IV.

CONCLUSION

Mitchell's contention that all pending matters before Judge Potter are either moot or now ripe for judicial determination does not mean that he is unwilling to work with Dr. Lenkeit as a parenting coordinator to mediate issues between the parties. However, Mitchell suggests in his reply that resolving the disputes that are before this Court, which Mitchell believes can be decided in light of Judge Sullivan's written decision from the May 6, 2010 hearing, may provide the parties a clean slate from which to start to work together as co-parents. Otherwise, Mitchell believes that Christina will continue her litigation posture during mediation with an eye toward the next hearing before this Court.

DATED this 18 day of November, 2010.

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 "Reply to Plaintiff's Opposition to Defendant's Countermotion for Sole Decision-Making Authority Regarding Healthcare Decisions Affecting the Children, for Attorney's Fees, Costs and Sanctions against Plaintiff and Patricia Vaccarino, Esq." on this 18th day of November, 2010, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue, Suite 210
Las Vegas, Nevada 89117

An employee of Radford J. Smith, Chartered

DOCKETING STATEMENT TAB #10

Electronically Filed
11/22/2010 02:41:47 PM

CLERK OF THE COURT

SUPP
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
Email: rsmith@radfordsmith.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION** **ORAL ARGUMENT REQUESTED** **YES** ☒ **NO** ☐

SUPPLEMENT TO DEFENDANT'S COUNTERMOTION

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.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 Mitchell's supplement captioned above.

. . .

. . .

. . .

This supplement is made pursuant to EDCR 2.20(f) and based upon the points and authorities attached hereto, the affidavit of Mitchell Stipp attached as Exhibit "A" and all other exhibits attached hereto, and all pleadings and papers on file in this action, and any oral argument made or evidence introduced at the time of the hearing on December 1, 2010.

DATED this 22nd day of November, 2010.

RADFORD J. SMITH, CHARTERED

/s/ Radford J. Smith - for 4030

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
(702) 990-6448
Attorneys for Defendant

I.

FACTS

The procedural matter to be decided at the December 1, 2010 hearing is whether this Court has jurisdiction to reconsider, clarify, amend, stay or set aside Judge Sullivan's order entered on October 13, 2010 arising from the June 22, 2010 hearing. On November 19, 2010, a day after Mitchell Stipp ("Mitchell") filed his opposition and countermotion,[1] Christina Calderon-Stipp ("Christina") communicated to Mitchell that she also intends to pursue reconsideration of Judge Sullivan's written decision entered on November 4, 2010 arising from the May 6, 2010 hearing. *See* Email from Christina to Mitchell dated November 19, 2010 attached hereto as Exhibit "B". Judge Sullivan's written decision from the May 6, 2010 hearing simply confirms the joint physical custody status of the parties and provides Mitchell additional time with his children of merely nine hours per month. The additional time

[1] In addition to jurisdiction, Mitchell briefed the substantive issues in his filing at significant cost and expense.

occurs on the third Friday of the month (when the children are generally in school) from 9:00 am to 6:00 pm. Attached as Exhibit "C" is Mitchell's email response to Christina sent on November 19, 2010.

Based on the time requirements of EDCR 2.24, NRCP 52, and NRCP 59, Mitchell believes Christina's motion for rehearing of Judge Sullivan's written decision from the May 6, 2010 hearing must be filed no later than November 24, 2010. Assuming that Christina files her motion for reconsideration by that date, there will only be two judicial days prior to the December 1, 2010 hearing because of the Thanksgiving holiday and this matter is ripe for determination at that hearing. Therefore, Mitchell files this Supplement and hereby requests that Judge Potter also rule at the hearing on December 1, 2010 that this Court lacks jurisdiction to reconsider, clarify, amend, stay or set aside Judge Sullivan's written decision from the May 6, 2010 hearing, or any other hearing for that matter.

II.

POINTS AND AUTHORITIES

Christina's motion, and her anticipated new motion, request that Judge Potter review the determinations of Judge Sullivan. A district court, however, does not have jurisdiction to reconsider, clarify, amend, stay or set aside another district court's orders. *See Rohlfing v. District Court*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990); *Warden v. Owens*, 93 Nev. 255, 563 P.2d 81 (1977), *State v. Sustacha*, 826 P.2d 959, 108 Nev. 223 (1992). Under these circumstances, Christina's motion for rehearing of Judge Sullivan written decision from the May 6, 2010 hearing should be summarily dismissed by this Court at the December 1, 2010 hearing for lack of jurisdiction.

There is no new evidence that exists or law that Christina can cite that will support a motion for rehearing. The events that have transpired since the May 6, 2010 hearing have been fully briefed in pleadings before this Court on Christina's current motions. In these pleadings, Christina has not asked this Court to change the physical custody status of the parties or limit Mitchell's actual time with the

children. The law applicable to the matters before Judge Sullivan at the May 6, 2010 hearing also has not changed. Therefore, Christina's motion will seek to challenge Judge Sullivan's factual findings and/or application of the law as indicated in her email to Mitchell. The proper forum for Christina to pursue these matters is on appeal to the Nevada Supreme Court.

No additional opposition from Mitchell or hearing on the matter should be necessary. Any such briefs addressing matters beyond the scope of jurisdiction would amount to re-litigating the custody matters considered by and already decided by Judge Sullivan over many months and after several hearings, a process that would be enormously costly to and time consuming for Mitchell, Christina and this Court. Furthermore, another separate hearing before this Court addressing matters already addressed by Judge Sullivan would be a waste of judicial resources. The issue of whether this Court has jurisdiction to clarify, amend, stay or set aside Judge Sullivan's orders is already before this Court and will be addressed at the December 1, 2010 hearing – Mitchell has raised this issue in regard to Christina's second motion for rehearing on the issue of "omitted assets" and attorney's fees. In an effort to avoid further substantive briefing on yet another of Christina's motions, Mitchell requests that this Court address its ability to rehear or modify Judge Sullivan's order regarding the May 6, 2010 hearing. If this Court finds it lacks jurisdiction to do so, everyone will save an enormous amount of time and effort. If this Court finds it can proceed forward, the parties can complete their briefing on the substantive matters.

...

...

...

...

...

III.

CONCLUSION

Based upon the foregoing, Mitchell requests that this Court:

1. Grant Mitchell's request to file this supplement pursuant to EDCR 2.20(f).

2. Enter an order that this Court lacks jurisdiction to reconsider, clarify, amend, stay or set aside Judge Sullivan orders.

DATED this 22nd day of November, 2010.

RADFORD J. SMITH, CHARTERED

R. J. Smith for 4070

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 "Supplement to Defendant's Countermotion" on this 22nd day of November, 2010, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117

An employee of Radford J. Smith, Chartered

DOCKETING STATEMENT TAB #11

Electronically Filed
11/29/2010 03:47:19 PM

CLERK OF THE COURT

SUPP
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

SUBMISSION OF PLAINTIFF'S AFFIDAVIT AND EXHIBITS IN SUPPORT OF REPLY

Comes now, Plaintiff, CHRISTINA CALDERON STIPP, appearing by and through her counsel, PATRICIA L. VACCARINO, ESQ., of the Vaccarino Law Office and hereby submits her Affidavit and Exhibits in support of Reply.

Dated this 29th day of November 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff
CHRISTINA CALDERON STIPP

AFFIDAVIT OF CHRISTINA CALDERON STIPP

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Christina Calderon Stipp, being duly sworn, deposes and says:

1. I am the Plaintiff in this matter and the natural mother of the minor children, who are the subject of this action. I have personal knowledge of the facts set forth in this affidavit, and if called to testify, I would be competent to testify thereto.

2. The facts set forth in this Affidavit are true and correct to the best of my knowledge and belief. I am submitting a Reply Brief and Exhibits in support.

3. In light of the multitude of outstanding issues in this case and the current time constraints, I will not take the time to specifically rebut each inaccurate contention made by Defendant Mitch Stipp ("Mitch") in the voluminous pleadings he recently filed on November 18, 2010. With the Thanksgiving holiday break, my counsel and I have been left with insufficient time to fully rebut. I ask the Court to forthwith address what should be the issue of greatest importance to all of us, that is, the health and well-being our children, Mia (now age 6) and Ethan (age 3). Mitch has made it clear that he will not agree upon the color of the sky with me, so I ask the Court to <u>now</u> order that the children receive appropriate treatment without further delay.

4. Ethan continues to exhibit ongoing behaviors resulting from his exposure to sexual abuse that are also cause for concern and warrant counseling, as recommended by Child Protective Services. Although I tendered to Mitch CPS's referrals for such counseling in July 2010, Mitch refused and continues to refuse to allow such counseling, to Ethan's detriment. To the extent that Ethan's ability to obtain such counseling has been affected by Mitch's actions in submitting bogus orders containing restrictions neither contemplated by nor ordered by the Court, such matters will be addressed by my counsel, separately, and at the hearing on this matter.

5. As the Court can see from the pleadings filed in this case, Mitch disagrees with me on numerous issues. With regard to Mia, however, I recently confirmed on November 15,

2010, after reviewing Mia's educational records at Nevada Child Find, that **Mitch and I both agree** that Mia is continuing to exhibit behaviors that are causing **both of us** significant concern. See Mitch's Child Find Health History forms, attached hereto as Exhibit 1 which reveal his concerns.

6. With regard to Mitch and my concerns for Mia, Child Find found Mitch and my agreement as to our concerns for Mia to be clinically significant. As noted in the **complete** draft Multidisciplinary Evaluation Team Report ("Report"), attached hereto as Exhibit 2, at p. 2, Child Find Evaluator/School Nurse Kandy Ling recorded the following comment on August 2, 2010: "I received Mia's father's health and behavior history today. Except for his family medical history **all other areas were addressed by mom and both mom and dad had similar concerns for child**." Id. It should be noted that the draft Report submitted by Mitch to the Court on November 18, 2010, is incomplete. He omitted from the Court's consideration the last two pages of the draft Report, which contain the critical recommendation made by the professionals at Nevada Child Find that Mia should receive "mental health or psychiatric assessment" and be permitted to consult with her "school psychologist and speech therapist." See Report, Exhibit 2, at p. 8.

7. Yet, in his pleadings and before the Court, Mitch completely denies having any concerns regarding Mia that post-date the conclusion of Dr. John Paglini's custody evaluation on April 29, 2010, or the last custodial hearing in our case, which occurred on May 6, 2010. This position is contrary to what Mitch had just reported to Child Find. The "Health/Developmental History" and "Behavioral/Social History" forms that Mitch voluntarily completed and submitted to Child Find on July 29, 2010, document his ongoing social/emotional and behavioral concerns regarding Mia, some of which he described under the section entitled, "Current Concerns," as being "**serious**." See Mitch's Child Find Health History forms, Exhibit 1, at p. 4.

8. Specifically, Mitch acknowledged the following behaviors and current concerns regarding Mia to Child Find (Mia was age 5 when he completed the form): "anger," "anxiety," "eating problems," "anxious," "hard to discipline," "quick to lose temper," "spitting," licking,"

"growls," "yells," "hits," "defiant toward adults/authority," "difficult to discipline," "fidgety, squirmy or restless" (he endorsed these as "serious" current concerns), "easily distracted," "doesn't listen," "anger management" problems, and aggression/conflict towards Ethan. Id.

9. I share these same concerns of Mitch's with regard to Mia. I continue to be concerned with the following conduct exhibited by Mia: continuing obsession with germs, i.e., "Ethan germs," and stuffed animals, compulsive rituals such as spitting/licking, tickling, nail biting, and teeth grinding, (see Letter from Adventure Smiles, dated October 6, 2010, attached hereto as Exhibit 3, describing the severe nature of Mia's new teeth grinding compulsion, which remains yet to be treated), chronic constipation, extreme and rapid mood changes, strong resistance to change, screams, angry outbursts (foul language), continuing resistance to clothing and seatbelts, and sensitivity to sound/light/touch.

10. I need to briefly clarify what "Nevada Child Find" is and the process for determining Mia's eligibility for special education services, as there appeared to be confusion over both topics at the last hearing in this case. The Child Find Project is a service of the Clark County School District (CCSD), which is designed to identify and evaluate the special education needs of children ages 3 to 21, who are suspected of having social/emotional/behavioral problems, and/or a disability or delay and are not currently enrolled in the district.

11. As explained to me by Child Find's director, Dr. Judy Miller, a child who is evaluated under Child Find and is found to be eligible to receive services can still benefit from assessment by Child Find if he/she later enrolls in the CCSD. In such a case, the student would simply transfer his file along with his recommendations and individual education plan (IEP) with him to his CCSD school. He would then be permitted access to a multidisciplinary team of professionals and specialists, similar to the team assigned to evaluate Mia in July 2010, which included a school nurse, special education teacher, school psychologist and speech pathologist.

12. Mia is now attending kindergarten in the CCSD. Her initial assessment is already completed. Mia's Child Find eligibility for services and a final IEP determination is being

prevented by Mitch who is refusing to take the **final step** in simply meeting with or allowing me to meet with Mia's evaluators to discuss their observations, recommendations, and Mia's eligibility for services. The last remaining step to determine whether or not Mia is eligible for special education services and an IEP is to simply meet with Mia's Child Find team. **Nevertheless, Child Find's recommendation that Mia obtain psychiatric or mental health assessment is critical here. See Report, Exhibit 2, at p. 8. It directly refutes Mitch's contention that Child Find made no such recommendation and had no concerns with Mia**.

13. I ask the Court to note the School Nurse's referral of Mia to a psychiatrist and provision to me of a list of psychiatrists, as documented in the Report at page 2. See Exhibit 13. Also, the Report documents that each professional that evaluated Mia noticed Mia's spitting compulsions. Id. at pp. 2-3, and 6. Psychologist Shirlee Williams noted that Mia would "lick her hand and place her hand onto her legs and under her arms very frequently throughout the session." Id. at p. 3. Dr. Williams also noted various areas of additional concern on page five of the Report. Id. at p. 5. School Nurse Kandi Ling noted that Mia, "will lick her hand and wiped it behind her knees. She does this over and over and did so today." Id. at p. 2. Speech Pathologist Robbie Webb noted that Mia presented with "obsessive compulsive type behaviors." Id. at p. 6.

14. Mitch contends that Mia's obsessive-compulsive behaviors were simply and unequivocally "sensory processing disorder" and that she is now "cured." In support of this belief, Mitch submitted to Child Find, occupational therapist Tonia Stegen-Hanson's evaluation and progress report on Mia's supposed diagnosis of sensory processing disorder as to the new behaviors. He also submitted to Child Find the records of Dr. Melissa Kalodner. Mitch attempts to rely upon the records in support of his argument that because Dr. Kalodner ruled out OCD as to Mia with regard to her clothing issues in September 2009, Mia will never develop OCD. The medical research does not support such a conclusion.

15. After physically evaluating Mia, administering psychological assessments to both Mitch and me, and evaluating both Mitch and my respective health and behavioral histories

containing our past and current concerns regarding Mia, Child Find did not concur with Mitch on his sensory processing diagnosis. Instead, Child Find recommended that Mia receive "mental health or psychiatric assessment." Id. at p. 8.

16. Child Find Director Judy Miller told me that she and the evaluators would be "shocked" if Mia's behaviors were diagnosed to be "sensory processing disorder." Dr. Miller believes that Mia suffers from an anxiety-based disorder, and Mia would greatly benefit from a mental health evaluation. Although I contemporaneously communicated Child Find's then-informal recommendations and commentary regarding the sensory disorder diagnosis to Mitch, he refused to consent to obtain a second opinion and, most egregiously, adamantly refused to stipulate to a parenting coordinator to help us reach a timely and cost-effective resolution on the matter, even though Dr. Paglini had strongly recommended that a parenting coordinator be appointed and Mitch's own attorney begged Judge Sullivan for one on May 6, 2010.

17. I do not believe that Mitch's reliance on an occupational therapist's diagnosis of compulsive behaviors is genuine. I believe Mitch is using Dr. Stegen-Hanson, as he did Dr. Kalodner, to further his own litigation strategies, i.e., do not allow Mia to receive a second opinion because it might hurt him in litigation.

18. Mitch initially agreed to attend the final meeting with Child Find on August 4, 2010. Then Mitch reneged on his agreement and forced Director Judy Miller to cancel the meeting. Mitch even threatened litigation against the CCSD. Yet, Mitch forwarded sealed court documents to Child Find without my knowledge or consent (even though he adamantly refuses to allow Dr. Lenkeit to review any such documents now) and began a continuing battle to "bully" and "control" Child Find from releasing to me any information that would prove helpful in assessing and/or treating Mia's behaviors and/or recommending treatment and evaluation of them. See October 27-28, 2010 Letters from Mitch to Child Find, attached hereto as Exhibit 4.

19. The Court need only review the threatening and litigious letters Mitch sent to Child Find after they recently provided us both with a draft of their evaluation Report in order to see

how Mitch is more concerned with his own litigation position than in Mia's serious needs. Id.

20. Mitch is a father, who has self-described and documented "serious current concerns" about his child as of August 2010. Yet, this father is refusing to allow anyone, including himself, access to recommendations from professionals who specialize in children with special needs that may prove helpful for Mia. The Court should grant me sole legal custody given Mitch's abuse of his joint legal custodial status in vetoing and continuing to withhold and delay the cooperative parenting process and receiving needed healthcare and treatment for Mia. Withholding such clearly needed care is neglectful and even abusive.

21. In the last two months since the October 6, 2010 hearing in this case, Mitch has also bullied Dr. Lenkeit into delaying commencement of the parenting coordination services this Court ordered on October 6, 2010. See Emails and Correspondence re Dr. Lenkeit, Exhibit 5. The Court's mandate for parental coordination did not contain the conditions or restrictions Mitch has manipulated into the process in order to delay, and, therefore, nullify the effectiveness of such services for the parties. See Referral Order, dated October 6, 2010, attached hereto as Exhibit 6. Neither the transcript of the hearing, nor the minutes contain the restrictions and conditions Mitch wrongfully sought to and thereafter wrongfully imposed upon Dr. Lenkeit in order to delay and control the parental coordination process. See Relevant Portions of October 6, 2010 Transcript, attached hereto as Exhibit 7 (describing, among other things, Judge Potter's view of Dr. Lenkeit's role). Mitch's "narcissism" and need to have "control in relationships" was documented by Dr. Paglini in his custody evaluation, dated April 29, 2010. He has been trying to "control" everyone in this case and prevent parenting coordination to the detriment of our children.

22. I do not understand why it has taken eight months and tens of thousands of dollars wasted on attorney's fees in order to attempt to obtain a second opinion for Mia given our **shared concerns** over her ongoing behaviors. As Mitch and the Court are aware, Mia's pediatrician, who knows Mia since birth, also referred Mia to child neuropsychologist Dr. Nicole Cavanagh, over eight months ago. See Dr. DeSimone Letter, dated September 30,

2010, attached hereto as Exhibit 8. This is not the first time that Mitch has withheld treatment for Mia. The Court should note that Mitch waited until December 2009, over four months, to tell me that his secret psychologist, Dr. Melissa Kalodner, recommended occupational therapy for Mia in September 2009, because he was afraid of the Court discovering his "deceit and deception," as described by Dr. Paglini, in having Mia secretly seen by a psychologist for over 5 months. See Dr. Paglini's Custody Evaluation, dated April 29, 2010 and the recent custody order in this case documenting Mitch's "deceit and deception."

23. Mitch's stated reason for refusing to allow Mia valid and necessary mental health evaluation and treatment is that he is afraid that it may produce evidence that I may use against him in future litigation. Given his own history of "deceit and deception" involving secret psychological treatment of Mia, it appears that Mitch is projecting onto me his fear that I will mimic his own previous misconduct in this case. I have learned a lot in the parenting classes that I have been willingly taking since immediately after the last hearing in this case, pursuant to the Court's order to do so. I have learned, often times, the conflictual parent, which I believe is Mitch in this case, incites conflict not only to maintain his emotional connection to his former partner, but also because he is afraid. Mitch's objection to allowing Mia to get the help she needs is fear-based (he states that he is afraid of what evidence might derive from medical treatment of Mia) and ignores Mia's best interests. As he has done in the past, Mitch has lost sight of Mia and Ethan here.

24. I am thankful that this Court ordered us both to take UNLV's cooperative parenting and divorce class. I have learned many important lessons about my high-conflict relationship with Mitch that I hope to be able to change, at least on my part, for the sake of our children. Although the Court expressed its dislike for both of us, on October 6, 2010,I hope to change its opinion of me by doing even more on my part to lessen the conflict between us. Margaret Pickard, Esq., is my teacher. She has shared a wealth of information with me through her class, which I highly recommend to any custody litigant in any jurisdiction. Since participating in the class, I have endeavored to keep my communications with Mitch

brief, polite, professional, and geared toward the business of cooperating to meet the needs of our children. When Mitch immediately and unreasonably objected to Dr. Lenkeit's viewing any pleadings or Dr. Paglini's obviously relevant custody evaluation, I asked Mitch to jointly attempt to resolve the matter with me using Dr. Lenkeit, directly, through a quick conference call so as to reduce fees and eliminate delay and judicial involvement in the case. See Email, dated October 26, 2010, attached hereto as Exhibit 5. Mitch ignored my offer of compromise.

25. Thereafter, on November 11, 2010, after seeing the weeks drag on and on as Mitch continued to prohibit Dr. Lenkeit from commencing his services in our case, I begged Mitch to allow us to please proceed with parental coordination and offered to do so without providing documents to Dr. Lenkeit, pending the December 1, 2010 hearing. Id. Mitch ignored this request for over nine days and only responded **after** the Court signed his Order, which contains items not contemplated at the hearing nor ordered by the Court. Mitch has tendered for submission, without adequate opportunity for review, many such orders that have had to be clarified and/or reconsidered given his reckless actions geared at controlling, manipulating, and perpetuating the litigation between us. I respectfully request that the Court put an end to Mitch's expensive and time-consuming manipulations of Court orders, as they waste everyone's resources unnecessarily, including the Court, and serve no benefit to our children.

26. Judging from Mitch's recent factually inaccurate and emotionally charged communications to me as well as his actions in doing everything possible to delay Dr. Lenkeit's Court-ordered parental coordination in our case, I am doubtful and fear that Mitch has not even started the cooperative parenting class this Court ordered him to attend.

27. The emails he attaches to his recent pleadings document his willingness to have our children serve as "messengers," contrary to accepted cooperative parenting principles. Mitch uses the children as messengers for matters as critical as the details of even a head injury suffered while in his care. In any event, regardless of the source of or reason for Mitch's continuing conflict against me, it is clear that Mia's need for medical evaluation and

treatment far outweighs Mitch's "litigation defense" concerns.

28. I respectfully request that the Court allow me to immediately begin Mia's evaluation with Dr. Nicole Cavanagh to whom Mia's pediatrician referred Mia eight months ago. Mia should also undergo brain spect imaging with the Amen Clinic, whose information I attached to the Affidavit I filed on October 5, 2010. The Court should order both Mitch and I to share the cost of Mia's evaluation and treatment, including the brain spect imaging equally. It is clear that parental coordination on this issue will not help, as immediate resolution is warranted, not more delay. I have no objection to proceeding with parental coordination on all other outstanding matters between us.

29. I also want to bring the Court's attention to the heinous actions Mitch undertook following the October 6, 2010 hearing to put Mia directly in the middle of our litigation. Following the hearing, Mitch told Mia that I am "recording" her and that I am "telling everybody" about her "bad reactions." Mia told me that her stepmother, Amy, confirmed Mitch's statements and told her that "she [Amy] was there," when I supposedly told "everyone" that Mia was "bad."

30. As the Court will recall, my counsel offered Mitch's counsel and the Court the opportunity to review video evidence of some of Mia's conduct, which I surreptitiously obtained. My counsel had requested documentation of what was then, but is no longer given Mitch's Child Find records, the disputed issue of Mia's continuing behavioral concerns. Mitch then literally coached Mia by telling her that if she "caught me recording her," Mia was to "freeze," "be still," "give [me] a blank stare," and "act in the appropriate way." Mia told me that Mitch told her to do this because he does not want "anyone to know that she has any issues." Attached hereto as Exhibit 9 is a transcript of the audio recording I made contemporaneously documenting Mia's conversation with me confirming this horrific emotional abuse by Mia. The audio recording will be produced to the Court at the hearing on this matter.

31. I cannot fathom why Mitch and Amy would subject Mia, who is already suffering from anxiety, to the pain of thinking, although it is absolutely false, that her own mother is showing "everybody" video of her in order to speak poorly of her. These actions constitute

abuse, violate EDCR 5.03, are certainly not condoned in our co-parenting class, and counsel against Mitch remaining Mia and Ethan's joint legal custodian. See EDCR 5.03 (prohibiting parties from "[d]iscussing the issues, proceedings, pleadings, or papers on file with the court with the minor children of the litigants" as it is not in their best interest). Dr. Kalodner's records reveal previous coaching of Mia and involvement of her in the litigation by Mitch.

32. Child Find ultimately recommended the following: "1. Consultation with the school psychologist and speech therapist should be made available on an as needed basis to Mia's caregivers. 2. **Mia's family is encouraged to follow up with community resources such as mental health assistance or psychiatric assistance**." See Report at p. 8, Exhibit 2. I implore the Court to stop Mitch from harming Mia any further by directly involving her in the litigation as well as by continuing to prevent Mia from getting the evaluation and treatment that has been recommended for her by both her pediatrician as well as Child Find.

33. From the date of the October 6, 2010 hearing in this case to the present, Mitch has acted in bad faith, has defied this Court's orders, has directly apprised Mia of litigation issues to her detriment, and has not coparented or cooperated to meet our shared concerns regarding Mia. In fact, Mitch wants to tell Dr. Lenkeit, a qualified Ph.D, how to do his job, and is refusing to complete Dr. Lenkeit's necessary, extensive Parenting Questionnaire

34. I have followed the Court's Order by immediately signing up for and taking the eight-week UNLV cooperative parenting course, which I will conclude next week. See UNLV Enrollment Verification Letter, attached hereto as Exhibit 10. I also submitted to Dr. Lenkeit a completed parenting questionnaire, parenting agreement, and retainer, as requested by him, without delay. See Email from Dr. Lenkeit's Office re Initiation of Services, dated October 19, 2010, attached as Exhibit 11 (forwarding Dr. Lenkeit's Parenting Agreement & Questionnaire).

35. Mitch presently refuses to submit to Dr. Lenkeit his standard form Parenting Agreement, Questionnaire or retainer, for that matter, claiming that they are now "unnecessary." See

Mitch's Email and correspondence about Dr. Lenkeit, attached as Exhibit 5. Thus, although we are set to begin parenting coordination services on December 7, 2010, Mitch has already imposed upon the process yet another unnecessary roadblock.

36. Mitch's bad faith should be punished by an award to me of attorney's fees, which he has unnecessarily caused me to incur. Such an award is NOW warranted in light of the new dispositive evidence proving Mitch's lack of candor concerning his true and "serious" concerns regarding Mia's "current" behaviors. Mitch is playing games with the Court as well as me.

37. Judge Potter indicated on October 6, 2010, that he wanted Dr. Lenkeit to give him a report documenting the parent's behavior, should we not reach resolution on outstanding matters. See Relevant Portions of the Hearing Transcript, October 6, 2010, attached as Exhibit 7, at p. 17.

38. Judge Potter took the matter of attorney's fees under advisement and said that if he awarded fees in this matter, they would be "voluminous." Id. at 26. Mitch single-handedly destroyed Judge Potter's attempt to get us help on the co-parenting front. Mitch should be made to pay for his willfulness and unnecessary waste of my resources, as well as the Court's resources. I implore the Court to stand by the statements made previously about fees. If the Court permits Mitch's misconduct to slide, Mitch will simply continue to play games with everyone, to Mia and Ethan's detriment.

39. Specifically, Judge Potter stated, "If the parties can't work through the issues on their own, then they can come back here and I'll make the decisions, but I'm going to put a separate layer in, somebody who can—has the mental health training that can coach them a little bit and help them to hopefully reach resolutions that are in the children's best interest. And if they can't, then certainly I would expect him to provide some type of report to me regarding the parents' behaviors, his concerns." Id. at 17. Mitch's actions are certainly indicative of a refusal to coparent. Mitch's legal position is completely contradicted by his own admissions to Child Find of current and serious concerns for Mia. Attorney's fees are certainly warranted in my favor in this case, and deferring fees will add fuel to the horrible

fire Mitch is burning. Although I offered Mitch to do so, we could have easily resolved our disputes as to Dr. Lenkeit's role by simply putting the matter to Dr. Lenkeit directly. This Court already indicated its confidence in Dr. Lenkeit and his professionalism. Id. at 15.

40. The Court must see Mitch's actions for what they truly are, and please allow me to immediately obtain the second opinions that I requested for Mia's ongoing behaviors. The return hearing on Dr. Lenkeit's final report is set for January 11, 2010. Given Mitch's deliberate delay tactics, our first appointment with Dr. Lenkeit will not be until December 7, 2010. As it appears from Mitch's emails on the matter and letter to Dr. Lenkeit, attached as Exhibit 5, Mitch is unwilling to allow Dr. Lenkeit to proceed with his customary protocol, contrary to even the most recent Order of the Court.

41. Mitch has already delayed help for Mia for over eight months now. A parent, who knowingly and willfully refuses to provide his child with proper health care, as Mitch does here, is guilty of child abuse. Protection of his litigation position does not outweigh Mia's need to have a proper mental health evaluation and treatment. Mia was not "cured," as Mitch maintains to the Court, but admits otherwise to others, including Child Find.

42. To date, Mia continues to express an irrational and vocal fear of what she characterizes to be "Ethan germs." On a daily basis, she refuses to use a bathtub if Ethan uses it first; she will not step on a stool Ethan uses unless she puts a towel over the stool; and she asks me constantly whether or not Ethan has touched certain things before she will consider touching them herself. Ethan is beginning to mimic Mia's behaviors and appears to be affected by Mia's negatively singling him out.

43. Contrary to Mitch's claims otherwise, Mia also continues to spit as well. She regularly spits onto the arches of her feet on a daily basis. Mia continues to spit onto her hand and wipe it on her vagina. Mia now also chews things more than ever before. Mitch's "occupational therapy" of Mia since May 2010, which he undertook against my revocation of consent in the absence of a mental health evaluation as to Mia's new behaviors that emerged in late May 2010, included completely ignoring Mia's germ phobia, admonishing Mia's spitting behavior, and encouraging her to "chew on a straw" among other things.

44. As a result of Mitch's mistreatment of Mia with occupational therapy instead of a qualified mental health professional, Mia has developed new spitting/chewing rituals. She picks and bites her nails frequently. Mia also now spits into and chews on the ears of the multitude of stuffed animals she constantly carries around with her wherever she goes (another sign of insecurity/anxiety), especially her two favorite pink bears that she has had since birth.

45. On October 6, 2010, Mia was seen by her dentist, Dr. Gary Richardson, for her second chipped tooth since August 2010. In August 2010, Mia's two front teeth had to be filled in the back as a preventive precaution against further damage due to Mia's grinding away at half of the depth of each tooth. I believe teeth-grinding is Mia's new replacement compulsion. Mitch is a chronic teeth-grinder and has suffered from obsessive-compulsive disorder ("OCD"). OCD is a progressive and degenerative disorder that can benefit greatly from early diagnosis and treatment. Dr. Gary Richardson's office took the time to clarify, in writing, Mia's teeth-grinding habit and his treatment of it for me. Contrary to Mitch's previous statements on the matter, Mia's teeth-grinding has not been addressed or resolved. See Letter from Adventure Smiles, Exhibit 3.

46. Ethan also should be allowed to receive counseling to address the ongoing behaviors he continues to exhibit, demonstrating victimization of sexual abuse. CPS provided both Mitch and I with referrals for such counseling in July/August 2010, but Mitch refuses to permit it. Specifically, Ethan recently exposed his erect penis to a child of similar age and sex at the park. He engages in behaviors with his penis, such as exposure and fondling, on an almost daily basis. He continues to refer to his cousin, Cody, as his "boyfriend." His behaviors are worsening. Today, he got in trouble at preschool for "destroying the classroom." Clearly, Ethan requires counseling.

47. Mitch's opposition to such counseling is based upon fear of a negative litigation effect upon him as well. As demonstrated by Mitch's threatening and controlling emails to CPS on the matter, Mitch is not putting Ethan's best interests above his own. The issue of Ethan's counseling also must be ordered by the Court at the upcoming hearing. This Court promised to select healthcare providers and rule upon issues if the parenting coordinator

classes and coordination efforts did not help. We are now further apart from reaching any agreements on any issue due to Mitch's position and defiance. Thus, I ask the Court to NOW rule on the deferred issues without further delay.

48. Mitch has demonstrated how he intends to act towards any parenting coordinator appointed by the Court in this case. He vehemently opposed a parenting coordinator, and appears to be saying through his actions, which speak louder than his words, that he does not intend to allow Dr. Lenkeit to follow the Doctor's normal protocol and help us. Since Mitch refuses to follow the Orders of the Court and will not act in good faith in order to reach resolution instead of incite conflict in this case, he should not be a joint legal custodian of our children. The Court should allow our children to receive immediate healthcare and also grant my request for attorney's fees given Mitch's bad faith misconduct in unnecessarily delaying help for Mia, who both parties agree has current, serious issues of concern.

49. Mitch has already gotten too many windfalls due to his manipulation of the litigation process. Case in point is Mitch's recent attempt to change custody based upon false and previously litigated claims, which were completely disproven by Dr. Palglini, that I emotionally abused Mia and caused many of the same concerns we continue to share about her now (anger, defiance, clothing issues). Judge Sullivan's recent November 4, 2010 decision (delayed since May 6, 2010), which attempts to change physical custody from primary in my favor, as it has always been, and, judging from Mitch's continuing efforts to ignore and act against the best interests of the children, should remain, to joint physical custody. Judge Sullivan's decision is clearly not in the best interests of the children (among other things, Dr. Paglini's report specifically cautioned Judge Sullivan against increasing Mitch's timeshare due to Mitch's "deceit and deception" with regard to his secret treatment of Mia), but it violates my due process rights, as his attempted custody change occurred without notice, a hearing, and without any, let alone substantial, evidence, or the opportunity to rebut the same.

. . .

50. It should be noted, however, that the November 4, 2010 decision does not do that which it sets out to accomplish. Judge Sullivan arguably attempted to "add" 12 custodial days to Mitch's timeshare in order to have Mitch meet the 146-day or 40% definition of a joint physical custodian under Nevada law. See Rivero v. Rivero, 216 P.3d 213 (Nev. 2009). Even assuming, arguendo, that the 12 days Judge Sullivan has now awarded Mitch can be counted as full days where Mitch could be deemed to have parental responsibility (during school days, the increase will only be that of three hours), Mitch still does **not** have the 146 days required under Nevada law to be considered a joint physical custodian. Had Judge Sullivan calculated the "actual" timeshare we practiced in the year preceding the May 6, 2010 hearing, as the law required him to do, he would have seen that Mich has 124 annual custodial days. See Calendar Documenting "Actual", not Speculative, Custodial Timeshare in the Year Preceding May 6, 2010, attached hereto as Exhibit 12. Mitch's newly awarded 136-day timeshare (124 days, plus 12 days) will, therefore, still fall short of the definition of joint physical custodian under Nevada law.

51. I ask the Court to strike Mitch's Order from the October 6, 2010 hearing that was erroneously filed with language this Court never ordered. My attorney's proposed Order is being submitted for ratification.

Christina Calderon Stipp
CHRISTINA CALDERON STIPP

Subscribed and sworn to before me this 29 day of November, 2010.

Notary Public, in and for said

MATTHEW J. LAYTON
Notary Public State of Nevada
No. 09-9449-1
My appt. exp. Feb. 6, 2013

DOCKETING STATEMENT TAB #8

Electronically Filed
11/18/2010 03:06:04 PM

CLERK OF THE COURT

OPP
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
Email: rsmith@radfordsmith.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION** **ORAL ARGUMENT REQUESTED** **YES** ☒ **NO** ☐

OPPOSITION TO PLAINTIFF'S MOTION FOR "NEW" TRIAL TO AMEND FINDINGS AND/OR RESCISSION, RECONSIDERATION, MODIFICATION AND/OR STAY OF ORDER FILED ON OCTOBER 13, 2010, AND ALLOWING PLAINTIFF IMMEDIATE ACCESS TO DEFENDANT'S TAX RECORDS AS PREVIOUSLY ORDERED, AND TO COMPEL DEFENDANT TO COOPERATE IN COMMENCING SESSIONS WITH THE PARENTING COORDINATOR AND FOR ATTORNEY'S FEES AND COSTS; AND COUNTERMOTION FOR AN AWARD OF ATTORNEY'S FEES, COSTS AND SANCTIONS

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.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, hereby submits Mitchell's opposition and countermotion captioned above to this Court.

OPP
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
Email: rsmith@radfordsmith.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION** **ORAL ARGUMENT REQUESTED** **YES** ☒ NO ☐

OPPOSITION TO PLAINTIFF'S MOTION FOR "NEW" TRIAL TO AMEND FINDINGS AND/OR RESCISSION, RECONSIDERATION, MODIFICATION AND/OR STAY OF ORDER FILED ON OCTOBER 13, 2010, AND ALLOWING PLAINTIFF IMMEDIATE ACCESS TO DEFENDANT'S TAX RECORDS AS PREVIOUSLY ORDERED, AND TO COMPEL DEFENDANT TO COOPERATE IN COMMENCING SESSIONS WITH THE PARENTING COORDINATOR AND FOR ATTORNEY'S FEES AND COSTS; AND COUNTERMOTION FOR AN AWARD OF ATTORNEY'S FEES, COSTS AND SANCTIONS

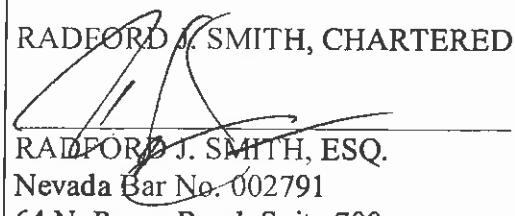
DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.m.

COMES NOW, Defendant MITCHELL D. STIPP ("Mitchell"), by and through his attorney Radford J. Smith, Esq., of the firm of Radford J. Smith, Chartered, hereby submits Mitchell's opposition and countermotion captioned above to this Court.

This opposition and countermotion is based upon the following points and authorities, the affidavit of Mitchell Stipp attached hereto as Exhibit "A" and the other exhibits attached hereto, all pleadings and papers on file in this action, and any oral argument made or evidence introduced at the time of the hearing on December 1, 2010.

DATED this 18 day of November, 2010.

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

I.

INTRODUCTION

The parties, Mitchell Stipp ("Mitchell") and Christina Calderon-Stipp ("Christina"), were recently before this Court on October 6, 2010. The order from that hearing was recently signed by Judge Potter and is in the process of being filed with the Clerk of the Court. To the extent that Christina's new motion concerns matters addressed by that order, those parts of her motion are now moot and are not discussed by Mitchell in this pleading.[1] Christina's motion is the third motion seeking identical relief that has already been denied twice by Judge Sullivan. Indeed, as demonstrated below, her "third bite at the apple" requests that this Court review the orders of Judge Sullivan, an act that is prohibited under Nevada law. Moreover, she again requests relief from this Court regarding matters that

[1] Mitchell has filed concurrently with this opposition and countermotion his reply to Christina's opposition to his countermotion for this Court to grant him sole decision-making authority over healthcare matters affecting the children. Christina's opposition was filed on October 5, 2010, a day before the hearing. Mitchell directs this Court to his filing because Mitchell believes that matters from the October 6, 2010 hearing will likely be argued by Christina at the hearing on December 1, 2010, and this Court should be aware of events that have transpired since the hearing.

are still under submission with Judge Sullivan (the amount of fees she must pay Mitchell due to his prevailing on her second motion of this type.) Christina's baseless motion has now become her standard tactic in this matter, and Mitchell requests that the court enter its order granting him attorney's fees as the prevailing party in this matter, and further direct Christina and/or her counsel to pay sanctions to discourage their filing of serial meritless motions.

II.

BACKGROUND

After reviewing Christina's motion, it is likely this Court is completely puzzled. The motion lacks basic facts and background, and it cites to points of law without any attempt to justify their applicability. Essentially, Christina dumped the matter onto this Court to figure out. Through his opposition, Mitchell will attempt to provide the necessary factual background and analysis so that this Court will be able to rule clearly and definitively at the December 1, 2010 hearing.

The financial matters litigated by the parties over the six (6) month period between December of 2009 and June of 2010 are fairly complex, but thoroughly addressed and understood by Judge Sullivan. Christina's fundamental argument, that she was entitled to a division of an "omitted asset," or permitted discovery to determine any omitted asset, was fully briefed and argued before Judge Sullivan. Judge Sullivan denied Christina's initial motion, and her subsequent motion for rehearing. The pleadings related to those issues amount to hundreds of pages of filed documents (motions, countermotions, oppositions, replies, and supplements), all of which were reviewed and considered by Judge Sullivan in three (3) separate and full hearings held on December 8, 2009, February 3, 2010 and June 22, 2010. As more fully discussed below, Christina has had these issues reviewed by Judge Sullivan on two occasions, and on each occasion he denied her motions.

One would think, then, that Christina would commence her motion by providing that basic procedural history, and advising the Court that her motion constitutes a ***second motion for reconsideration.*** Apparently she believes that by briefly mentioning the previous proceedings she will cause this Court, Judge Potter, to forget the thousands of pages and dozens of hours of drafting, research, hearings, review and rulings that led to the entry of Judge Sullivan's Orders (as more particularly described below). Indeed, Christina fails to attach to her motion any of the relevant pleadings, transcripts of the hearings, or orders issued by Judge Sullivan. Consequently, Mitchell will provide the relevant documents and as brief a review as possible of the substantial factual and procedural history underlying Judge Sullivan's denials of Christina's meritless motions.

III.

RELEVANT FACTS

On October 29, 2009, Mitchell filed his Motion to Confirm Parties as Joint Physical Custodians and to Modify Timeshare Arrangement. The motion was designed in part to address Christina's continued acts of disparaging Mitchell and his wife Amy both directly, to third parties, and most importantly, to the parties' daughter Mia. Mitchell believed and believes that Christina's attempts at alienation (which arise from her continued anger toward Mitchell based upon her misconceptions regarding the circumstances of their divorce) constituted emotional abuse of Mia. While that issue is not before the Court here (indeed Judge Sullivan has a written decision on Mitchell's motion (a copy of which is attached as Exhibit "B" hereto)[2] in which Judge Sullivan granted Mitchell additional time and confirmed Mitchell's status as a joint physical custodian), it provides the context for Christina's first motion seeking to divide "omitted assets" and requesting discovery.

---

[2] As part of Judge Sullivan's findings in his order, he confirmed the series of disparaging statements made by Christina to Mia, as reported by Mia's counselor, Dr. Kalodner. *See,* Exhibit "B" attached hereto, page 12.

On November 30, 2009, Christina filed her opposition to Mitchell's above referenced motion, and to punish Mitchell for his allegations that Christina was emotionally abusing Mia, she filed a countermotion for, among other things, discovery of Mitchell's personal financial information and the partition of alleged "omitted assets." In sum, Christina alleged that Mitchell received money from Aquila Investments, LLC ("Aquila Investments")[3] to which she believed she was entitled. Mitchell opposed that motion, and saw it as a thinly veiled attempt to pry into Mitchell's personal financial affairs for litigation leverage. Mitchell filed his opposition and reply to Christina's opposition and countermotion on December 7, 2009, and Christina filed a reply to Mitchell's opposition on December 8, 2009. The court held a hearing on the foregoing matters on December 8, 2009. At the hearing, the court considered oral arguments of Christina's countermotion but deferred ruling on Christina's requested relief.

Mitchell desired to end the issue of Christina's claim that he received money from Aquila Investments as simply as possible, so he went to the company's principal, William W. Plise, and requested that he, Mitchell, be allowed to present the company's tax returns to the court in his case. Mr. Plise required that Mitchell sign a confidentiality agreement, and upon doing so, on December 18, 2009, he ***voluntarily*** submitted the 2007 and 2008 federal income tax returns for Aquila Investments (the "Aquila Tax Returns") for *in camera* review by Judge Sullivan. The tax returns show that Christina's allegation was baseless - ***no distributions*** were paid to Mitchell.[4]

---

[3] Aquila Investments was a holding company that owned and/or controlled through single asset entities various commercial real estate projects in Las Vegas, Nevada developed by William W. Plise. Mitchell owned through Stipp Investments, LLC a profits-interest in Aquila Investments while Mitchell was married to Christina. Aquila Investments became insolvent shortly after the parties divorced during the 2008 meltdown in the financial markets and currently has no material assets. Mitchell's interest in Aquila Investments was redeemed by Aquila Investments at the end of 2008.

[4] In Mitchell's supplement, Mitchell specifically authorized Judge Sullivan to provide the Aquila Tax Returns to Christina subject to a confidentiality agreement.

In addition, with the December 18, 2009 filing, Mitchell provided a detailed analysis of the financial records that ostensibly formed the basis of Christina's countermotion.

At a hearing held February 3, 2010, Judge Sullivan considered the merits of Christina's countermotion regarding her request for financial discovery (including her request for discovery of Mitchell's personal tax returns and request for an affidavit of financial condition, the same claims she raises in her present motion) and her request for a partition of alleged "omitted assets." Judge Sullivan indicated that he had reviewed the Aquila Tax Returns and had not found any evidence of distributions. Equally important, Judge Sullivan found that Christina's motion's lacked legal basis, and found that in order to bring such claims, she would be required to show "fraud upon the court." He thus ***denied*** Christina's countermotion. His order, entered April 13, 2010 (attached hereto as Exhibit "C" and referred to herein as the "April 13, 2010 Order"), incorporates his stated findings from the February 3, 2010 hearing. Paragraph 4 of that order reads:

> The Court does not intend to re-litigate the financial issues between the parties, and is inclined to deny Christina's Motion to partition omitted assets. The Court is not willing to re-open the litigation unless it can be shown that a fraud was committed upon the Court. Christina has provided no evidence of such fraud. Christina's motion to open discovery is based upon her allegations relating to Aquila Investments, LLC. The court notes that Christina was aware of the Aquila Investments, LLC, and its assets prior to the parties' divorce. She had sufficient opportunity to explore and investigate that asset during any discovery process prior to divorce. Her failure to do so does not constitute a fraud committed upon the Court by Mitchell.

As a matter of fairness and due process, and without objection from Mitchell, Judge Sullivan also ruled that Christina's counsel alone could review the Aquila Tax Returns in chambers, provided, that Christina's counsel enter into a confidentiality agreement with Mitchell. See Paragraph 5 of the April 13, 2010 Order. Nothing in that paragraph, or in the order has a whole, however, suggests that Judge Sullivan's ruling that Christina had failed to meet her burden that Mitchell had committed fraud upon the court was contingent upon her review of the tax returns.

If Christina truly believed that Judge Sullivan's denial of her motion was contingent upon her review of the tax returns, she would have diligently pursued that review. Instead, she waited months to even respond to Mitchell's proffer of a confidentiality agreement, arguably because she knew already what Judge Sullivan had found: the Aquila Tax Returns did not support her claim. Indeed, on February 23, 2010, before Judge Sullivan had even entered a written order, Mitchell's counsel provided a draft copy of the confidentiality agreement to Christina's counsel who at the time never bothered to review it. *See* Email Correspondence (without enclosures) to Donn Prokopius attached as Exhibit "D".

Without reviewing the Aquila Tax Returns, or commenting on the confidentiality agreement, on or about April 30, 2010, Christina filed her first motion to reconsider and/or clarify the April 13, 2010 Order. Mitchell filed an opposition on or about June 3, 2010. The court held a hearing on June 22, 2010 and ***denied*** Christina's motion.

Notably, even by the June 22 hearing date, her counsel had still not bothered to review the Aquila Tax Returns. At that hearing, after it had been demonstrated that her counsel had failed to respond to the proposed confidentiality agreement, Christina claimed that her former counsel was not qualified to review the returns anyway, and she requested that she be allowed to have a CPA review them. Mitchell had no objection, and so the court permitted Christina to hire an accounting expert to review the Aquila Tax Returns "in a manner consistent with the terms of the April 13, 2010 Order" (i.e., subject to a confidentiality agreement). The court also awarded Mitchell his attorney's fees and costs incurred in connection with opposing Christina's motion for reconsideration/clarification and directed Mitchell's counsel to submit a fee memorandum.[5] A copy of the order arising from the June 22 hearing

---

[5] The attorney's fees and costs awarded to Mitchell were only with respect to fees and costs incurred for opposing Christina's motion for reconsideration and/or clarification heard on June 22, 2010. Mitchell incurred substantially more attorney's fees and costs in connection with the litigation over Christina's countermotion filed on November 30, 2010 that was considered at the hearings on December 8, 2010 and February 3, 2010 and denied pursuant to the April 13, 2010 Order.

(which was entered by Judge Sullivan on or about October 13, 2010) is attached hereto as Exhibit "E" (the "October 13, 2010 Order" and, together with the April 13, 2010 Order, are referred to below as "Judge Sullivan's Orders"). Judge Sullivan has yet to rule on Mitchell's fee memorandum which was submitted to the court and served upon counsel for Christina on or about July 7, 2010. A copy of the fee memorandum is attached hereto as Exhibit "F" (the "Fee Memorandum"). Notably, Christina has never filed an objection to the fee schedule prior to her present motion, filed some three months after she received the fee schedule from Mitchell's counsel, and even here has failed to address any of the charges set forth in the schedule.

IV.

POINTS AND AUTHORITIES

A. Judge Sullivan's Orders cannot be reconsidered, clarified, amended, stayed or set aside by Judge Potter.

In *Rohlfing v. District Court*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990), the Nevada Supreme Court recognized that "[t]he district courts of this state have equal and coextensive jurisdiction; therefore, the various district courts lack jurisdiction to review the acts of other district courts." *See also* NRS 3.220 (district judges "possess equal coextensive and concurrent jurisdiction and power"). The Nevada Supreme Court thus concluded in Rohlfing that a district judge had exceeded his jurisdiction when he, *sua sponte*, entered an order declaring another judge's order void.

Similarly, in *Warden v. Owens*, 93 Nev. 255, 563 P.2d 81 (1977), the Nevada Supreme Court reversed a district court order granting relief from another district court's order. The respondent had been convicted by a jury and sentenced by the Eighth Judicial District Court. Thereafter, the respondent did not pursue a direct appeal, but filed a petition for writ of habeas corpus in the First Judicial District Court; the First Judicial District Court granted habeas corpus relief. In reversing the First Judicial

District Court, the Nevada Supreme Court stated that "[t]he First Judicial District Court had no jurisdiction to vacate the other court's valid judgment of conviction and sentence." *Id.* at 256, 563 P.2d at 82.

In *State v. Sustacha*, 826 P.2d 959, 108 Nev. 223 (Nev., 1992), the Nevada Supreme Court relied on *Rohlfing* and *Warden* to hold that one district court generally cannot set aside another district court's order. In addition, the Nevada Constitution provides that the district courts have appellate jurisdiction only in cases arising in justices' courts and "other inferior tribunals." *Id.* at 961 (citing Nev. Const. art. 6, § 6). The *Sustacha* confirmed that only the Nevada Supreme Court is given general appellate jurisdiction: "The supreme court shall have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in ... criminal cases...." *Id.* (citing Nev. Const. art. 6, § 4).

Consequently, Christina's attempts to have this court, Judge Potter, review Judge Sullivan's Orders in this case is without legal merit. Christina's relief should have been to timely file an appeal to the Nevada Supreme Court had she wanted to attack Judge Sullivan's original order denying her motion. She has failed to do so, and as discussed below, not only is her motion completely meritless, but its real purpose is to resurrect her right to appeal that has expired.

B. Judge Sullivan's Orders are final orders with respect to Christina's motions.

Christina argues in her motion that Judge Sullivan has not finally ruled on her countermotion filed on November 30, 2009. She contends that Judge Sullivan's Orders are merely interlocutory. While Christina does not offer any support for this position, Mitchell believes that Christina is incorrectly relying on (1) the language of the April 13, 2010 Order which provides that the court "is inclined to deny Christina's motion to partition omitted assets[]" and (2) the fact that Judge Sullivan permitted Christina's counsel and/or her accounting expert access to the Aquila Tax Returns that Mitchell voluntarily submitted to Judge Sullivan *in camera*.

i. The language of Judge Sullivan's Orders makes it clear that the financial matters have been finally decided.

Use of the phrase "inclined to deny" by Judge Sullivan at the hearing on February 3, 2010 which was memorialized in the April 13, 2010 Order prepared by Mitchell's counsel does not mean Christina's motion was not in fact denied. In fact, what is clear from the order is that the "inclined" language is a prefatory statement to the analysis in that paragraph. After stating he is "inclined" to deny the order, Judge Sullivan immediately states that he would only "re-open litigation on the financial issues" if Christina showed "fraud upon the court." He then concludes, "**Christina has provided no evidence of such fraud.**" (emphasis added).

Christina's feigned (and now repeated) contention that the April 13, 2010 Order was not final should have been cleared up by Judge Sullivan's unequivocal statement in his October 13, 2010 Order that it was final. In his October 13, 2010 Order, Judge Sullivan states: "In that order [referring to the April 13, 2010 Order], the [c]ourt indicated ***its denial*** of Christina's Countermotions filed November 30, 2009, requesting both discovery and the partition of alleged omitted assets . . . ." *See* Paragraph 1 of October 13, 2010 Order attached as Exhibit "E" (emphasis added). Indeed, Judge Sullivan emphasized the finality of his orders throughout the October 13 Order, in which he states: "For the reasons stated below, the [c]ourt ***denies those motions*** [referring to the motions contained in Christina's motion for reconsideration and/or clarification,]" and further provides that "[t]he [c]ourt ***does not*** find these, or any other grounds stated by Christina in her pleadings supporting her motion, to be adequate evidence to justify either rehearing of the [c]ourt's April 13, 2010 order, nor an adequate basis for the opening of discovery relating to Christina's claim for partition of omitted assets. The Court thus ***denies Christina's present motions***."] *See* Paragraphs 1 and 4 of the October 13, 2010 Order attached hereto as Exhibit "E" (emphasis added).

ii. There is nothing left for the court to decide even after Christina's counsel and/or accounting expert review the Aquila Tax Returns.

Judge Sullivan's Orders correctly and clearly found that distributions from Aquila Investments are not omitted assets, and that Christina must demonstrate "fraud upon the court" in order to sustain any claims against Mitchell because her countermotion was filed more than six (6) months after entry of the Decree. Christina falsely argues in her new motion that Judge Sullivan granted her motion for reconsideration and/or clarification in part and has permitted discovery of "***Mitch's*** tax returns." *See* page 4, lines 23-25, of Christina's motion (emphasis added). That statement clearly and intentionally misrepresents Judge Sullivan's Orders.

First, as evidenced by the quotes cited above, Judge Sullivan plainly denied Christina's request for discovery in his orders. Second, "***Mitch's*** tax returns" ***are not*** the Aquila Tax Returns, and Mitchell is not obligated to provide Christina any financial information pursuant to Judge Sullivan's Orders or otherwise (including any affidavit of financial condition). Third, it is legally impossible to show "fraud upon the court" from the Aquila Tax Returns.[6] Finally, Judge Sullivan offered to provide access to the Aquila Tax Returns to Christina's counsel and/or her accounting expert with no objection from Mitchell only as a matter of fairness and due process. Based on the foregoing, Judge Sullivan's Orders confirm

---

[6] For a more detailed discussion of this third point, please see Mitchell's Opposition filed on or about June 3, 2010 which relies in part on *NC-DSH, Inc. v. Garner*, 125 Nev. Adv. 50, 218 P.3d 853 (2009). In this case, the Nevada Supreme Court held that true fraud on the court is rare and requires "egregious misconduct." 218 P.3d at 856. The court emphasized the serious nature of the conduct required in its definition of "fraud upon the court" when it provided: "The most widely accepted definition, which we adopt, holds that the concept embrace[s] ***only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases ... and relief should be denied in the absence of such conduct.***" 218 P.3d at 857 (Emphasis added and citations omitted). Christina cannot show egregious misconduct on the part of anyone (including Mitchell and his counsel) with the tax information contained in the Aquila Tax Returns (especially in light of the fact that the underlying asset was specifically included as part of the division of the marital estate at the time of divorce). Again, Judge Sullivan reviewed those returns and found Christina "has provided no evidence of such fraud." *See* paragraph 4 of the April 13, 2010 Order.

that there is nothing left for the court to decide on Christina's motions even after Christina's counsel and/or accounting expert review the Aquila Tax Returns.

iii. The issues raised by Christina in her new motion were already carefully considered by Judge Sullivan when he signed the October 13, 2010 Order.

Mitchell's counsel submitted the proposed order from the June 22, 2010 hearing together with the correspondence exchanged with Christina's counsel describing in detail the disagreements between the parties regarding the finality of Judge Sullivan's Orders ***both*** to Judge Potter and Judge Sullivan. See Correspondence attached hereto as Exhibit "G". Judge Sullivan signed the October 13, 2010 Order after reviewing and considering these issues.

C. Christina has no right to appeal Judge Sullivan Orders from the February 3, 2010 and June 22, 2010 hearings to the Nevada Supreme Court except as to the award of attorney's fees and costs granted in the October 13, 2010 Order.

Christina cannot realistically believe that Judge Sullivan's orders were not final, and in reality she has brought her baseless motion in vain to attempt to resurrect her right to appeal Judge Sullivan's initial order denying her motion. Christina wants this Court, Judge Potter, to re-interpret Judge Sullivan's orders as interlocutory because she is aware that unless this Court so finds, she has no right to appeal that order to the Nevada Supreme Court except with respect to the award of attorney's fees and costs granted in the October 13, 2010 Order. Christina now understands that she failed to timely file a notice of appeal of April 13, 2010 Order, and that her first motion for rehearing did not toll her obligation to file such a notice under NRAP 4(a). *See* EDCR 2.24.

As a result of her failure to appeal the April 13, 2010 Order, Christina has no right to appeal Judge Sullivan's October 13, 2010 Order except with respect to the award of attorney's fees and costs. In *Alvis v. State*, 660 P.2d 980, 99 Nev. 184 (1983), the district court had dismissed a petition for judicial review. The party that was denied that review then sought rehearing of that decision, but did not timely appeal the district court's order dismissing the petition for judicial review. After the district court

denied the motion for rehearing, the appellant sought review of the order denying rehearing. The Nevada Supreme Court held that an order from a district court denying rehearing ***is not independently appealable*** if the order "does not affect the rights of parties growing out of final judgment."

The holding in *Alvis* precludes Christina's appeal of Judge Sullivan's October 13, 2010 order. The denial of Christina's motion for reconsideration and/or clarification does not affect the rights of the parties as finally determined by the April 13, 2010 Order denying Christina's countermotion. However, Christina requests, without any basis, that the court find that the April 13, 2010 order was not final in order to create a right to appeal where no right currently exists. Christina's attempt to correct her failure to file a timely appeal is not an adequate or good faith basis upon which to file her present motion.

D. Christina's new motion fails to meet the standards of EDCR 2.24; and NRCP 52 and 59 are inapplicable to the matters decided at the June 22, 2010 Hearing.

Further evidencing that Christina has not brought this motion in good faith is her failure to even attempt to meet the standard under EDCR 2.24. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Even if Judge Potter could rehear or reconsider the findings and rulings of Judge Sullivan from the June 22, 2010 hearing as set forth in the October 13, 2010 Order, which he cannot do, Christina cites ***no new law*** and ***no new evidence*** to support her motion including with respect to Judge Sullivan's award of attorney's fees and costs.

Christina seeks to preserve her right to appeal by now citing rules that would toll her obligation to file an appeal. She has done so, however, without any explanation as to why those rules would be applicable here. Moreover, the citation to those rules is inapplicable this matter (her second motion for reconsideration and/or clarification). Christina's motion for reconsideration and/or clarification considered by Judge Sullivan at the June 22, 2010 hearing was based solely on EDCR 2.24 and did not

rely upon or even cite to NRCP 52 or 59. The *Alvis* court rejected the notion that a motion for rehearing should be treated as a motion to alter or amend the judgment. Instead it upheld the plain language of EDCR 2.24 stating that such motions do not toll the time for appeal. *Alvis*, 660 P.2d at 981. Christina simply missed her deadline to appeal the April 13, 2010 Order, and her citation to NRCP 52 and 59 now cannot retroactively toll the time for appeal.

In essence, Christina seeks to have a ***third bite*** at the apple by moving this Court to review the April 13, 2010 Order through her instant motion on the basis of EDCR 2.24 and NRCP 52(b) and 59(a)(4) as applied to the October 13, 2010 Order. First, Christina has not offered in her new motion why or even how any of Judge Sullivan's findings could or should be amended under NRCP 52(b) (which seems to be applicable only to Judge Sullivan's award of attorney's fees and costs). Christina simply makes blanket and unsupported statements that she is entitled to move this Court to amend the findings of the October 13, 2010 Order on the basis of NRCP 52(b) but does not offer any such "amended findings."

Second, while Christina theoretically may be able to rely upon NRCP 52(b) in her motion with respect to Judge Sullivan's award of attorney's fees and costs (Judge Sullivan must make findings as to what fees and costs are reasonable), until Judge Sullivan approves Mitchell's Fee Memorandum, Christina's requested relief is premature (as more fully described below).

Finally, the June 22, 2010 hearing was not a trial; it was a motion hearing held on Christina's request to reconsider and/or clarify a previous order pursuant to EDCR 2.24 with opposing points and authorities. NRCP 59(a)(4) does not authorize a new trial where no trial ever occurred in the first place (or no trial is even required) and certainly not on the ground of "newly discovered evidence" as argued by Christina which has not even been offered by Christina in her motion with respect to any matter (including Judge Sullivan's award of attorney's fees and costs). Christina argues that this "evidence"

will be found in the Aquila Tax Returns,[7] despite the fact that Judge Sullivan ***had already reviewed*** the Aquila Tax Returns when he issued his orders from the February 3, 2010 and June 22, 2010 hearings. Again, Christina ignores the plain findings of Judge Sullivan rejecting the notion that anything related to Aquila Investments could constitute a basis to re-open the litigation of the financial matters:

> Christina has provided no evidence of [fraud upon the Court]. Christina's motion to open discovery is based upon her allegations relating to Aquila Investments, LLC. The court notes that Christina was aware of the Aquila Investments, LLC, and its assets prior to the parties' divorce. She had sufficient opportunity to explore and investigate that asset during any discovery process prior to divorce. Her failure to do so does not constitute a fraud committed upon the Court by Mitchell

See, Exhibit "C," April 13, 2010 Order, paragraph 4. It is plan that Christina has cited NRCP 52 and 59 in her instant motion as a misguided attempt to correct her fatal error of failing to appeal the April 13, 2010 Order.

E. Christina's request to stay Judge Sullivan's award of attorney's fees and costs incurred in connection with the June 22, 2010 hearing is premature because Judge Sullivan has not yet approved Mitchell's Fee Memorandum.

For the second time in a few weeks Christina causes Mitchell and the court to waste time and resources on a premature motion regarding a matter pending before Judge Sullivan. Judge Sullivan awarded Mitchell attorney's fees and costs as the prevailing party in the matter of Christina's motion for reconsideration and/or clarification heard at the June 22, 2010 hearing. The award was made as a matter of ***contractual right*** (not statute or rule as incorrectly claimed by Christina) pursuant to the terms and conditions of the parties' marital settlement agreement. As stated above, Judge Sullivan's Orders are final orders and no reasonable person could interpret these orders as anything other than the court's clear denial of Christina's motions. Christina has no right to appeal Judge Sullivan's Orders except for Judge Sullivan's award of attorney's fees and costs. Mitchell has submitted to Judge Sullivan his Fee

---

[7] *See id.* (footnote 6).

Memorandum on July 7, 2010. Judge Sullivan has not ruled upon the Fee Memorandum is still under advisement with Judge Sullivan.

Christina's motions go from frivolous to inane when she argues that Mitchell is not entitled to fees because he failed to address the factors identified in *Brunzell v. Golden State Nat'l Bank*, 85 Nev. 345, 445 P.2d 31 (1969) as part of his request for fees. The factors set forth in *Brunzell* address the court's determination of the reasonableness of a fee. Mitchell fully expects that Judge Sullivan will consider the *Brunzell* factors when he rules on Mitchell's Fee Memorandum; however, Judge Sullivan was not required, and could not, make specific determinations at the June 22, 2010 hearing of the amount of attorney's fees and costs until he made the determination of the prevailing party, and considered Mitchell's Fee Memorandum (which he directed Mitchell's counsel to prepare setting forth the actual attorney's fees and costs incurred). Christina's position in her motion is just another ill-advised premature motion that has again wasted everyone's time, money, and effort. To add insult to injury, Christina's counsel received a copy of the Fee Memorandum over three months ago, and has to this date never filed a specific objection to any of the fee charges specifically listed in it.[8]

Christina's request to "stay" the award of fees under NRCP 62 is equally premature and frivolous. Such as stay can be granted upon a final judgment for the fees, or pending adjudication of motions tolling the time for appeal. *See* NRCP 62(b). The obvious fact is that there is no final judgment on the amount of fees that would even grant Mitchell the right to execute, and her request based upon the filling of frivolous motions to amend findings and for new trial is equally frivolous.

---

[8] Christina's counsel had no problem improperly submitting Christina's motion filed on or about September 2, 2010 before this Court to Judge Sullivan's law clerk for his review while Judge Sullivan considered the matters from the May 6, 2010 hearing; however, Christina elects to address the matter of attorney's fees and costs awarded by Judge Sullivan with this Court. While Christina's counsel's decision to attempt to influence Judge Sullivan's law clerk violated EDCR 7.74, a timely filed objection to Mitchell's Fee Memorandum with Judge Sullivan would not have done so. The reasonable time for the submission of such an objection, however, has long passed.

When Judge Sullivan does finally enter his order setting forth the exact amount of attorney's fees and costs to be awarded, she can invoke her right to seek a stay under NRCP 62, but Mitchell should not have to address her premature motions that are apparently based upon some unfathomable misreading of that rule.

Even if Christina were now belatedly, and in the wrong forum, permitted to file a dispute as to the fees incurred by Mitchell in defense of her first motion for reconsideration and/or clarification, Christina has failed to identify any portion of the fees to which she takes objection. This Court and Judge Sullivan should, and Mitchell assumes will, take note that the briefs surrounding that motion were each as thick as phone books, and required an extensive legal and factual analysis due to Christina's trademark lack of clarity and shotgun approach to presenting her motions.

F. Christina should not be able to obtain "discovery" via an affidavit of financial condition through EDCR 5.32 on the basis of an award of attorney's fees and costs if Judge Sullivan has already denied it.

Mitchell's motion for attorney's fees as the prevailing party in the June 22, 2010 hearing was not a request for financial relief cognizable under EDCR 5.32. Instead, Mitchell sought to invoke his contractual right under the Marital Settlement Agreement incorporated into the Decree. Nothing in the contract language allows the court to address the financial condition of the parties when determining the right to a fee, or its amount. Indeed, even the *Brunzell* factors that Christina cites as the basis of Judge Sullivan's review of the award do not include any factor considering the financial condition of Mitchell.

Moreover, requiring Mitchell to submit a Financial Disclosure Form would subvert the orders Judge Sullivan issued. Judge Sullivan denied discovery generally, and specifically denied Christina's request that Mitchell complete such a Financial Disclosure Form. Indeed, Christina made that request in her prior pleadings, and during oral argument at the December 8, 2010, February 3, 2010 and June 22,

2010 hearings. Judge Sullivan denied each of those requests, and Christina has now simply again (this time by subterfuge) attempted to skirt Judge Sullivan's orders.

G. The Aquila Tax Returns may only be released to Christina's counsel and/or accounting expert pursuant to a confidentiality agreement.

Judge Sullivan's Orders make it clear that access to the Aquila Tax Returns is subject to a confidentiality agreement to be prepared by Mitchell's counsel. These tax returns are not being held hostage by Mitchell as falsely claimed by Christina. Mitchell first supplied a draft of the confidentiality agreement to Christina's counsel on February 23, 2010 (which was a few short weeks after the February 3, 2010 hearing). Christina's counsel at the time, Mr. Prokopius, never responded to the confidentiality agreement which was the key to obtaining access to the Aquila Tax Returns. Instead, Christina elected to file a motion for reconsideration and/or clarification of the April 13, 2010 Order on or about April 30, 2010. Mitchell believes this fact was significant in Judge Sullivan's decision to award Mitchell his attorney's fees and costs at the June 22, 2010 hearing. The first time Christina's counsel responded to the form of the draft confidentiality agreement was on July 28, 2010 (more than five (5) months after it was first provided by Mitchell's counsel) and more than one (1) month after the June 22, 2010 hearing. See Correspondence by and between Radford Smith and Patricia Vaccarino attached hereto as Exhibit "H".

Mitchell's counsel has revised the initial draft of the confidentiality agreement pursuant to comments received by Ms. Vaccarino and provided to her a final draft which is attached hereto as Exhibit "I". Apparently, there is still one provision of the final draft to which Ms. Vaccarino personally objects: Ms. Vaccarino refuses to approve the final draft because it contains language that makes all recipients of the Aquila Tax Returns under the confidentiality agreement jointly and severally liable for any breaches. Essentially, Ms. Vaccarino argues that she does not want to be personally liable for any breaches of the agreement by Christina or Christina's accounting expert. Her objection is not consistent

with either Mitchell's duty to Mr. Plise with respect to the confidentiality of the Aquila Tax Returns, or Judge Sullivan's Orders.

First, Mitchell has limited authority to release the Aquila Tax Returns for review. Mitchell is not authorized to release the Aquila Tax Returns to any other person except to the court and to Christina and Christina's counsel and accounting expert, and he is personally liable to Mr. Plise for any unauthorized disclosure pursuant to his own confidentiality agreement with Mr. Plise. It makes no sense that Ms. Vaccarino would bear less responsibility for improper disclosure than Mitchell.

Second, Mitchell has no control over the actions of Christina or Christina's counsel or accounting expert except via the confidentiality agreement. Christina and Ms. Vaccarino have an attorney/client relationship. Christina is also a Nevada licensed attorney. Christina and Ms. Vaccarino have the ability to select a professional and reputable accounting expert who will review the Aquila Tax Returns almost certainly pursuant to a negotiated contractual relationship with Christina and/or Ms. Vaccarino.

Finally, Ms. Vaccarino is not being "forced" to sign the confidentiality agreement. Christina can engage substitute counsel who will be more accommodating or simply rely on her accounting expert's review of the Aquila Tax Returns (indeed, Christina's lack of trust in her counsel's ability to competently review the tax returns was the basis for her request that she be permitted to have them reviewed by an accounting expert). Judge Sullivan's Orders do not require both Ms. Vaccarino and Christina's accounting expert to enter into a confidentiality agreement in order for Christina to access the Aquila Tax Returns. Alternatively, Ms. Vaccarino can request indemnification from Christina and/or her accounting expert for any liability that results from their breaches of the agreement.

As a technical matter, Judge Sullivan's Orders do not even permit the Aquila Tax Returns to be reviewed by Christina. Mitchell has offered to provide them to Christina merely as an accommodation.

Ms. Vaccarino can avoid the entire issue of personal liability for others by simply entering into the confidentiality agreement only with Mitchell. Ms. Vaccarino can also hire an accounting expert directly who she can personally control and both Ms. Vaccarino and the CPA can enter into the confidentiality agreement with Mitchell. However, under either of these circumstances, Christina will not be provided access the Aquila Tax Returns. The wild card here seems to be Christina (and for good reason). Christina has a history of invading Mitchell's privacy and sharing personal and confidential matters with third-parties. This is the real reason Ms. Vaccarino does not want to be responsible for Christina.

V.

ATTORNEY'S FEES, COSTS AND SANCTIONS

A. Christina's request for sanctions and attorney's fees should be denied; however, Mitchell is entitled to an award of attorney's fees and costs incurred for opposing Christina's motion.

Christina's motion is an attempt to re-litigate the financial matters considered by Judge Sullivan during three (3) separate hearings and already decided by the court with the hope that Judge Potter will provide Christina more favorable rulings. Therefore, Christina's second motion for reconsideration and/or clarification should be denied, and Christina should be required to pay Mitchell's attorney's fees and costs. Judge Sullivan awarded Mitchell his attorney's fees and costs at the June 22, 2010 hearing. Under these same circumstances, Judge Potter should do the same. NRS 18.010 and Section 4.7 of the parties' marital settlement agreement provide that the prevailing party in any legal action related to or arising out of the agreement shall be entitled to an award of attorney's fees and costs incurred by the party.

B. Christina and/or her counsel should be sanctioned for the filing of a frivolous motion, and unreasonable multiplying the proceedings in this matter.

EDCR 7.60(b)(1) and (3) provides the following:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be

> reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> ...
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

Christina's motion repeats the same claims that have now been denied twice. As shown in meticulous detail above, Christina, through both sworn affidavit and the argument of her counsel, has falsely characterized both the content of and law surrounding the order issued by Judge Sullivan. They have, for the second time in the last few weeks, filed premature motions that this court can neither decide nor weigh in on.

The goal of Christina's motion appears to delay and/or avoid complying with Judge Sullivan's final and validly issued orders by attempting to confuse this court, Judge Potter, by citing to inapplicable law, ignoring controlling Nevada Supreme Court precedent, and purposefully mischaracterizing access to the Aquila Tax Returns as "discovery of Mitch's tax returns" throughout her pleading. For the reasons set forth here and throughout this opposition, Christina's motion is frivolous, and unnecessarily multiplies these proceedings. Unless this court enters sanctions now, Christina and her counsel will be encouraged to challenge every decision of this court with a never-ending array of motions to reconsider, motions to clarify or motions to just plain cause Mitchell to incur fees. The court should enter sanctions against Christina and/or her counsel significant enough to curb Christina's frivolous filings.

...

...

...

...

...

VI.

CONCLUSION

Based upon the foregoing, Mitchell requests that this Court:

1. Deny and/or dismiss for lack of jurisdiction Christina's motion in its entirety; and

2. Award Mitchell his attorney's fees and costs for opposing Christina's second motion for reconsideration and/or clarification; and

3. Sanction Christina and/or her counsel pursuant to EDCR 7.60(b) with respect to their conduct described above.

DATED this 12 day of November, 2010.

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 "Opposition to Plaintiff's Motion for "New" Trial to Amend Findings and/or Rescission, Reconsideration, Modification and/or Stay of Order filed on October 13, 2010, and Allowing Plaintiff Immediate Access to Defendant's Tax Records as Previously Ordered, and to Compel Defendant to Cooperate in Commencing Sessions with the Parenting Coordinator and for Attorney's Fees and Costs; and Countermotion for an Award of Attorney's Fees, Costs and Sanctions" on this 18TH day of November, 2010, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue, Suite 210
Las Vegas, Nevada 89117

An employee of Radford J. Smith, Chartered

DOCKETING STATEMENT TAB #9

Electronically Filed
11/18/2010 03:09:50 PM

CLERK OF THE COURT

RPLY
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
Email: rsmith@radfordsmith.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION** **ORAL ARGUMENT REQUESTED** **YES** ☒ NO ☐

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR SOLE DECISION-MAKING AUTHORITY REGARDING HEALTHCARE DECISIONS AFFECTING THE CHILDREN, FOR ATTORNEY'S FEES, COSTS AND SANCTIONS AGAINST PLAINTIFF AND PATRICIA VACCARINO, ESQ.

DATE OF HEARING: January 4, 2011
TIME OF HEARING: 2:30 p.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, hereby submits Mitchell's reply captioned above to this Court.

This reply is based upon the following points and authorities, the affidavit of Mitchell Stipp attached hereto as Exhibit "A" and the other exhibits attached hereto, all pleadings and papers on file in this action, and any oral argument made or evidence introduced at the time of the hearing on the matter.

DATED this 15 day of November, 2010.

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

I.

INTRODUCTION

The parties, Mitchell Stipp ("Mitchell") and Christina Calderon-Stipp ("Christina"), were recently before this Court on October 6, 2010, during which this Court temporarily appointed Dr. Gary Lenkeit as a parenting coordinator to mediate disputes between the parties pending the written decision from Judge Sullivan from the May 6, 2010 hearing. The ***joint physical custody*** status of the parties with respect to the children has now been judicially confirmed with the grant of additional timeshare to Mitchell by Judge Sullivan whose decision was finally entered by the court on November 4, 2010. A copy of Judge Sullivan's decision is attached hereto as Exhibit "B".

The problem with this case is that Christina's self-worth is inextricably intertwined with perpetuating conflict through litigation. In time, if the parties are unable to resolve their disputes themselves, Judge Potter will see (just like Judge Sullivan did) that any time a decision is made that Christina does not like, she will file a new motion. While Mitchell understands that it is Christina's constitutional right to pursue an endless path of litigation and, at least according to this Court, ruin the children's lives concurrently, Mitchell will continue to defend his parental choices which he believes are in the best interests of the children. To date, this decision has placed Mitchell at the other end of Christina's on-going litigation efforts at significant cost and expense to Mitchell. However, Mitchell

hopes that this Court will take the opportunity to resolve the litigation once and for all if the parties are unable to reach resolution themselves in mediation with Dr. Lenkeit. Such final resolution will provide Mitchell (and the children) a degree of comfort, certainty and peace associated with clear resolution of the matters.

II.

MATTERS PENDING FROM THE OCTOBER 6, 2010 HEARING ARE EITHER MOOT OR NOW RIPE FOR JUDICIAL DETERMINATION

A. Brief Summary of the Matters before this Court at the October 6, 2010 Hearing.

The motions and requests for relief before Judge Potter at the October 6, 2010 hearing can be summarized as follows:

1. Whether Mitchell or Christina should have sole decision-making authority regarding healthcare decisions affecting the children.

2. Whether Christina should be permitted over the objections of Mitchell to submit Mia to additional evaluations and treatment from healthcare providers when Mia only possesses a sensory processing disorder for which she successfully received occupational therapy.

3. Whether this Court should vacate Judge Sullivan's order from the April 13, 2010 hearing permitting Mia to receive occupational therapy from Dr. Stegen-Hanson and her staff.

4. Whether Christina should be permitted over the objections of Mitchell to obtain counseling for Ethan for sexual abuse that never occurred.

5. Whether this Court should issue a stay-away order prohibiting contact between the children and Cody Stipp, the children's cousin, for sexual abuse that never occurred.

6. Whether Christina should be permitted over the objections of Mitchell to force Nevada Child Find to finish its evaluation of Mia which was conducted without Mitchell's consent, release its records of Mia, and permit Mia to receive any services offered by Nevada Child Find.

7. Whether this Court should appoint a parenting coordinator.

8. Whether Mitchell should be held in contempt for permitting Mia to receive occupational therapy from Dr. Stegen-Hanson and her staff and refusing to permit Mia to be evaluated or treated by another psychologist consistent with Judge Sullivan's orders from the April 13, 2010 hearing.

9. Whether Mitchell or Christina are entitled to an award of attorney's fees and costs.

10. Whether Ms. Vaccarino and Christina should be sanctioned.

Matters 4, 5, and 7 above have ***already been decided*** by Judge Potter at the hearing on October 6, 2010. The other matters are either moot or now ripe for judicial determination notwithstanding the appointment of Dr. Lenkeit as the parties' parenting coordinator.

B. Matters concerning Mia's therapy with Dr. Stegen-Hanson and the evaluation, records, and services of Nevada Child Find are moot.

Matters 3 and 6 above are moot; therefore, Judge Potter may dismiss them. However, at the October 6, 2010 hearing, this Court stayed and/or deferred ruling on these matters until Judge Sullivan issued his written decision from the May 6, 2010 hearing. Judge Sullivan has issued his written decision.

i. Mia is no longer receiving therapy from Dr. Stegen-Hanson.

Judge Sullivan's order from the May 6, 2010 hearing did not amend, modify, or in any way change the order from the April 13, 2010 hearing attached hereto as Exhibit "C" that prohibits Mia from being treated by a psychologist without further order of the court but expressly permits Mia to receive occupational therapy from Dr. Stegen-Hanson and her staff. See Paragraph 4 of the order. Without considering whether Judge Potter can review and/or vacate Judge Sullivan's orders, which Mitchell

contends Judge Potter cannot do under applicable law,[1] Mia is no longer obtaining therapy from Dr. Stegen-Hanson and her staff. Mia also will not be returning to Achievement Therapy Center in the future for therapy because Dr. Stegen-Hanson is closing her practice and moving to South Africa.

Although Mia is no longer being treated by Dr. Stegen-Hanson and her staff, Christina has not ceased harassing and attempting to punish Dr. Stegen-Hanson. Dr. Stegen-Hanson successfully treated Mia (including her spitting/licking behaviors). Christina's consent and/or participation in the therapy were not required pursuant to Judge Sullivan's order from the April 13, 2010 hearing. Dr. Stegen-Hanson has provided to Christina all of Mia's medical records requested by Christina after the October 6, 2010 hearing. Mitchell attaches hereto as Exhibit "D" Dr. Stegen-Hanson's letter to Christina dated October 19, 2010. Note this letter is also signed by Susan Holden who previously treated Mia as part of Dr. Stegen-Hanson's staff and who Christina ***falsely*** claims in her pleadings agrees with Christina's assessment of Mia's spitting/licking behavior. Despite the fact that Mia successfully completed therapy as set forth in the letter, Christina still reported Dr. Stegen-Hanson to the State of Nevada Board of

---

[1]In Rohlfing v. District Court, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990), the Nevada Supreme Court recognized that "[t]he district courts of this state have equal and coextensive jurisdiction; therefore, the various district courts lack jurisdiction to review the acts of other district courts." See also NRS 3.220 (district judges "possess equal coextensive and concurrent jurisdiction and power"). The Nevada Supreme Court thus concluded in Rohlfing that a district judge had exceeded his jurisdiction when he, *sua sponte*, entered an order declaring another judge's order void.

Similarly, in Warden v. Owens, 93 Nev. 255, 563 P.2d 81 (1977), the Nevada Supreme Court reversed a district court order granting relief from another district court's order. The respondent had been convicted by a jury and sentenced by the Eighth Judicial District Court. Thereafter, the respondent did not pursue a direct appeal, but filed a petition for writ of habeas corpus in the First Judicial District Court; the First Judicial District Court granted habeas corpus relief. In reversing the First Judicial District Court, the Nevada Supreme Court stated that "[t]he First Judicial District Court had no jurisdiction to vacate the other court's valid judgment of conviction and sentence." Id. at 256, 563 P.2d at 82.

In State v. Sustacha, 826 P.2d 959, 108 Nev. 223 (Nev., 1992), the Nevada Supreme Court relied on Rohlfing and Warden to hold that one district court generally cannot set aside another district court's order. In addition, the Nevada Constitution provides that the district courts have appellate jurisdiction only in cases arising in justices' courts and "other inferior tribunals." Id. at 961 (citing Nev. Const. art. 6, § 6). According to Sustacha, only the Nevada Supreme Court is given general appellate jurisdiction: "The supreme court shall have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in ... criminal cases...." Id. (citing Nev. Const. art. 6, § 4).

Occupational therapy. Attached as Exhibit "E" are copies of Christina's complaint letter and notice received by Dr. Stegen-Hanson. Christina's complaint letter makes it clear that she is more interested in litigation and revenge than the best interests of Mia. In fact, and most tellingly of Christina's state of mind on the issue, Christina even reveals that she is suffering from "emotional distress" as a result of the issues concerning Mia's care.

ii. Nevada Child Find has completed its evaluation and released its records.

After the hearing on October 6, 2010, Christina demanded that Nevada Child Find complete its evaluation and release Mia's records despite the fact that Judge Potter deferred ruling on this matter. Pursuant to Christina's demands after the hearing and over the previous objections of Mitchell, Nevada Child Find completed and released Mia's confidential evaluation report and made available it and all of Mia's records to Christina. See Exhibit "F". Mitchell is certain that Christina believed that she could bully Nevada Child Find to adopt her own diagnosis of Mia and view that Mia has conditions that require further evaluations and treatment. Although Nevada Child Find does not actually diagnose problems, the report makes it clear that after being evaluated by Dr. Shirlee Williams (school psychologist), Kirsten Keavin (special education teacher), Robbie Webb (speech language pathologist), and Kandy Ling (school nurse), ***Mia is a normal child with no issues*** other than the spitting/licking behavior that was reported by Christina in July of 2010. Christina represented to this Court in her pleadings that Nevada Child Find rejected Dr. Stegen-Hanson's diagnosis of a sensory processing disorder with respect to Mia's spitting/licking behaviors and referred Mia to a psychiatrist for treatment. The evaluation performed by Nevada Child Find does not support Christina's representations of Nevada Child Find's conclusions and/or recommendations in her pleadings, and in fact, it contradicts her position that Mia needs further evaluations and/or treatment.

Mia is not eligible for services at Nevada Child Find because such services are only available to children ages 3 to 21 who are not currently enrolled in the Clark County School District. Mia currently attends Linda R. Givens Elementary School. Although she theoretically may be eligible for similar services through the Clark County School District if the parties jointly seek to obtain an IEP (individualized educational program) for Mia, Mitchell believes this will not occur on the basis of Nevada Child Find's evaluation of Mia. To put it another way, Mia does not have any learning disabilities.

C. Legal Matters to be decided by Judge Potter.

The ***only*** matters that remain before Judge Potter from the October 6, 2010 hearing are matters *1, 2, 8, 9, and 10* above. This Court may rule on these matters because they are now ripe for decision based on the pleadings currently before this Court and in light of Judge Sullivan's written decision from the May 6, 2010 hearing. Matters 8, 9 and 10 above are purely legal matters (i.e., contempt, attorney's fees and costs, and sanctions) that must be decided by this Court and cannot be resolved through mediation with Dr. Lenkeit.

Matters 1 and 2 are the subjects of Mitchell's reply.

III.

THIS COURT SHOULD AWARD MITCHELL SOLE DECISION-MAKING AUTHORITY REGARDING THE HEALTHCARE DECISIONS AFFECTING THE CHILDREN.

Christina has not demonstrated that Mia's best interest will be served by new evaluations and treatments by new healthcare professionals. Mia has been evaluated and treated by multiple therapists in the last twelve (12) months (e.g., Dr. Mishalow, Dr. Kalodner, Dr. Julie Beasley, Dr. Stegen-Hanson and her staff (including Susan Holden), and four (4) staff members of Nevada Child Find). Dr. Paglini also evaluated Mia as part of his child custody evaluation and recommended no therapy for her. None of these qualified professionals concluded that Mia possesses any disorder or condition other than a

sensory processing disorder for which Mia received occupational therapy. Mia's elementary school teacher at Linda R. Givens, Ms. Leslie Thompson, continues to report that Mia is not exhibiting any behaviors that cause her any concern. See Email Correspondence from Ms. Thompson to Mitchell dated October 22, 2010 attached hereto as Exhibit "G" (stating that Mia is doing "great academically and socially" and that she has "no concerns"); see also Mia's school progress reports attached as Exhibit "H". And finally, the evaluation performed by Nevada Child Find does not identify any areas of concern other than Mia's spitting/licking behavior that was reported by Christina. Dr. Stegen-Hanson has already concluded that Mia's spitting/licking behavior was related to her sensory processing disorder. Even if Christina rejects the diagnosis, Mia's spitting/licking behavior was resolved through occupational therapy. There is no other evidence before this Court offered by Christina that Mia has any other condition or disorder.

When considering the issue of who should have decision making authority over healthcare decisions, this Court should vest this authority with Mitchell because it will be in the best interest of the children. There is no basis to provide this authority to Christina (even if she is the party who regularly takes the children to the pediatrician when they have a cold, flu or other common condition as Christina argues in her pleadings). The alternative would be for this Court to keep the joint nature of the parties' decision making authority in tact in accordance with the parties' marital settlement agreement but deny Christina's pending motion to permit Mia to be further evaluated and/or treated. While this alternative is not the preferred solution for Mitchell, the litigation still would be resolved but the potential for disagreement in the future would remain. The issues before this Court regarding the healthcare choices for Mia are not emergency conditions or life threatening matters. If this Court denies Christina's motion (and does not grant Mitchell's request for sole authority over healthcare matters), Christina would always have a right to bring another motion in the future if Mia's medical condition changes and/or the

parties are unable to resolve disagreement with Dr. Lenkeit over healthcare matters that affect the children. It is also important to note that Dr. Lenkeit will not be personally evaluating Mia as part of the mediation and he will not be in any position or have any authority as a parenting coordinator to diagnose specific disorders or conditions and/or recommend any kind of evaluations or treatment.

i. Christina had the right to select her own therapist for Mia, but she asked Judge Sullivan to prevent Mitchell from exercising the same right and lost the right herself because she was too concerned about litigation strategy than the best interests of Mia.

Christina is more interested in "winning at all costs" through litigation. If Christina does not like the judge's decision, she will continue to file motions. At the hearing held on April 13, 2010, the court ruled that Mia shall not be treated by any psychologist until further order of the court. This order was entered after Christina filed a motion for reconsideration and/or clarification of the court's ruling from the December 8, 2009 hearing which permitted the parties to select their own therapists if the parties could not agree. ***Essentially, Christina had the right to obtain an evaluation and/or therapy from a psychologist for Mia without Mitchell's consent.*** Rather than accept this order from Judge Sullivan and obtain whatever care she desired for Mia (even over Mitchell's objections), Christina was more interested in going back to court to prevent Mitchell from also exercising this right (which he did not intend or actually do).

ii. Christina will only work with therapists that accept her diagnosis of Mia and assist with her goal of limiting Mitchell's timeshare with the children.

Christina has a history of harassing Mia's medical care providers. Dr. Paglini interviewed Dr. Kalodner for purposes of the child custody evaluation. Dr. Kalodner first recognized that Mia may be suffering from a sensory processing disorder (and not OCD), and after consultation with Dr. Julie Beasley, she referred Mia to Dr. Stegen-Hanson. During Dr. Paglini's interview with Dr. Kalodner, Dr.

Kalodner communicated the following to Dr. Paglini with respect to Christina as set forth in the child custody evaluation: (1) Dr. Kalodner felt that Christina was attempting to dictate the pace of her practice (e.g., Christina wanted to bring Mia in for the sessions and exclude Mitchell's wife, Amy); (2) Christina made threats to Dr. Kalodner; (3) Dr. Kalodner felt that Christina was manipulating Mia's therapy and was litigious; (4) Dr. Kalodner reported that Christina's correspondence to her had numerous untruths and manipulated their conversations; (5) Dr. Kalodner felt manipulated by Christina and felt that she lacked trust in Christina because she misrepresented the facts of their meetings; and (6) Dr. Kalodner reported that she felt very harassed by Christina, and as such engaged an attorney.

As discussed above, Christina also continued to harass and attempt to punish Dr. Stegen-Hanson after the October 6, 2010 hearing. Based on Christina's actions and behavior toward Dr. Kalodner and Dr. Stegen-Hanson, Christina should not be permitted to make decisions regarding healthcare matters affecting the children. Christina's view of Mia's medical condition has been rejected by every single professional that interviewed, observed, evaluated and/or treated Mia in the last twelve (12) months. Accordingly, Mitchell does not believe that Christina honestly believes Mia needs further evaluations and/or treatment. Mitchell believes Christina's sole objective of seeking therapy for Mia is to manipulate the therapeutic process in order to gather "evidence" so that she can use it in litigation to restrict Mitchell's timeshare with the children.

iii. Christina now falsely accuses Mitchell of physically abusing Mia to support her litigation claims.

Christina recently accused Mitchell of physically abusing Mia. Mia bumped her head on her nightstand after rolling off her bed while playing with Mitchell's wife, Amy, on November 5, 2010. Mia did not require medical care; however, Mitchell applied an icepack. These types of bumps and

bruises are typical with children. When Mia returned home that evening, Christina emailed Mitchell that Mia reported that she was "injured," and Christina demanded to know from Mitchell the exact circumstances. While Mitchell knew that Mia was capable of communicating that she fell off her bed and bumped her head on her nightstand and that certainly Christina had already questioned Mia about the matter, Mitchell responded via email. After receiving Mitchell's response, Christina sent another email indicating that Mia was somehow "unclear" on the matter; however, Christina now claimed that Mia regularly reports that Mitchell "wrestles" with Mia "very hard" and "hurts" her on a routine basis (although this is the first time Mitchell received an email from Christina about it). Christina also claimed that Mia reports that such "wrestling" includes "choking" Mia. Mitchell, of course, addressed these allegations via email, which are absolutely false. Attached as Exhibit "I" is the email correspondence exchanged between Mitchell and Christina on this matter. Mitchell admits to "wrestling" with both of his children. Neither of the children has ever been hurt from this type of play.

When Christina could not obtain any immediate success from her tactics, Christina switched course and sent another email to Mitchell claiming that Mia was likely injured by Amy as part of addressing Mia's clothing issues which Christina now claims Mia continues to have during Christina's timeshare. For the record, Mia did not bump her head when Amy was trying to dress Mia, Mia does not exhibit any clothing issues while in Mitchell's care, and Mitchell does not wrestle with Mia for any purpose other than Mia's own enjoyment. To refresh the memory of this Court, Mia was directed by Dr. Kalodner and Dr. Beasley to Dr. Stegen-Hanson to address Mia's clothing issues as part of her sensory processing disorder. Christina participated in this therapy for six (6) months, and Mia resolved her clothing issues. Christina then attempted to sabotage Mia's therapy when Mia began to develop spitting/licking behaviors (which Dr. Stegen-Hanson has already concluded were part of Mia's sensory processing disorder). Christina filed her motion before this Court on or about September 2, 2010

seeking, among other things, to terminate Mia's therapy with Dr. Stegen-Hanson (although Mia had already discontinued therapy and her spitting/licking behavior was resolved). Now, Christina wants to use the issue of Mia's bump on her head, to revive the matters of Mia's clothing issues and reinforce the fact that Mia apparently is still engaging in spitting/licking behaviors during Christina's timeshare. Christina conveniently claims these problems re-surfaced and/or continue and intimates in her email to Mitchell that he is aware of them simply, bizarrely and incorrectly because he "wrestles" with Mia. Attached as Exhibit "J" is Christina's email to Mitchell.

At what point will Christina stop using the children for her own litigation purposes? There is no point to her emails other than perpetuating conflict and gathering "evidence" to support her legal positions. If Mitchell does not respond, her wild presumptions and conclusions must be true. And if Mitchell responds, she twists and distorts his response to serve her purposes anyway (e.g., if you are not abusing Mia when you "wrestle" with her, then you must be doing it to cover up her medical conditions). None of these emails help to resolve any issue between the parties. Does Mitchell now need to cease "wrestling" with the children for fear of another complaint to CPS/LVMPD? [2] Or, does Mitchell stop "wrestling" only with Mia because Christina now alleges that he is secretly "treating Mia's medical conditions" by beating her up?

iv. Judge Sullivan found Mitchell to be a fit parent and did not order that Mia receive therapy.

Judge Sullivan found Mitchell to be a fit parent in his decision from the May 6, 2010 hearing, and this Court should also note that his decision does ***not*** include an order of therapy for Mia.

...

...

---

[2] As this Court is aware, Christina previously filed false sexual abuse claims concerning Ethan with CPS/LVMPD to limit Mitchell's timeshare with the children.

Marshall, has an extensive, criminal record and he has a history of drug use and neglectful parenting behavior. Marshall's adult Las Vegas Justice Court records (CHRISTINA believes he has a juvenile record relating to trespassing and vandalism) contain his conviction in 2000 for unlawful possession of drug paraphernalia (Case No. 00M06883); his two 2006 convictions for DUI (Case Nos. 06TA0935X and 06TA1393X); his 2007 Battery complaint (Case No. 07M23635X); and, most recently, his 2009 convictions related to being charged with the crime of "impersonating a police officer" (Case No. 09F09032X), *see* Complaint/Disposition, attached hereto as Exhibit "11". Marshall is the father of the boy, Cody, who has exposed young Ethan to sexual abuse.

Clearly, Cody is a sexually-charged pre-teen, who is being cared for primarily by a parent who has an extensive, criminal history and history of drug use. Marshall and Cody therefore pose a threat to the parties' children, and they should be properly restricted from contact with the children of this action. MITCH apparently promised CPS in writing that he would never have Cody alone with the children in an effort to eliminate liability upon CPS for repeat abuse and to force CPS to close its case immediately, (See MITCH's E-mail to CPS, dated July 30, 2010, at Exhibit "15" [stet] to MITCH's Opposition). Yet, MITCH unreasonably refuses to agree to place this or any other restriction in a Stipulation and Order in this case. Such matters were reasonably requested by CHRISTINA in EDCR 5.11 correspondence sent by her counsel to MITCH's counsel prior to the filing of the instant motion. *See* Letters from Vaccarino to Smith, dated August 4 & 10, 2010, attached hereto as Exhibit "12".

Upon information and belief, MITCH and his family's permissive attitude and/or denial toward incest and molestation stems from a family history of such behavior. MITCH's maternal grandfather, John Myers, was known among the family to have molested the step-daughter of one of his multiple ex-wives. He is believed to have been married at least four times. MITCH and his siblings irreverently refer to "Grandpa Myers" as "Grandpa Molester." Such inappropriate and comical treatment of such a serious crime appears to affect their present attitude toward abuse which ETHAN has suffered. The Court must note that MITCH proudly declares that he only kept Cody away from ETHAN for all of four days, notwithstanding the seriousness of the reports..

The important point here, however, is not "punishment or reward," but rather, help for

ETHAN, who, due to the abuse, continues to suffer. ETHAN urinated in his school clothes as recently as Tuesday, September 29, 2010, *see* Supplemental Affidavit of CHRISTINA, attached hereto as Exhibit "3". ETHAN also kisses other children on the mouth inappropriately, *see* Email from Michele Quirk, attached hereto as Exhibit "13"; continues to make inappropriate intimate disclosures regarding Cody, *see* Affidavit of Anthony Calderon, attached hereto as Exhibit "7"; and continues to talk "baby talk" when discussing Cody. CHRISTINA'S sister, Elena Petsas, made the initial call to CPS along with CHRISTINA. Regardless of whether or not CHRISTINA had joined her, Elena would have reported ETHAN's sexual abuse to CPS as she was required to under law. Elena is licensed to teach in both Nevada and Oregon, and also has a Master's Degree in School Counseling.

MITCH admits in his opposition that he should be appointed sole legal decision-maker over healthcare because, as he claims, CHRISTINA should be held "accountable" for, among other things, "fabricating claims of sexual abuse." (See MITCH's Opposition at page 40.) Yet, CPS and Metro did not find fabrication, but credible disclosures. Indefensibly, MITCH even faults CHRISTINA for not having ETHAN physically examined. The subject of a physical examination of ETHAN was discussed by CHRISTINA and CPS, and, likely, MITCH as well. Ultimately, CHRISTINA deferred to CPS's decision not to perform a SAINT exam. CHRISTINA was glad ETHAN did not have to receive such an invasive exam. CHRISTINA also discussed the matter with ETHAN's pediatrician in case of future abuse given MITCH's insistence on allowing Cody unrestricted contact with ETHAN.

CHRISTINA is certain that ETHAN is telling the truth and was sexually abused by Cody. *See* Supplemental Affidavit of CHRISTINA, attached as Exhibit "3". As a good, concerned mother, CHRISTINA was confident that the physical signs of the trauma that she witnessed, i.e., ETHAN's disclosures of abuse, his bed-wetting, his baby-talk, and the mannerisms he was displaying were sufficient indicia of abuse to warrant immediate and emergency action to secure protection for ETHAN. CPS does not fault CHRISTINA'S actions, nor should MITCH. Instead, MITCH should want to provide ETHAN the care and counseling he now requires.

MITCH'S objection to counseling for ETHAN is also based on his projection of future

wrongdoing by CHRISTINA akin to what he did to CHRISTINA in the past with respect to MIA and Dr. Kalodner. Mitch unbelievably claims that CHRISTINA will 1) coach ETHAN to lie about the abuse (MITCH coached MIA to make false statements of alienation the "spontaneity" of which were suspect to Drs. Paglini and Mishalow, *see* Dr. Paglini's Report at p. 61); 2) reward ETHAN for lying (Dr. Kalodner's treatment notes documents the "rewards" from her "treasure box" that MIA received for "sharing her feelings); 3) and get the counselor to provide a letter documenting the lies that she will submit to court.

Yet, Dr. Kalodner signed a letter MITCH wrote on her behalf, which MITCH submitted to the Court in October 2009, as his purported "proof" of CHRISTINA's supposed "emotional abuse". It is clear why MITCH could be projecting misdeeds upon CHRISTINA given his personal experience with faking offers of proof. MITCH and the Court must both note that CHRISTINA is not asking for, nor is she undertaking to have, ETHAN secretly examined by any medical professional to MITCH's exclusion. Counseling, as with all medical care of their children, has been an inclusive activity for CHRISTINA, even though MITCH has not returned the sentiment.

Appropriate medical care for ETHAN in the form of therapeutic counseling as recommended by his pediatrician and/or by the service providers already identified by CPS must be allowed. CHRISTINA is not asking for an evaluative report for this Court to consider. The care should not be withheld from ETHAN as punishment to CHRISTINA.

VIII.

MITCH'S COUNTERMOTION FOR SANCTIONS AGAINST CHRISTINA AND HER COUNSEL, DIRECTLY, SHOULD NOT ONLY BE SUMMARILY DENIED, BUT IS, IN AND OF ITSELF, SANCTIONABLE MISCONDUCT PURSUANT TO NRCP 11

EDCR 7.60 as well as NRCP 11(b) provides authority to this Court to sanction MITCH in this case. NRCP 11(b) provides, in pertinent part, as follows:

> . . .[b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless

> increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

A violation of NRCP 11 is sanctionable by the Court, *sua sponte*. MITCH, an American University-educated, Nevada-licensed attorney, and his counsel, Radford Smith, should be sanctioned for their violations of NRCP 11 with regard to their multiple and deliberate factual misrepresentation.

A. Communications with Judge Sullivan's Clerk Were Appropriate

Specifically, CHRISTINA takes issue with MITCH's characterization of Ms. Vaccarino's actions in providing Judge Sullivan, through his law clerk, via E-Mail, a current copy of the pending motion. Judge Sullivan has had significant issues under advisement since May 6, 2010, since *almost over* five months ago. It is common practice for a Court that has issues under advisement to retain a case even when it has been randomly reassigned to another department in the interim pursuant to the "One Judge, one Family Rule". As MITCH concedes in his Opposition, Judge Sullivan rendered no final decision on custody in the present case pursuant to the Motion MITCH filed one year ago. It was Judge Sullivan's law clerk who first wrote to Ms. Vaccarino. Ms. Vaccarino's response was copied to opposing counsel and filed with the Court.

Judge Sullivan may still order an evidentiary hearing, although MITCH is unequivocally not entitled to such a hearing, *see Rooney v. Rooney,* 853 P.2d 123, 124, 109 Nev. 540 (1993) and CHRISTINA's Motion at page 33. Contrary to MITCH's claims that Ms. Vaccarino violated EDCR 7.74, therefore, both courts may receive and consider filings. There has not been improper communication with the Court by CHRISTINA and/or her counsel.

Attorney Vaccarino was not "arguing" or "attempting to influence a law clerk on the merits of a contested matter pending before the judge or judicial officer to whom that law clerk is

assigned." Clearly, Ms. Vaccarino simply provided notice to Judge Sullivan by providing a courtesy copy of the present motion and by filing a submission with the Court that a review of certain portions of Judge Sullivan's lengthy proceedings could assist. Apparently, Judge Sullivan has encountered a delay in rendering a decision in this case, and the filing of the present motion presented a new hearing date of which CHRISTINA's counsel wanted Judge Sullivan to have prompt notice. Given the reassignment of the case in the interim, Ms. Vaccarino copied MITCH's counsel on her communications and properly filed her Request for Submission for the record. The proper forum to evaluate MITCH's false accusations of ethical violations allegedly committed by CHRISTINA and Ms. Vaccarino is not this Court, but, rather, the Nevada State Bar. Ms. Vaccarino and CHRISTINA are not concerned with the lame attacks made, and will confidently defend their proper actions in any forum.

B. Neither Christina Nor Her Counsel Had a Duty to Invite MITCH's Counsel to the July 2010 CPS Meeting

In his Motion, MITCH, again, in violation of NRCP 11, makes a false claim that Ms. Vaccarino "hijacked" a meeting and violated some unknown and uncited rule by being present with CHRISTINA at a CPS meeting. MITCH, a licensed attorney, was free to have his counsel of record present, but, apparently declined representation. Ms. Vaccarino did not even speak with MITCH, and MITCH decided to not be present at the CPS meeting which did go forward. In fact, MITCH had his own, separate meeting with the CPS officer when CHRISTINA finished. Indeed, CHRISTINA and her counsel had no duty to invite Mr. Smith to the meeting, and certainly had a duty to attend the important meeting.

C. MITCH'S Unprofessional/Unethical Misconduct Must Be Considered

MITCH may decide to further pursue his bogus, ethical complaints against CHRISTINA and/or Ms. Vaccarino, as he and his counsel have repeatedly threatened. MITCH also used this tactic against CHRISTINA's former counsel by threatening to report Jim Jimmerson and Shawn Goldstein to the Nevada State Bar for calling MITCH a "liar," *see* MITCH'S E-Mail, dated June 25, 2009, attached hereto as Exhibit "14" (evidencing MITCH's unrelenting anger and condescension in this case).

The Court and the State Bar should note that MITCH's conduct in this case and the Justice Court TPO case has been far from professional and in violation of numerous ethical cannons and Court Rules. In fact, MITCH's letters to Judge Bell and CPS officers, who are also considered judicial officers, are intimidating and sent with the intent to influence the judicial officer in making decisions. Also, the discussion above regarding MITCH's actions in threatening the life of CHRISTINA's brother, filing false police reports, manipulating and abusing the judicial process both in this and the TPO action, his false criminal report against CHRISTINA, and in the present case all reveal MITCH's unprofessional conduct. MITCH also verbally attacked Ms. Vaccarino outside of Judge Abbatangelo's courtroom when he jumped up in a menacing manner and pointed a finger in Ms. Vaccarino's face. MITCH "interjected" and yelled at Ms. Vaccarino in response to her professional inquiry directed to Mr. Frank Cremen (MITCH's criminal and DUI counsel) as to whether or not they had reached a settlement in the TPO matter. Although Ms. Vaccarino offered Mr. Cremen several reasonable settlement offers, MITCH would have none of it, yelling at Ms. Vaccarino, "Don't be ridiculous! Why would I settle with you." Even Frank Cremen appeared taken back by MITCH's ire. Interestingly, Judge Abbatangelo ordered one of Ms. Vaccarino's settlement options, affirming the reasonableness of her conduct. At the end of the hearing it was stated:

> MS. VACCARINO: I-
>
> THE COURT: Nothing else. Good-bye. Nothing else.
>
> I said no contact. I gave you what you wanted. Stop talking.
>
> MS. VACCARINO: Thank you, your Honor. Appreciate your indulgence.

See Justice Court Transcript Excerpt, at 35, ll. 14-19 attached as Exhibit "6".

MITCH also used Mr. Cremen to unjustifiably attempt to influence Judge Linda Bell in Anthony Calderon's unrelated case by having him write a letter forwarding, for her consideration, MITCH and Amy's false police reports, asking not to have Anthony's unrelated case dismissed at an upcoming hearing. See Exhibit "7" attached to CHRISTINA's Motion. MITCH attacked Anthony and then filed a frivolous TPO Application with the intent to start trouble just prior to

Anthony's dismissal of a previous case filed and pending before Judge Bell. The E-mails MITCH attached to his Opposition regarding his correspondence with CPS also reveal that he was threatening and demanding towards Ms. Daramola concerning his adamant demand that they close out the sexual abuse investigation case and NOT formally recommend counseling for ETHAN. CPS is an arm of the Family Court, and his actions should be seen for what they are, attempts to influence a judicial officer.

MITCH seeks sanctions against CHRISTINA because he asserts that the allegations of sexual abuse were not substantiated. MITCH deliberately fails to understand that neither LVMPD nor CPS substantiated the lack of abuse. In other words, there is no "proof" that ETHAN was NOT abused. CPS did recommend counseling for ETHAN and has instructed both parties not to ignore the disclosure ETHAN made. One such E-mail regarding this abuse provides as follows:

> Christina and Mitchell
>
> **ETHAN did make a disclosure, which should not be discredited**. However, law enforcement and DFS will be closing the case due to the reasons stated in my e-mail response below. I have agreed to meet with Christina on Friday 7-30-10 at 9am here at my office **to offer referrals for counseling services and to discuss any other concerns regarding safety and ETHAN's future interactions with Cody**. Mitchell, you are welcome to attend the meeting at my office. I am not sure if my supervisor will be available, but if so, she will also be present.
>
> **As parents, I believe that both of you have addressed this matter appropriately and it is clear that you have talked to your children about body safety. In my observation of both home environments, it is evident that your children are**

well cared for and properly supervised.

See CPS Email from Olukemi Daramola, dated July 24, 2010, attached as Exhibit "6" to CHRISTINA'S Motion. (Emphasis added).

Cody's failure to confess to sexual contact does not mean that it did not happen and that ETHAN's disclosure should be ignored. Therefore, MITCH's countermotion seeking sanctions, is itself sanctionable, inflammatory and wade with reckless disregard to the truth. The Countermotion is also indicative of MITCH's ongoing method of "coparenting" with CHRISTINA, to wit, attack the messenger when he does not agree with the message. Dr. Paglini and Ms. Vaccarino are simply the latest messengers of choice for attack (MITCH has accused both of being "ridiculous" and Ms. Vaccarino of being unprofessional). MITCH'S attacks upon Jim Jimmerson and Shawn Goldstein are discussed above and referenced in the attached Exhibit "14".

D. **The Las Vegas Justice Court Proceeding and Anthony's Application for TPO Reveal that MITCH is Before Both Courts in Bad Faith**

MITCH and his counsel, in violation of NRCP 11, certified the following, false allegations to the Court:

> Christina and Ms. Vaccarino violated EDCR 5.13 by revealing facts and information contained in the confidential report of Dr. John Paglini...Christina and Ms. Vaccarino improperly, unethically and falsely communicated to the Las Vegas Justice Court through pleadings and oral argument at an open hearing that Dr. Paglini concluded Mitchell had personality and behavioral issues relevant to the case before it. Even though Dr. Paglini made no such findings, Christina and Ms. Vaccarino referred to items in the report. (See MITCH's Opposition at page 46, ll. 6-12.)

MITCH and his counsel fail to make any specific citation to the *pro se* submission of pleadings Anthony Calderon submitted to the Las Vegas Justice Court prior to retaining Ms. Vaccarino shortly before the July 26, 2010 hearing on the TPO matter. Nor does MITCH explain

how CHRISTINA is liable for Anthony's submissions, when she did not represent him in the matter. Even assuming, *arguendo*, that CHRISTINA and Ms. Vaccarino would be liable for them, MITCH did not, because he cannot, point to any specific citation to Dr. Paglini's report contained in those pleadings. Anthony was present at the May 6, 2010 hearing on Dr. Paglini's report in this case. However, Anthony has also known MITCH for over 20 years and has personally witnessed MITCH's character and personality defects independent of Dr Paglini's analysis of MITCH. MITCH cannot use the confidentiality of Dr. Paglini's report to forever into the future prohibit anyone who has ever known MITCH from forming their own opinion of him and advancing an argument about him at a contested TPO hearing.

Importantly, MITCH also did not, because he cannot, reference the specific argument he believes constitutes unethical conduct by Ms. Vaccarino and/or CHRISTINA, who did not testify in and was not a party to the TPO action. For the record, Ms. Vaccarino argued before Judge Abbatangelo with the utmost professionalism and deference to the confidentiality of Dr. Paglini's report as follows:

> MS. VACCARINO: And if you want me to, your Honor, I'll ask the Family Court to allow an order for the psychological report to be released to you so you can see what the professionals have had to say about this man's personality and how aggressive he even was in court today with me when I'm trying to work this out for the children's best interest.

MITCH could have produced and was ethically required to review the transcript of the proceeding upon which he relies to hurl his meritless accusations of professional misconduct, but he either chose not to do so, in violation of NRCP 11, or did and made deliberate misrepresentations of fact. MITCH's request for sanctions on this basis should not only be denied, but should itself be sanctioned against MITCH and his counsel for their respective failure to undertake the reasonable investigation and inquiry required by NRCP 11. Their misrepresentations also constitute violations of their respective duties of candor to the tribunal, *see* Nevada RPC 3.3, and his misconduct can be sanctioned under EDCR 7.60 as well.

IX.

IF A PARENTING COORDINATOR IS NOT APPOINTED, CHRISTINA SHOULD BE GRANTED SOLE LEGAL CUSTODY OF THE CHILDREN

As set forth in detail above, at section II., if the Court believes that either party should be sole legal custodian of the children, it should be CHRISTINA, CHRISTINA has evidenced her commitment to coparenting, and MITCH has evidenced his wilful refusal to provide healthcare for the children based on unreasonable and indefensible positions.

X.

MITCH'S REQUEST FOR RATIFICATION OF HIS FINANCIAL "OFFSET" SHOULD BE CONSIDERED A COUNTERMOTION, AND THE COURT SHOULD TREAT THE REQUEST AS SUCH

The pertinent facts and law relating to MITCH's continuing refusal to pay for his share of the children's monthly health insurance premiums, a modest $97 per month, is set forth in detail above at section IV.(3), and is fully incorporated herein. MITCH's has requested this Court ratify his claim of an "offset," is an issue previously resolved. See Stipulation and Order dated February 24, 2009. At that time CHRISTINA argued that MITCH's premiums were covered by his employer. The doctrine of *estoppel* and *res judicata* prohibit MITCH's requested relief. The facts and the parties' 30/30 reimbursement rule documented in their Marital Settlement Agreement also govern this issue. Given these circumstances, as well as the fact that the much more important and urgent needs concerning the parties' children's health matters need to be given immediate priority, CHRISTINA requests that the Court treat MITCH'S "offset" request as a countermotion and allow the following procedure to take place:

1. Allow for full briefing on the financial issues to allow CHRISTINA the opportunity to respond to MITCH'S financial request and petition this Court concerning her financial requests;
2. Calendar a 45-day status check on these financial issues;

3. Require MITCH to provide CHRISTINA, her counsel and tax expert immediate access to MITCH's tax returns, as already ordered by Judge Sullivan;

4. Require the parties to file and serve complete Financial Disclosure Forms within ten days; and,

5. Review the parties' obligations of support with regard to child support and health insurance matters as provided under NRS 125B.145 and address arrears and offset issues at the return hearing.

CHRISTINA has attempted to resolve these and other financial matters with MITCH and his counsel pursuant to EDCR 5.11. The letters from CHRISTINA's counsel to MITCH's counsel are attached as Exhibit "15" (see also Exhibit "21" [stet] to MITCH's Opposition). The requests are met with continuing resistance from MITCH and silence from his counsel. Rather than burden the Court regarding financial matters upon CHRISTINA's Motion to Resolve Parent/Child Issues, CHRISTINA requests the Court take up the matters separately to address the exhibits and arguments MITCH has submitted to justify his continuing refusal to pay for his one-half share of the children's health insurance premiums and other unreimbursed healthcare expenses.

XI.

CONCLUSION

For all of the foregoing reasons and pursuant to Nevada law, CHRISTINA's Motion must be granted and MITCH's Countermotion for sole legal custody regarding healthcare issues and for sanctions must be denied. The financial issues must be addressed by the Court as noted above. Also, CHRISTINA is entitled to all of her fees and costs incurred.

Respectfully submitted by:

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

DOCKETING STATEMENT TAB #7

*MOT
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.m.

PLAINTIFF'S MOTION FOR "NEW" TRIAL TO AMEND FINDINGS AND/OR FOR RESCISSION, RECONSIDERATION, MODIFICATION AND OR/STAY OF ORDER FILED ON OCTOBER 13, 2010, AND ALLOWING PLAINTIFF IMMEDIATE ACCESS TO DEFENDANT'S TAX RECORDS AS PREVIOUSLY ORDERED, AND TO COMPEL DEFENDANT TO COOPERATE IN COMMENCING SESSIONS WITH THE PARENTING COORDINATOR AND FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Plaintiff, CHRISTINA CALDERON STIPP, ("CHRISTINA"), by and through her attorney of record, PATRICIA L. VACCARINO, ESQ. of the VACCARINO LAW OFFICE, and hereby submits her Motion requesting the following Orders:

1. An Order pursuant to Nevada law, and the parties' Marital Settlement Agreement rescinding, reconsidering and/or staying the $9,000.00 award of fees and costs Defendant, MITCHELL DAVID STIPP, ("MITCH"), is seeking upon CHRISTINA's Motion for reconsideration and clarification of the Order stemming from the February 2010 hearing. CHRISTINA is entitled to discovery, a full hearing on the merits of all issues and specific, Findings of Fact, Conclusions of Law and a "final determination" before MITCH is awarded <u>any</u> fees and costs;
2. An Order confirming that Dr. Lenkeit, the Court-appointed Parenting Coordinator,

may review Dr. Paglini's April 2010 report and pleadings as Dr. Lenkeit has requested. This case has been ordered sealed, and MITCH refuses to allow such documents to be released to Dr. Lenkeit;

3. An Order requiring MITCH's full cooperation with the directives of the Parenting Coordinator, under penalty of contempt of Court;

4. An Order requiring MITCH and his counsel to make earnest efforts to agree upon language for Court Orders that comply and comport with Court Rulings, Court Minutes and Court transcripts, to allow opposing counsel sufficient time to review and modify any proposed Order;

5. An Order granting CHRISTINA and her counsel and experts immediate access to MITCH's tax records, as Judge Sullivan has already ordered such documentation discoverable;

6. An Order granting CHRISTINA attorney's fees and costs of no less than $6,000.00 for being forced to file this Motion; and,

7. Any further Orders the Court deems just and proper.

This Motion is based upon the following Points and Authorities, CHRISTINA's Affidavit, all pleadings and papers on file in this action, and any argument to be made by undersigned counsel at the hearing in this matter.

DATED this 2nd day of November 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

NOTICE OF MOTION

TO: MITCHELL DAVID STIPP, Defendant; and

TO: RADFORD J. SMITH, ESQ., Attorney for Defendant.

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Plaintiff's Motion on for hearing before the above- entitled Court on December 1, 2010, in Dept. M.

DATED this 2nd day of November 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

POINTS AND AUTHORITIES

I.

INTRODUCTION AND RELEVANT, RECENT FACTS

The parties were before the Court on February 3, 2010 upon CHRISTINA'S Motion to divide omitted assets. CHRISTINA and MITCHELL DAVID STIPP, ("MITCH"), were present. Thereafter, CHRISTINA filed a Motion to clarify and Reconsider the Court's Order which states the Court was "inclined to deny" CHRISTINA's Motion. Indeed, CHRISTINA's Motion was not denied, and issues remain pending upon CHRISTINA's underlying Motion. At page four of the Order prepared by MITCH's counsel filed October 13, 2010 upon CHRISTINA's Motion for reconsideration and clarification, it states that MITCH is "entitled to an award of fees as the prevailing party in this litigation". The Order specifically cites the governing Marital Settlement Agreement on the fees issue. The amount MITCH is seeking for pleadings, papers and an appearance upon a Motion to reconsider and clarify is an extreme amount, in excess of $9,000.00 as provided in the submission on file.

The Marital Settlement Agreement of the parties governs the attorney's fees issue. The Order filed October 13, 2010 stemming from the June 22, 2010 hearing correctly notes at page four of the Order that the award of fees is pursuant to the parties' Marital Settlement Agreement. Yet, the Marital Settlement Agreement provides that in the event either party seeks Court intervention, the prevailing party "as finally determined" is entitled to "REASONABLE" Attorney's Fees. Yet, Radford Smith, Esq.'s submission of fees and costs on file for one Motion exceeds $9,000.00. In addition, the issues addressed in CHRISTINA's underlying Motion to divide assets and the extensive and lengthy custody proceedings have NOT yet been finally determined.

CHRISTINA's Motion to divide omitted assets was granted, in part. Indeed, Judge Sullivan ruled he would "be inclined" to deny CHRISTINA's Motion if she could not "show fraud", but allowed her the opportunity to inspect MITCH's tax records. Somehow, CHRISTINA was denied access, at that hearing, to conducting certain discovery to make further, valid offers of proof upon her Motion. However, Judge Sullivan believed CHRISTINA still could possibly show fraud, so he allowed CHRISTINA access to MITCH's tax records.

Yet, EIGHT MONTHS have passed, and MITCH continues to hold the tax returns hostage. MITCH continues to demand an unreasonably drafted Confidentiality Agreement where CHRISTINA's attorney accepts liability for CHRISTINA and her expert, although CHRISTINA and her expert are independently and individually liable to wrongful dissemination. MITCH's counsel recently, unreasonably told CHRISTINA and her counsel to wait another three months until the January 11, 2011 return hearing, until this Court can address this simple issue that remains with the Confidentiality Agreement. As of August 2010 CHRISTINA's counsel sought access to the tax records.

Additional Orders were issued at the February 2010 hearing allowing CHRISTINA, her counsel and tax expert to inspect MITCH's tax returns Upon inspection, CHRISTINA believes that certain information will need to explained by MITCH and his tax experts. When such discovery is completed and CHRISTINA's allegations are confirmed as true, CHRISTINA believes MITCH will not be "finally determined" to be the prevailing party as required to receive fees pursuant to the parties' Marital Settlement Agreement. Thus, MITCH is not entitled to any attorney fee award at this time upon all issues related to CHRISTINA's pending Motion to divide omitted assets. For these reasons, CHRISTINA seeks a trial on the merits of her Motion, specific findings, reconsideration and/or stay of any Orders and Judgment awarding MITCH fees upon any issue in this tortured case. Again, outstanding custodial and financial issues still pend in this complicated case. CHRISTINA is likely to prevail on many issues still yet to be "finally determined" by the Court.

Further, in order to receive financial orders of any nature, the requesting party must file a Financial Disclosure Form. Pursuant to Court Rule, MITCH has failed to file such disclosure form noted below.

Also, since the October 6, 2010 hearing, MITCH continues to cause unnecessary problems, and he delays attempts at the peaceful, less costly resolution process recently ordered by the Court. MITCH refuses to allow Dr. Lenkeit to receive Dr. Paglini's report and certain pleadings and papers. MITCH refuses to do so, even though Dr. Lenkeit's office requested such information from CHRISTINA. In addition, Dr. Lenkeit's Parenting Coordinator Questionnaire is

lengthy and requires detailed responses. The information already contained in Dr. Paglini's report and the parties' recent pleadings and papers on file provide answers to Dr. Lenkeit's inquiries as stated in his Questionnaire. See CHRISTINA's counsel's letter attached as Exhibit "1". CHRISTINA even sent an E-mail to MITCH asking that MITCH allow Dr. Lenkeit to resolve this new "dispute" MITCH has created about documents and records being requested by the qualified Ph.D. See Exhibit "2". MITCH refuses to be reasonable.

Regrettably, CHRISTINA and her counsel are also forced to request the Court issue specific Orders about how Orders will be prepared, reviewed by both counsel and submitted to the Court. MITCH and his counsel waited 14 days, until October 20, 2010, to fax a proposed Order to CHRISTINA's counsel that miserably failed to comport with the Court's Rulings and Minutes. Then, MITCH's counsel did not even allow CHRISTINA's counsel four judicial days to retrieve the Minutes, review the lengthy transcript and respond to the erroneously prepared Order. MITCH's counsel rushed to write a letter to "Judge Potter" asking that the improper Order be ratified, without first providing notice to CHRISTINA's counsel that the Order would be submitted by a certain date. Thus, CHRISTINA and her counsel are requesting that MITCH and his counsel govern their conduct according to the proper, ethical Standards of Conduct. CHRISTINA asks that all future Orders and preparation thereof, and the parties' conduct comply with EDCR 2.28 and 7.50.

II.

THE FACTS AND LAW SUPPORT THE GRANTING OF CHRISTINA'S MOTION

EDCR 5.32 states as follows:

> **Motions for** support; **fees and allowances; affidavit of financial** condition **required.**
>
> **(a)** Any motion for fees and allowances, temporary spousal support, child support, exclusive possession of a community residence, or any other matter involving the issue of money to be paid by a party must be accompanied by an affidavit of financial condition describing the financial condition and needs of the movant. The affidavit of financial condition must be prepared on a form approved by the court. An incomplete affidavit or the absence of the affidavit of financial condition may be construed as an admission that the motion is not meritorious and as cause for its denial. Attorney's fees and

other sanctions may be awarded for an untimely, fraudulent, or incomplete filing.

(b) Any party opposing a motion for fees and allowances, temporary spousal support, child support, exclusive possession of the community residence, or any other matter involving the issue of money to be paid by a party must also submit an affidavit of financial condition describing the financial condition of that party at the time of the filing of the opposition or no later than 2 days before the date of hearing, whichever is earlier. The affidavit of financial condition must be prepared on a form approved by the court. The failure of a party opposing such motion to file an affidavit of financial condition may be construed as an admission that the opposing party has the resources to pay the amount requested by the moving party or has the resources to permit the other party to have exclusive possession of the marital residence. Attorney's fees and other sanctions may be awarded for an untimely, fraudulent or incomplete filing.

(c) Income of a successor spouse of a party must be listed in that party's affidavit of financial condition in the "other income" section of the affidavit. If any party resides with an adult person other than a spouse, that party's affidavit of financial condition must reflect the extent to which the cohabitant contributes to that party's expenses.

(d) An affidavit of financial condition may only be filed in open court with leave of the judge upon a showing of excusable delay.

NRCP 52 states, in pertinent part:

FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule. But an order granting

summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.

(b) Amendment. Upon a party's motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may later be questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

. . .

NRCP Rule 59 states as follows:

NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which he could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after service of written notice of the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) Reserved.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after service of written notice of entry of the judgment.

EDCR 2.24 states as follows:

Rehearing of motions.

(a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

(b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30 day period for filing a notice of appeal from a final order or judgment.

(c) A motion for reconsideration must be based on allegations that the previous rulings of the court failed to completely dispose of the matters before the court or that there has been an apparent mistake of fact upon which the court based its ruling. The motion may not be brought to reargue matters disposed of by the court, or to introduce new evidence.

(d) If a motion for reconsideration is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Pursuant to the United States and Nevada State Constitutions, the above-referenced authority, the specific facts, procedural history of this case and the provision in the parties' Marital Settlement Agreement, CHRISTINA's Motions concerning the attorneys' fee award to MITCH are meritorious. Pursuant to NRCP 52 and NRCP 59, CHRISTINA is entitled to an action tried upon facts, with proper application of the law. CHRISTINA is entitled to FINDINGS of FACT and CONCLUSIONS of LAW after discovery and a trial.

NRCP 59 (a)(4) allows for new trials for "newly discovered evidence material for the party making the Motion, which the party could not, with reasonable diligence, have discovered and produced at the trial". Yet, CHRISTINA still awaits her Court-ordered access to initial discovery,

to wit: MITCH's tax returns. It simply violates elementary principles of Constitutional law and other law and the parties' Marital Settlement Agreement governing this case to grant MITCH any fees upon an interlocutory order when numerous issues remain pending.

CHRISTINA still awaits her discovery and final "day in Court" upon her Motion initially heard in February 2010. CHRISTINA requests that the Order filed on October 13, 2010 be rescinded, stayed and/or amended until after proper evidence can be discovered and presented to the Court. The attorney's fee award is premature at best.

Further, pursuant to EDCR 5.32, without the proper financial disclosure from MITCH, the Court cannot properly rule upon his request for fees and any monetary request he has made of this Court. It appears there is a large disparity, in MITCH's favor, in the post-divorce financial footing of the parties post-divorce. The Court's award of attorney's fees must be supported by specific findings after considering all factors and certain, basic elements in determining the reasonable value of an attorney's services as set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 445 P.2d 31 (1969). MITCH has not prevailed at a final hearing upon CHRISTINA's underlying Motion. MITCH has failed to provide CHRISTINA with his tax returns so that she can further verify her claims as stated in her underlying Motion have validity and are further discoverable pursuant to the parties' Marital Settlement Agreement.

Again, in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), when Courts determine the appropriate fee to award in civil cases, they must consider various factors, including the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and result obtained. In family law cases, trial courts are required to evaluate and make Findings concerning the Brunzell factors when deciding attorney fee awards. The Court's Order on file fails to comply with Brunzell. In addition, if MITCH seeks to rely upon a statute in receiving a bloated award of fees and costs upon interlocutory orders, there is no evidence presented, nor Findings made by the Court that CHRISTINA's claims in her Motion are unreasonable, groundless or brought to harass as required pursuant to Bower v. Harrah's Laughlin, Inc., 125 Nev. 37, 215 P.3d 709 (2009) in order to award fees and costs.

. . .

III.

UNTIL MITCH PRODUCES HIS TAX RETURNS, A FINAL DETERMINATION WILL NEVER BE MADE UPON CHRISTINA's MOTION; THUS ANY AWARD OF ATTORNEY'S FEES TO MITCH MUST BE STAYED, AT MINIMUM

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

> **(a) Automatic** Stay; Exceptions—**Injunctions and Receiverships.** Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after service of written notice of its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.
>
> [As amended; effective January 1, 2005.]
>
> (b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a judgment as a matter of law made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).
>
> . . .

CHRISTINA has timely filed her Motion, allowing the Court numerous alternatives to preserve both parties' many requests for fees and costs which remain pending in this action. Final determinations must be made on all custodial and financial issues and CHRISTINA's underlying Motion to divide omitted assets. Both parties' requests for fees must be properly and finally addressed and assessed by the Court. At minimum, the award of fees to MITCH should be stayed, if not rescinded.

. . .

. . .

. . .

IV.

THE COURT MUST ISSUE STRICT ORDERS AND COMPEL DEFENDANT'S COMPLIANCE UNDER PENALTY OF CONTEMPT, AND CHRISTINA IS ENTITLED TO FEES AND COSTS UPON THIS MOTION

As noted above and the attached Exhibits reveal, MITCH and his counsel are still delaying the process of starting to cooperate, coparent and communicate. Instead, MITCH is still forcing arguments over non-issues, and he is requiring more, unnecessary judicial intervention. MITCH and his counsel attempted to have the Court ratify the Order stemming from the October 6, 2010 hearing, when they well understand the Order does not accurately reflect what this Court has ordered. MITCH and his counsel gave CHRISTINA and her counsel only four judicial days to respond to the improper Order, and then, without notice, they submitted the erroneously prepared Order to the Judge.

Thus, CHRISTINA and her counsel are requesting that the Court issue strict Orders concerning counsel mutually ratifying correct Orders. CHRISTINA asks that all Orders contain a fixed time for MITCH's compliance pursuant to EDCR 2.28, or he will delay resolution on any issue he can. CHRISTINA also requests that the Orders be effective immediately at the hearing and be reflected in the Court Minutes in the form of an Order pursuant to EDCR 7.50 so MITCH cannot manipulate and further delay this costly process. CHRISTINA fears that MITCH and his counsel are abusing Court process and are in violation of certain ethical standards of conduct, the provisions of EDCR 7.60 and NRS 18.010.

MITCH and his counsel refuse to allow Dr. Lenkeit, the Court-appointed Parenting Coordinator, copies of Dr. Paglini's report and recent, relevant pleadings. See attached Exhibits. Yet, Dr. Lenkeit's office has requested such records. This Court has appropriately entered an Order for Outsourced Evaluation services by a qualified, Ph.D to act as a Parenting Coordinator. The Court requested Dr. Lenkeit issue a report on specific issues, with recommendations. See unofficial transcript excerpts of Court hearing held on October 6, 2010, attached as Exhibit "3". Such Orders were made by this Court in compliance with NRS 125.510, the best interest standard, and EDCR 5.12 and EDCR 5.13.

. . .

MITCH and his counsel attempt to pose an irrelevant and inapplicable NRCP 53 "Master" argument in trying to, for obvious reasons, hide relevant information from Dr. Lenkeit. It is well understood that Court-appointed evaluators and coordinators, CASAs, etc. do no act as NRCP 53 Masters. Such appointed persons do not regulate proceedings, admit evidence or rule upon discovery issues like 53 Masters. Regardless of Dr. Lenkeit not providing recommendations to the Court, Dr. Lenkeit wants access to and to review certain information in Dr. Paglini's report and the parties' recent pleadings and papers in order to understand current issues of concern. MITCH and his counsel are refusing such access. CHRISTINA is entitled to attorney's fees and costs upon this Motion. Pursuant to EDCR 7.60, Leeming v. Leeming, 87 Nev. 530, 490 P.2d 342, Ormachea v. Ormachea and Halbrook v. Halbrook, 971 P.2d 1262, 114 Nev. 1455 (1998), this Court can now, grant CHRISTINA's request for an award of fees and costs.

V.

CONCLUSION

For all of the foregoing reasons, CHRISTINA respectfully requests that the Court grant her motion in its entirety. CHRISTINA requests an award of fees and costs of no less than $6,000.00.

DATED this 2nd day of November 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

AFFIDAVIT OF CHRISTINA CALDERON STIPP

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CHRISTINA CALDERON STIPP, being first duly sworn on oath, states as follows:

1. That I am the Plaintiff in the above-entitled action. That I read the foregoing motion, including the points and authorities and any exhibits attached hereto. The same are true and correct to the best of my knowledge and belief.

2. For the reasons stated in the foregoing Motion, I am requesting that the Court grant me the relief sought in my motion, in its entirety. I and my counsel have tried to resolve and will continue to try and resolve all issues prior to the hearing.

3. I have been forced to now return to Court to seek specific, legal and fair Orders. I only seek Orders which which comply with the law, the Marital Settlement Agreement governing our case as well as the Court's recent Orders rendered at the October 6, 2010 hearing.

4. MITCH has refused to resolve any issue as of this date. I doubt MITCH will cooperate into the future. I seek an award of fees and costs, as the Court warned us on October 6, 2010 that fees would be granted if warranted.

Christina Calderon Stipp
CHRISTINA CALDERON STIPP

Subscribed and sworn to before me this
2 day of November 2010.

Notary Public, in and for the State of Nevada
County of Clark

MATTHEW J. LAYTON
Notary Public State of Nevada
No. 09-9449-1
My appt exp. Feb. 6, 2013

RPLY
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: October 6, 2010
TIME OF HEARING: 2:00 p.m.

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR WILFUL VIOLATIONS OF COURT ORDERS; TO RESOLVE PARENT/CHILD ISSUES; FOR THE APPOINTMENT OF A PARENTING COORDINATOR; FOR OTHER RELATED RELIEF AND FOR ATTORNEY FEES, COSTS AND SANCTIONS
AND
OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR SOLE DECISION-MAKING AUTHORITY REGARDING HEALTHCARE DECISIONS AFFECTING THE CHILDREN, FOR ATTORNEY'S FEES, COSTS AND SANCTIONS AGAINST PLAINTIFF AND PATRICIA VACCARINO, ESQ.

I.

INTRODUCTION

It appears Defendant cannot resolve issues with CHRISTINA without constant, judicial intervention. The time has come for the Court to intervene, make firm orders, appoint a Parenting Coordinator and end Defendant, MITCHELL STIPP'S, ("MITCH"), self-described "battle". MITCH's battle is being fought with the never-ending goal of "punishing" the ex-wife he so clearly despises. Unfortunately, MITCH's punishment comes at the expense of the parties' two, innocent, young children (MIA is age 5; ETHAN is age 3). MITCH's bloated and meritless

opposition/countermotion stands as stark testimony, in and of itself, to the insanity of his over two-and-one-half-years of debilitating post-divorce conflict.[1] The essence of MITCH's Opposition/Countermotion is that no one, not even this Court, can take away his right to so multiply the proceedings as to litigate any and all matters, *ad nauseam*, in the Family Court for as long as he desires, even when such action is unreasonable, unjustified, and is harming the parties' children. As was demonstrated in Plaintiff, CHRISTINA CALDERON STIPP's, ("CHRISTINA") motion and as will be discussed below, MITCH is wrong on both the facts and the law.

Only months ago, the court-appointed custody evaluator, Dr. John Paglini, comprehensively analyzed MITCH's past, duplicitous medical evaluation and over five-months of psychotherapy treatment he provided to MIA without CHRISTINA's knowledge, participation, or consent. Notwithstanding MITCH's "deceit and deception," which Dr. Paglini affirmatively stated was a contraindication against increasing MITCH's custodial timeshare, MITCH now asks this Court to award him sole legal custody regarding the children's healthcare matters. MITCH's continued, deliberate obstinance in, among many other things, cooperating in the children's health care matters and his ongoing attempts to assert absolute control over the parties' parenting relationship has dominated the lives of the parties and, unfortunately, MIA and ETHAN, for far too long. Nevada law authorizes the Court to cease the madness MITCH is causing by protecting the best interests of the children. MITCH is more concerned with his own personal vendetta against CHRISTINA and her family than in cooperating to meet the needs of their children. For the reasons set forth in CHRISTINA'S motion, as well as addressed below, the Court should grant her motion in its entirety and forthwith deny MITCH's countermotion for sanctions which are clearly NOT warranted.

MITCH's is seriously incorrect in his recitation of the past affirmative motions CHRISTINA

---

1 In the interest of judicial economy, as well as because of MITCH's delay in filing and serving his Opposition/Countermotion, CHRISTINA denies, but will not address, each and every one of the multiple, factual misrepresentations made by MITCH in his Opposition/Countermotion. However, CHRISTINA stands ready to address each one at the hearing on this matter as they constitute separate, but equally cognizable, violations of NRCP 11, not to mention abuse of the judicial system and complete waste of judicial resources.

has been forced to file. The Motions filed followed MITCH's still-pending, third custodial modification motion in nine months, which motion was filed only two months after the parties' global settlement on the matter. A brief rebuttal and the correct, procedural history of this case follows:

1. CHRISTINA's Motion to Stay Discovery (heard on February 3, 2010) was granted. MITCH's vast and ridiculously broad and invasive discovery requests, including depositions, were ordered stayed. Only limited discovery was allowed.

2. CHRISTINA's Motion to Reconsider the Court's December 8, 2009 ruling (heard on April 13, 2010) was granted as to a critical issue. The Court "reconsidered" and vacated the order upon which MITCH improperly asks this Court to rely when considering his "deceit and deception," to wit, that if the parties could not agree on a treatment provider for MIA following the December 8, 2009 hearing, then more than one therapist could treat MIA.

This issue is still pending as well. The Court made the ruling at the end of a long hearing, and it certainly never expected MITCH to use the ruling to exclude CHRISTINA from further receiving further treatment for MIA. Yet, MITCH continued to schedule treatment with Dr. Kalodner. The Court also reconsidered the part of the Order in which MITCH attempted to modify the relocation provisions of the Martial Settlement Agreement, which was not a matter intended to be ruled upon by the Court. The Court already granted CHRISTINA's reconsideration motion, and held that the Martial Settlement Agreement controls, not MITCH's order, in this regard.

3. Again, CHRISTINA's Motion to Reconsider/Clarify the Court's February 3, 2010 ruling regarding her countermotion involving omitted assets (heard on June 22, 2010) was granted to the extent that CHRISTINA is now permitted to allow an accountant expert and her counsel to review tax records MITCH unjustifiably continues to refuse to finalize this issue as well. Judge Sullivan previously ruled and ordered he was "inclined" to deny CHRISTINA's Motion concerning omitted assets, but CHRISTINA is allowed to inspect MITCH's tax returns with her expert and counsel. This matter will be addressed further below.

4. MITCH's refusal (continuing since the last custody hearing in May 2010) to coparent and agree upon proper health care of the parties' children, and his unjustified refusal to consent

to a parenting coordinator to assist in achieving resolution in this regard, forms the basis of CHRISTINA's present motion. Had MITCH stipulated to a parenting coordinator he has asked Judge Sullivan to provide him anyway, this Court would not have had to endure consideration of the present matter. MITCH repeatedly told CYNTHIA to take him to court.

II.

IF THE COURT SHOULD DECIDE TO GRANT SOLE LEGAL CUSTODY OF THE CHILDREN TO EITHER PARTY, IT SHOULD BE CHRISTINA AND NOT MITCH, GIVEN HER HISTORY OF AND CONTINUING DEDICATION TO PRIMARILY TENDING TO SUCH NEEDS

CHRISTINA is the parent who has primarily and actively taken the initiative to procure the best medical care and attention to the parties' children as possible, both prior to and after the parties' divorce. Dr. Paglini's report is replete with glowing references to her care and devotion to the children in this, as well as in other, regard(s), in addition to Dr. Paglini's documentation of the children's close bond with her. *See* Dr. Paglini's Report (documenting that it was CHRISTINA who repeatedly reached out to MITCH to address MIA's behavioral concerns jointly, to no avail).

In the last four to six weeks alone, CHRISTINA has taken the children to the dentist for annual check up and exams to get fillings for MIA to address her now constant teeth-grinding. CHRISTINA has also taken the children to their pediatrician for their well-checks, annual flu shot, and repeated sick visits and follow-ups. Unfortunately, the children recently fell ill upon returning to school, and, at least with respect to ETHAN, were slow to recover. *See* Multiple E-mails from CHRISTINA to MITCH, attached hereto as Exhibit "1" revealing CYNTHIA's good faith efforts in coparenting and sharing information. As is her custom, CHRISTINA promptly apprised MITCH of any and all health conditions of the children as well as appointments. CHRISTINA consistently provides detailed information concerning each such visit to MITCH. *Id.* MITCH did not attend a single one of these healthcare visits the past two months, nor does he normally reciprocate this custodial responsibility by taking the children to the doctor when they are ill and in his care.

MITCH has also failed to advise CHRISTINA in advance of the limited, mental health appointments to which he has taken MIA. MITCH has made it clear to CHRISTINA and her counsel that he is and will be the "boss" over mental, healthcare issues. MITCH took MIA to

months of exclusive therapy for MIA with Dr. Stegen-Hanson during which time MITCH failed to advise CHRISTINA of appointments. Incredibly, MITCH's invoice attached to his September 2010 pleading from Achievement Therapy Center constitutes the first notice MITCH has ever provided CHRISTINA of any appointments he made with MIA following July 23, 2010.MITCH's failure to abide by the Martial Settlement Agreement's 30/30 reimbursement rule will be addressed below separately.

MITCH has demonstrated with his unilateral actions with Dr. Kalodner, and as demonstrated by repeating such "deceit and deception" with Dr. Stegen-Hanson, that he has not learned anything from Dr. Paglini's wisdom, experience and report. MITCH prefers, instead, to continue to parent the children in an exclusive and antagonistic manner. MITCH's papers on file reveal he has already taken on the role of "sole-decision maker" without a Court Order. He appears to think that "getting credit for curing the kids on his own", as he wrote in a letter, will count more than cooperating with CHRISTINA to meet their needs in a joint manner. MITCH's opposition and countermotion for sole legal custody regarding healthcare decisions given his past "deceit and deception" and irrational opposition to a parenting coordinator his attorney previously and repeatedly begged for repeatedly from the Court, epitomizes this belief. The Court should note that every professional that has ever been involved in this case recommends that a parenting coordinator be appointed. The professionals involved include, Dr. Paglini, Radford Smith (MITCH's attorney), Jim Jimmerson, Donn Prokopius, Patricia Vaccarino, the professionals at Nevada Child Find, Dr. DeSimone, the children's pediatrician and the CPS personnel.

MITCH's argument to the Court that Dr. Paglini believed that CHRISTINA's interactions with Dr. Kalodner were unjustified and problematic is patently false. Dr. Paglini specifically stated that the Court should consider such interactions in light of the fact that MITCH deliberately kept CHRISTINA in the dark as to his secret psychological therapy of MIA for over five months in which he took MIA to Dr. Kalodner for 19 separate sessions. CHRISTINA adamantly denies misrepresenting her financial position to Dr. Kalodner. Dr. Kalodner accepted a cash-pay price that Dr. Kalodner absolutely never indicated was subject to financial need. This matter was fully briefed in the Supplement CHRISTINA filed which is currently under advisement with Judge

Sullivan.

III.

THE COURT MUST ALLOW CHRISTINA TO OBTAIN NECESSARY AND CRITICAL HEALTHCARE MITCH HAS DELAYED TO THE DETRIMENT OF THE CHILDREN

MIA and ETHAN's pediatrician, Dr. Muriel DeSimone, recently provided CHRISTINA the letter quoted below for the Court's edification. The letter is in direct rebuttal to MITCH's ingenuous claim, raised in his opposition, that Dr. DeSimone's wellness checks of the children on August 17, 2010, somehow absolutely preclude the need for MIA to be treated and evaluated by a mental health professional and to have ETHAN counseled for the sexual abuse he was most certainly subjected to by Cody while in MITCH's care. Specifically, Dr. DeSimone states on September 30, 2010, in pertinent part, as follows:

> To Whom it May Concern:
>
> I am a pediatrician duly licensed to practice medicine in the State of Nevada. MIA Stipp (born 10/19/2004) and ETHAN Stipp (born 03/24/2007) are patients of mine and have been so since 2004, with respect to MIA, and 2007, with respect to ETHAN. **I have seen their mother, Christina Stipp, at almost every one of their appointments over the years.**
>
> Please be advised that at MIA and ETHAN Stipp's respective annual well checks, both of which I administered on August 17, 2010, and at which Christina Stipp was present, **I only assessed the physical health and development of each child. At this August 17, 2010 appointment, Ms. Stipp and I discussed that with respect to the mental health of the children, Ms. Stipp currently had a request pending before the Nevada Family Court to allow her to 1) obtain a second opinion for MIA's behaviors including her sensory issues, germ obsession and spitting/licking rituals as well**

> **as 2) to allow Ms. Stipp to obtain counseling for ETHAN to address the sexual abuse to which she believes he was subjected over this past summer (2010). Ms. Stipp advised me that Mitchell Stipp, the children's father, did not consent to either request and that she was seeking judicial intervention in the matter.**
>
> **I have discussed Ms. Stipp's concerns regarding MIA's mental health many times since at least as far back as December 2008, the month during which I first referred MIA to a psychiatrist** given Ms. Stipp's expressed concerns over MIA's behaviors involving clothing and seatbelts. In late May 2010, Ms. Stipp advised me that MIA had developed new behaviors related to an obsession with germs and associated spitting/licking rituals. **On or about May 24, 2010, I provided Ms. Stipp with the referral of Dr. Nicole Cavenagh, a child neuropsychologist, for evaluation and treatment of MIA, as well as Donna Wilburn, MS, LMFT, for counseling for MIA.**

See letter dated September 30, 2010, from Dr. DeSimone, attached hereto as Exhibit "2". Clearly, Dr. DeSimone focused on assessing the physical and not mental state and development of the children at the recent well-check visit. Like CHRISTINA, the doctor is waiting to hear what resolution CHRISTINA is able to receive from the Court, in the face of MITCH's crippling veto against MIA receiving suggested help. MITCH is of the strong belief that parents cannot and should not agree upon healthcare issues without Court rulings. It is imperative that CHRISTINA's motion be granted, and that the parties' children begin to receive the help they so desperately need.

CPS caseworker Kemi Daramola's July 24, 2010 E-mail to both MITCH and CHRISTINA similarly refutes MITCH's continued, unreasonable position that ETHAN should not get counseling because CPS does not "formally" recommend it. Of course, CPS cannot mandate a counseling

referral if a case is not opened. Yet, counseling was recommended by a qualified professional. Specifically, the E-mail dated July 24, 2010 from the CPS office states the following:

> Christina and Mitchell
>
> ETHAN did make a disclosure, which should not be discredited. However, law enforcement and DFS will be closing the case due to the reasons stated in my e-mail response below. **I have agreed to meet with Christina on Friday 7-30-10 at 9am here at my office to offer referrals for counseling services and to discuss any other concerns regarding safety and ETHAN's future interactions with Cody**. Mitchell, you are welcome to attend the meeting at my office. I am not sure if my supervisor will be available, but if so, she will also be present.
>
> **As parents, I believe that both of you have addressed this matter appropriately** and it is clear that you have talked to your children about body safety. In my observation of both home environments, it is evident that your children are well cared for and properly supervised. [Emphasis added.]

See CPS Email from Olukemi Daramola, dated July 24, 2010, attached as Exhibit "6" to CHRISTINA's Motion.

Dr. DeSimone and CPS recommended second opinions for MIA and counseling. These professionals made referrals for such help for the children. At a hearing, CHRISTINA can subpoena the CPS staff involved in ETHAN's investigation as well as the children's pediatrician to further prove to this Court that the relief CHRISTINA requests is not only reasonable, but is in the best interests of the children. Yet, it is apparent the parties and children need immediate and strict orders concerning these important matters.

. . .

. . .

IV.

MITCH ADMITTED TO SUFFERING FROM OBSESSIVE COMPULSIVE DISORDER AND, THOUGH HE CONSIDERED THE DISORDER IN THE PAST CONCERNING MIA, HE UNREASONABLY REFUSES TO CONSIDER THE POSSIBILITY NOW BECAUSE IT WILL DETRACT FROM HIS LITIGATION STRATEGY TO TAKE 100% CREDIT FOR HIS "CURING" MIA

The Court should note that MITCH's entire opposition, like Dr. Stegen-Hanson's "progress report," of July 2010, is absolutely devoid of any mention whatsoever of MIA's obsession with germs. Dr. Stegen-Hanson's failure to address such issues is likely due to her lack of expertise and qualification in the area. Dr. Stegen-Hanson readily admitted this fact to CHRISTINA and MITCH in late May 2010 when she told the parties that "we should seek the advice of Dr. Kalodner in this matter." MITCH's critical omission of MIA's continuing and real problems is deliberate and litigation-motivated. MITCH's lack of candor is especially troubling given MITCH's admitted personal experience with obsessive-compulsive disorder ("OCD") and his arguments to this Court and to Dr. Kalodner, as documented in her treatment notes, dated, September 9, 2009, that he believed MIA had OCD. *See* Ex. "2" [stet] to MITCH's Opposition.

MITCH reported to Dr. Paglini that:

> . . .as a child, after his parents divorced, he developed mild obsessive-compulsive symptoms from sixth through eighth grade. **He frequently engaged in counting rituals such as counting cars in sevens, or before he tied his shoelace, he wrapped it around his finger on seven occasions. Mr. Stipp reported that if he believed that the door was unlocked, he always had to go back to his house to check to see if the door was unlocked.** [Emphasis added.]
>
> Mr. Stipp reported that he exhibited performance **anxiety** symptoms pertaining to academics from college until he completed the bar exam. Mr. Stipp reported that just before the exam he would become nauseous, went to the bathroom, had dry heaves and then took his test.

See Dr. Paglini's Report at page 12.

In addition, MITCH swore to the Court in his October 29, 2009 Motion, which was devoid of mention of MITCH's then, on-going and secret treatment of MIA with Dr. Kaldoner, that:

> 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 aggravated by the conduct of Christina. Children with this disorder may perform certain acts (or rituals) to address feelings of insecurity.

See MITCH's Custody Motion filed October 29, 2009, at page 8, footnote 6. MITCH made this representation to the Court and CHRISTINA. However, according to Dr. Kalodner's treatment notes, Dr. Kalodner had already informed MITCH on September 29, 2009, that she had ruled out OCD "at this time" regarding MIA's clothing issues. *See* Ex. "2" [stet] to MITCH's Opposition. Apparently, MITCH believes it is acceptable for him to ignore or, alternatively, assert Dr. Kalodner's diagnosis when it suits his litigation strategy.

The concept that MIA may be suffering from OCD, therefore, is not foreign to MITCH. The Court needs to allow MIA to go to the proper professionals to rule out and receive a proper diagnosis. MITCH is only looking to use therapy to alleviate symptoms. He needs to focus on receiving a diagnosis and start treating MIA's disorder(s). Contrary to his statements otherwise, CHRISTINA is not claiming that she has diagnosed MIA's newest behaviors. CHRISTINA is requesting that a qualified mental health professionals evaluate MIA, just as the professionals at Nevada Child Find have recommended. Child Find's evaluation reports, findings, and recommendations are critical to understanding MIA's current mental health, future evaluation and her adjustment in school.

Dr. Judy Miller, Child Find's director, confirmed to CHRISTINA on September 30, 2010, that the Child Find Report would not be "moot" to MIA because the Clark County School District has the same "multi-disciplinary teams" (i.e., school psychologists, nurses, and speech and occupational therapists) as Child Find at local schools throughout the district. *See* Supplemental

Affidavit of CHRISTINA, attached hereto as Exhibit "3" to CHRISTINA's Reply. MITCH'S false contention that he did not complete his end of the evaluation process at Child Find is directly refuted by his own email on the subject documenting his meeting with school psychologist, Shirley William. *See* Mitch's E-mail, dated July 29, 2010, attached as Ex. "19" [stet] to MITCH'S Opposition.

If MIA were to qualify for services under Child Find, such help would be equally and immediately available to MIA now, as she now is attending public school. Indeed, Ms. Susan Holden, the occupational therapist assistant at Achievement Therapy Center, who was responsible for the vast majority of MIA's treatment sessions and disagreed with Dr. Stegen-Hanson's diagnosis of sensory processing disorder for MIA's new behaviors, also works for the school district. Ms. Holden's biography, which is posted on Achievement Therapy Center's web site confirm her qualifications. Indeed, MIA has also reported to CHRISTINA that Ms. Holden works at the same CCSD school as MIA's step-mother, Amy. Certainly, therefore, MITCH is aware that if MIA's occupational therapist works at his wife's school, there may clearly be special services for which MIA would be eligible to receive at her own elementary school. It is inconceivable that MITCH, a parent, would seek to, as here, prevent the release of such information to allow such evaluations of MIA to proceed. MITCH must somehow be afraid of the truth of MIA's condition being exposed because the truth further harms his "case" against CHRISTINA. Yet, MIA needs proper care, assistance and treatment, and MITCH must lay his sword down in the battle he is waging against CHRISTINA.

Dr. Stegen-Hanson was and is not only not qualified to assist the parties in this matter, as she admitted at the onset of MIA's new behaviors, but she is now, allegedly closing her practice. CHRISTINA is not surprised by this announcement given Dr. Stegen-Hanson's unprofessional and unethical conduct in "treating" MIA. As of July 2010, Dr. Stegen-Hanson claimed MIA needed three more months of "treatment", but then discontinued treatment within one month.

The fact remains that there has been a void of proper help for MIA, and MITCH is completely blocking CHRISTINA's ability to get proper healthcare for MIA. MITCH already

crowned himself as the "sole-decision maker" on issues affecting the children by virtue of his deliberate and unreasonable veto power. Yet, the provisions of joint legal custody only require CYNTHIA to "consult and cooperate" on issues, not wait until MITCH approves and allows healthcare as he has been doing. MITCH forbids CHRISTINA to get MIA and ETHAN the care they need from anyone. Yet, MITCH concedes in his Opposition, however, that MIA still requires medical help as she "still has a sensory processing disorder which may in the future require additional occupational therapy." The Court need only look at MITCH's E-mails attached to his Opposition to and from himself and CPS and Dr. Stegen-Hanson, respectively, to see how MITCH has already made himself the sole decision-maker to the detriment of the children. *See* Exhibits "8," "14," 18" & "22" [stet] to MITCH'S Opposition (documenting MITCH's demands that CPS close the case, and not recommend counseling; and MITCH ceasing MIA's occupational therapy himself, and MITCH responding on behalf of Dr. Stegen-Hanson, as he did with Dr. Kalodner, to each and every inquiry CHRISTINA made to the doctor).

MITCH claims that Dr. Kalodner "ruled out OCD" for MIA. This claim does not comport with the reality that while Dr. Kalodner may have ruled out OCD "at this time" in September 2009, explicitly with regard to MIA's "clothing issues," she did not rule out OCD for MIA for life. *See* Kalodner Treatment Notes, Ex. "2" [stet] to MITCH's Opposition. Dr. Kalodner's treatment notes, which MITCH has reproduced and attached to almost every pleading imaginable. The notes support CHRISTINA's position and logical assessment that MIA's new behaviors still must be assessed or considered to again rule out OCD and/or provide a true diagnosis and proper treatment plan for her new behaviors. *Id.* OCD is a progressive and degenerative disorder, and should be diagnosed and treated as early on as possible. The disorder must be consistently monitored and properly treated.

Specifically, Dr. Kalodnder stated, clearly and repeatedly in her notes, that she was going to "rule out an OCD problem **with clothing**;" 9/9/09. *Id.* In her note documenting her telephone call to Dr. Beasely, Dr. Kalodner stated "I am concerned that we are not dealing with an OCD **at this time**" 9/26/09; and, thereafter to MITCH she said "I do not believe that this is OCD **at this**

time" 9/29/09. *Id.* Clearly, Dr. Kalodner left the door open to the possibility that OCD could manifest itself in MIA with respect to, as here, other, future behaviors. MITCH's obstinate refusal to consider OCD or other diagnosis in the wake of MIA's germ obsession, repeated hand-washing, and his own history of OCD demonstrates his wilful refusal to provide appropriate care to MIA. MIA also bites her nails nervously and has other compulsions and obsessions that appear to, unfortunately, be hallmark signs of OCD and, possibly, bi-polar disorder according to research CHRISTINA has undertaken on MIA's symptoms.

Similarly, MITCH's reliance upon the fact that Dr. Paglini did not recommend counseling for ETHAN is obvious and apparent in its deliberate weakness. MITCH knows that Dr. Paglini concluded his evaluation and drafted his Report on April 29, 2010, ***well before ETHAN disclosed any signs or symptoms of abuse to CHRISTINA*** **and others**. To say that MIA and ETHAN should never receive any treatment which is not specifically contained in Dr. Paglini's report is simply and utterly ridiculous. MITCH's position also reveals the spitefulness of his conduct that he would restrict medical care for his children on the basis of such reasoning.

V.

NEVADA LAW AUTHORIZES, AND THE BEST INTERESTS OF THE CHILDREN MANDATE, THAT THE COURT END MITCH'S PURSUIT OF PERPETUAL AND DEBILITATING CONFLICT THAT IS DETRIMENTAL TO THE PARTIES' YOUNG CHILDREN

A Nevada court may, at any time, make any order concerning custody, care, education, maintenance and support as appears in a minor child's best interest. MITCH has made a curious argument that this Court lacks jurisdiction to address new facts occurring since the last hearing and now enter orders that best serve the children.

NRS 125.510(1)(a) provides, in pertinent part, as follows:

> [i]n determining the custody of a minor child..., the court may...:
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest...
> [Emphasis added].

This statute clearly delegates to this Court the authority necessary to grant CHRISTINA her

requested relief, i.e., orders allowing for, among other things, 1) counseling for ETHAN and second opinions from qualified mental health professionals for MIA to evaluate and treat her obsessive compulsive or other anxiety-based disorder, 2) counseling for ETHAN to address the sexual abuse committed against him by his nine-year-old cousin, Cody, and symptoms ETHAN is exhibiting and related thereto and 3) a parenting coordinator to facilitate cooperation and resolution instead of perpetual conflict and litigation in this case.

Notwithstanding the clear language of NRS 125.510(1)(a), MITCH incorrectly asserts in his opposition that District Court Rule 19 restricts the jurisdiction of this Court, and prohibits the Court from issuing any order to address children's current, urgent mental health needs and/or appointing a parenting coordinator in this case. MITCH concedes the Court's jurisdiction to order counseling for ETHAN, but is unjustifiably opposed to giving ETHAN this much-needed help. MITCH is wrong on the facts and the law.

First, DCR 19 is inapplicable to the present case. The plain language of the nearly identical local rule he likely intended to have the Court consider is equally inapplicable to the facts of this case. The contents of DCR 19 are largely mirrored in EDCR 7.12, which governs over DCR 19[2]. EDCR 7.12 provides that "[w]hen an **application or a petition for any writ or order** shall have been made to a judge and is pending or has been denied by such judge, **the same application, petition or motion** may not again be made to the same or another district judge, except in accordance with any applicable statute and upon the consent in writing of the judge to whom the application, petition or motion was first made." EDCR 7.12 [emphasis added]. (Nevada's District Court Rules on "cover the practice and procedure in all actions in the district courts of all districts where no local rule covering the same subject has been approved by the Supreme Court.") MITCH's citation to DCR reveals that MITCH, a now retired transactional attorney with substantial time on his hands, likely drafted his own Motion.

EDCR 7.12 does not apply here because, simply put, there is no other **"application, petition or motion"** made by either of the parties requesting 1) opinions by qualified mental health care professionals for MIA and ETHAN to address behaviors they began manifesting after May 2010, or 2) the appointment of a parenting coordinator.

---

[2]MITCH incorrectly abbreviates District Court Rule as NDCR, instead of DCR, as required by DCR 1.

Judge Sullivan never considered MIA's new germ obsession and spitting/licking compulsions because the hearing on the return on Dr. Paglini's report, which took place on May 6, 2010, and which constitutes the last custodial hearing in this matter, ***pre-dated*** the onset of these behaviors. Therefore, there could not be a motion/application/petition filed by either party prior to May 6, 2010, regarding these matters because MIA had not begun to manifest such behaviors prior to the hearing. As MITCH pointed out in his opposition, Judge Sullivan's law clerk recently communicated to the parties that no issues other than those raised prior to May 6, 2010 will ever be considered by Judge Sullivan in this case. MITCH knows this clear fact, but unjustifiably argues that in essence, no Court can help MIA until Judge Sullivan issues a ruling that will not even consider MIA's new behaviors or other new facts of great concern which have transpired in this case after the May 6, 2010 hearing. Certainly, NRS 125.510(1)(a) applies, and allows this Court to proceed in ruling upon CHRISTINA's motion. EDCR 7.12 if it were, *arguendo*, to be considered applicable, provides this Court the right to give CHRISTINA and the children the help they so desperately need, but which MITCH refuses to cooperate in allowing to be provided.

Next, MITCH makes the unbelievable argument that the Court's April 13, 2010 Court Order which prohibits MIA's "treatment" by any psychologist "until further order of the court" prohibits this Court from issuing an order allowing for mental health evaluation and treatment to address MIA's urgent medical needs. The adoption of MITCH's illogical position would mean a complete negation of NRS 125.510. The position results, unacceptably, in a void of authority of any Court to ***ever*** allow MIA to obtain psychological treatment, even for behaviors, as now, which manifest themselves after May 6, 2010. This is an illogical and unreasonable position, and was certainly not what was contemplated by Judge Sullivan on February 13, 2010.

Instead, as MITCH well knows, Judge Sullivan and Dr. Paglini did not consider MIA's new obsessive/compulsive behaviors because they were not yet in existence. Instead, Judge Sullivan, like Dr. Paglini and the parties at the time, were under the impression that MIA did not require any psychological treatment ***at the time*** because MIA was reducing her occupational therapy sessions to terminate in the near future. Neither the parties, nor Judge Sullivan, intended for the Court to impose a perpetual prohibition against MIA ever receiving psychological help should she, as now, exhibit behaviors in the future that would warrant psychological and/or any other healthcare

assistance. Has MITCH and his counsel forgotten that the parties can always STIPULATE in an Order to allow a parenting coordinator to assist the partes and to provide specific treatment for the children?

Indeed, MITCH could have stipulated with CHRISTINA, as she fervently requested, to have MIA evaluated by a mental health professional for her new behaviors as recommended by Dr. Stegen-Hanson (MIA's occupational therapist) as well as MIA's pediatrician, Dr. Muriel De Simone. Judge Sullivan and/or this Court would have readily approved such a joint legal custodial decisions and stipulation, and ratified such a stipulation and order, superceding the Court's April 13, 2010 order. Instead of coparenting in this regard, MITCH somehow prefers to savor the present "delay" in Judge Sullivan's ruling because MITCH is more interested in exercising his "veto power" and self-proclaimed "sole-decision making" power over CHRISTINA'S reasonable requests for consensus to address the children's health care needs. MITCH could attempt to actually cooperate with CHRISTINE to meet those needs, or ultimately, in expediting any order that would provide some finality in this case.

If MITCH truly believed that CHRISTINA was, indeed, harming the children, as he, again, outrageously asserts, by filing false accusations of sexual abuse and by mistreating his hired gun, then MITCH should have filed a Motion with the Court for an order to protect the children from such harm. MITCH no more believes that CHRISTINA poses a threat of harm to the children than he believes in the concept of coparenting. In fact, MITCH's motion filed in October 2009 sought more time with the children. Yet, his motion is not ruled upon one year later, and MITCH is apparently satisfied with the timeshare currently as ordered.

With respect to CHRISTINA'S present motion requesting the appointment of a parenting coordinator, pursuant to NRS 125.510, this Court is not restricted from so appointing one based solely on the facts and circumstances that follow May 6, 2010, if nothing else. Judge Sullivan has not yet issued an order implementing Dr. Paglini's "recommendation" for a parenting coordinator, which was endorsed by MITCH repeatedly on May 6, 2010. Such inaction does not preclude this Court from now appointing a parenting coordinator based upon the history of this case and the facts now presented by both parties. Moreover, the Court should note that Dr. Paglini's "recommendation" for a parenting coordinator is not the same as a "motion, application, or petition"

requesting one. Dr. Paglini is not a party in this case. Dr. Paglini did not formally move, nor could he, for the appointment of a parenting coordinator. Thus, EDCR 7.12 does not apply and NRS 125.510 controls in providing this Court jurisdiction to grant CHRISTINA the right to have the children evaluated and treated as well as the appointment of a parenting coordinator. A greater example of a case in which a parenting coordinator is desperately needed likely does not exist. (It should be noted that CHRISTINA requested a parenting coordinator at the parties' first post-divorce hearing on February 24, 2009, in this case. However, the Court denied her request stating that the court wanted the parties to learn how to coparent. The Court sought to ensure the parties would attempt effecting coparenting instead of using coordinator a "crutch". MITCH has simply chosen, instead, to use the judicial system as both his crutch and his sword.)

VI.

THE CONSTANT CONFLICT CAUSED BY MITCH IS HARMING THE CHILDREN; AN ORDER APPOINTING A PARENTING COORDINATOR, OR, IN THE ALTERNATIVE, AWARDING CHRISTINA SOLE LEGAL CUSTODY IS IN THE BEST INTEREST OF THE CHILDREN

First and foremost, CHRISTINA categorically denies MITCH's numerous, false and outrageous allegations. MITCH and his wife have conspicuously chosen to, for the first time, allege that CHRISTINA told Amy on June 9, 2010, that "God is punishing you because you can't have children of your own." See MITCH's Opposition at page three. MITCH is attempting to both elicit sympathy from the Court for what he describes to be his unfortunate, but nevertheless irrelevant, alleged fertility issues and to attempt to further demonize CHRISTINA to this Court, as he has done countless times in the past. The false and inflammatory allegation is also a red herring designed to distract the Court from considering, among the many other vulgarities MITCH hurled at CHRISTINA and her brother, the **DEATH THREAT** MITCH made to Anthony the same day in front of the parties' children. *(See* Anthony's TPO Application attached as Exhibit "7" to CHRISTINA's Motion).

Noticeably absent from either his or Amy's June 2010 police reports of the alleged incident, which also contain numerous false misstatements of fact and critical omissions concerning MITCH's uncontrollable rage exhibited in front of the parties' children, was any reference to "God" and/or MITCH's or Amy's "fertility." *(See* MITCH's TPO Application attached as Exhibit "9" [stet]

to MITCH's Opposition). It should be noted that in June 2010, not only did MITCH hurl the death threat of "putting a bullet in Anthony's head," but his current wife, Amy, had to physically restrain MITCH by the shoulders begging MITCH to "stop if you love ETHAN." ETHAN was sitting at MITCH's feet while MITCH exploded upon Anthony for "interjecting" into MITCH's verbal assault upon CHRISTINA. Amy repeatedly plead for MITCH to "please stop", to no avail. CHRISTINA and Anthony took immediate steps to secure the safety of the children, then left the facility at once. (*See* Anthony's TPO Application attached as Exhibit "7" to CHRISTINA's Motion). Amy was so upset by MITCH's actions that she did not follow him outside of MIA's therapist's office when MITCH chased after Anthony to continue his assault upon Anthony.

In addition, there does not exist a single reference to MITCH's newest and false "lack of fertility" accusation in the detailed E-mail MITCH copied and pasted into his opposition at pages 14 and 15. This detailed E-mail was intentionally and secretly forwarded to Dr. Stegen-Hanson by MITCH. MITCH forwarded the E-mail to Dr. Stegen-Hanson in a successful attempt to alienate Dr. Stegen-Hanson (like Dr. Kalodner) against CHRISTINA and convince her to treat MIA without CHRISTINA's involvement and against her express revocation of consent. Clearly, it is MITCH who suffers from unresolved feelings towards CHRISTINA. MITCH prefers to attack, assault, file false police reports, attack CHRISTINA's counsel at TPO hearings and attend hearings in numerous cases. Yet, at his July 2010 TPO hearing, Judge Abbatangelo yelled at MITCH to cooperate to meet the needs of the parties' children. Since May 6, 2010, MITCH has had a protective order issued and extended against him, due to his obvious lack of impulse control in front of the children.

The Court should disregard MITCH's false picture of CHRISTINA as the "angry," "bitter," and, in his mind, "2.1-million-of-*his*-dollars-too-rich" "Georgetown graduate." At least two ***independent*** professionals associated with this case have disregarded MITCH's false allegations when exposed to the true MITCH. Specifically, Judge Frank Sullivan's court-appointed custody evaluator, the esteemed forensic psychologist, Dr. John Paglini, clearly saw through MITCH's narcissism, need for control in relationships, and ruse of "deceit and deception". CHRISTINA is hopeful this Court will see the same, true MITCH. *See* Dr. Paglini's Report, dated April 29, 2010, at pages 15 and 49 (Issues of Concern: I. Impulsivity (previous alcohol abuse and speeding; ii.

Narcissistic traits; iii. Deception).

Dr. Paglini completely exonerated CHRISTINA of MITCH's false allegations of "emotional abuse" of MIA. *Id.* Dr. Paglini completely debunked MITCH's claims, which MITCH falsely continues to promulgate to this Court, that MIA's defiant behavior and outbursts began to occur only after the parties' August 7, 2009 comprehensive settlement and solely due to, as MITCH falsely claimed, CHRISTINA's "abuse" of MIA. *Id.* at 62. After reviewing an E-mail between the parties from December 2008 regarding MITCH's hitting MIA for her anger and outbursts, *see* Email attached hereto as Exhibit "4", Dr. Paglini concluded that "[w]hat this email indicates, is that Mitchell was dealing with his daughter's defiance, well before any dynamics emerged in this case." *Id.* Another E-mail, attached hereto as Exhibit "5", demonstrates that MITCH was also aware of MIA's clothing issues long before he filed his third, custodial modification motion. Yet, MITCH chose to ignore MIA's conditions until they proved helpful to his litigation strategy. Thus, MITCH is no stranger to, as he is doing here, manipulating MIA's health conditions to his litigation advantage, a tactic he wrongfully projects upon CHRISTINA.

More important than MITCH's need to blame CHRISTINA, her counsel, Dr. Paglini, and/or anyone else who stands in his path, is the impact his commitment to conflict is having on the children. Dr. Paglini advised the Court as follows:

> It is highly advisable that both Mr. Mitchell Stipp and Mrs. Christina Stipp be involved in a co-parenting class. There are co-parenting therapeutic programs whereby litigants learn through a work book how to co-parent, and then work with a therapist to resolve issues. This is one option, but perhaps **the better option would be that the litigants are involved with a parenting coordinator**. The litigants have the finances to work with a parenting coordinator. **The parenting coordinator would assist the STIPPS in communicating more appropriately and resolving conflicts.** Once the STIPPS have exhibited a period of time whereby they have less conflicts, they can terminate the services of the parenting

coordinator. **This evaluator would recommend Gary Lenkeit, Ph.D., or Stephanie Holland, Ph.D. They both are very skilled parenting coordinators. It is imperative that the parenting coordinator focuses only on current issues**, and not delve into previous dynamics. The parenting coordinator may benefit from contacting this evaluator to understand the case more thoroughly, or review my report.

The prognosis for the litigants is primarily favorable. Both litigants are extremely intelligent and provide wonderful care towards their children. **Currently, unresolved issues tend to re-emerge during a day to day communications pattern between the litigants. As stated, this evaluator would like to impress upon both Mr. And Mrs. Stipp that if they don't resolve their issues, that is likely that their children will be emotionally affected in the future. If their issues remain unresolved, it is then likely that both Mitch and Christina could litigate for the next decade.**

Id. at 69.

Only two months ago, at the July 26, 2010 hearing on CHRISTINA's brother, Anthony Calderon's TPO application against MITCH for MITCH's June 9, 2010 assault and threat to "put a bullet in [Anthony's] head," (*see* Anthony's TPO application attached as Ex. "7" to CHRISTINA's Motion) the Honorable Tony L. Abbatangelo of the Las Vegas Justice Court, witnessed, first-hand, MITCH's uncontrollable temper and desire to control. MITCH also subjected CHRISTINA's present counsel to his overwhelming anger by verbally lashing out at and attempting to physically intimidate her by jumping out of his chair and up into Ms. Vaccarino's face in a threatening manner before the same hearing. MITCH stood up and aggressively put his face and finger in Ms. Vaccarino's face, verbally and physically assaulting her, telling Ms. Vaccarino her proposal

to his counsel was "ridiculous". Like Dr. Paglini, Judge Abbatangelo took the time to counsel MITCH about the lasting impact his anger will have on the parties' children if he does not control himself.

Specifically, on July 26, 2010, Judge Abbatangelo admonished MITCH as follows:

> THE COURT: Do you guys, [referring to MITCH and Anthony] ever think what's in the best interest of the child? Do you ever think about that, about your niece or your nephew or your daughter or your son or are you just really so pissed off at Mitchell, and **you're so pissed off at Anthony that you guys don't care and you're all worked up?** Do you ever think that might be what's going on?
>
> MR. STIPP: Your Honor, I care a great deal about the best interest of my children.
>
> THE COURT: That's not what I asked you. See, once again you don't listen. Have a seat. We'll trail it. I'm going to take cases where people listen. You guys could have been out of here but you guys want to answer your own question. You don't listen.

See Relevant portions of the Justice Court Transcript, dated July 26, 2010, attached hereto as Exhibit "6", at 6, ll. 12-25, and 7, ll.1-3 (Emphasis added.) Later in the hearing, Judge Abbatangelo urged MITCH to think about ETHAN:

> THE COURT: Just stay away from each other because what do you think ETHAN is thinking about? He loves his uncle. Kids just love their parents and their uncles regardless of what's going on in the grown-up world. They think Dad is awesome, they think Mom's great and they think uncle's great. They don't know anything because these guys are little guys...

Id. at 27, ll. 4-10.

THE COURT: But think about what ETHAN has had to go through because somebody's lying and all we do know for sure is that there was a lot of tension that ETHAN's watching going on. MIA luckily was in the counseling session and had no clue what's going on.

MS. VACCARINO: She came out at the end and saw some of it.

Id. at 28, ll. 3-10.

Ultimately, Judge Abbatangelo, who, during the hearing described his own status as a divorced father, who has experienced conflict with his ex-wife, forecast the future for MITCH, if he did not grow up and act like an adult:

THE COURT: Stop it. This is stupid. Stay away from each other. No contact with each other. No communication with each other. That's the order. Leave each other alone. Grow up. Act like adults. I don't like Anthony, so this is Anthony, pointing to myself, I'm walking away from you. Oh, that was difficult. For the record I got up from my chair and walked away. No, you two guys keep getting by each other. And one of you is lying and someone's going to have a fist in their mouth and ETHAN's going to be crying and go I hate Dad, I hate Uncle Anthony and he's going to be doing blow when he's 15 years old and you guys are going to go I don't know what happened. That's what's going to happen. So you guys need to grow up and knock it off. It's that simple. That's it.

Id. at 34, ll. 23-25, and 35, ll. 1-13 (emphasis added).

MITCH spitefully responded to Judge Abbatangelo's insight and wise words of advice,

"losing" at the TPO hearing and immediately going down to the Las Vegas Metropolitan Police Department and filing a criminal report, falsely accusing CHRISTINA of "invading his privacy". MITCH referred to an incident which occurred over two-and-one-half years ago, as he previously October 4, 2010 threatened to do in order to influence an unrelated custody settlement from CHRISTINA. MITCH has also responded to his "loss" in Justice Court, as well as what he perceives to be CHRISTINA's CPS report "against him", by refusing to settle any issue with CHRISTINA in this case and by emotionally abusing ETHAN.

According to ETHAN, MITCH is telling him repeatedly that Anthony is "fat" and that he is going to "beat [Anthony] up." *See* Affidavit of Anthony Calderon, attached hereto as Exhibit "7". ETHAN does not understand why MITCH hates ETHAN's beloved uncle, and is being traumatized by MITCH's emotional abuse. As is discussed within this Reply, certainly, ETHAN would benefit from counseling not only for this abuse, but also for the sexual contact he encountered with Cody. It is apparent that MITCH is resistant to ETHAN receiving counseling given the abuse to which he is subjecting ETHAN and his fear that counseling will uncover the issues.

In sum, both Dr. Paglini and Judge Abbatangelo noted that MITCH's continual creation of conflict is adversely affecting the parties' children. As he readily admits in his present opposition/countermotion, MITCH prefers to bring any and all matters before the Court for resolution instead of resolving them with CHRISTINA with the help of the parenting coordinator Dr. Paglini recommends. A "decade of litigation" is not a deterrent for MITCH; more litigation is MITCH's asserted goal. *See* Anthony's TPO Application, Exhibit "7" to CHRISTINA's Motion. MITCH screamed at CHRISTINA that he was going to litigate against her indefinitely until all of her divorce settlement was gone.

NRCP 53(a) allows for the appointment of special masters. Pursuant to NRS 125.510(1)(a), therefore, the best interests of the parties' children mandate that the Court immediately appoint a parenting coordinator to end the escalating conflict emanating from MITCH or, in the alternative, appoint CHRISTINA as the children's sole legal custodian. Contrary to MITCH's arguments, *Rivero v. Rivero*, 216 P.3d 213 (Nev. 2009), does not permit a joint legal custodian to litigate matters of nonsubstantive legal custody so vexatiously and unreasonably.

Both Dr. Paglini and Judge Abatangelo have noted the negative impact MITCH's ongoing control and need to create conflict has on the children, as to negatively impair the health and well-being of the children.

VII.
MITCH SHOULD NOT BE PERMITTED TO CONTINUE TO "PUNISH" CHRISTINA FOR, AMONG OTHER THINGS, ACTING "APPROPRIATELY" IN REPORTING ETHAN'S SEXUAL ABUSE TO CPS

The time has come for MITCH to stop playing the blame game, and start the process of healing, unification and cooperation for the sake of the parties' children, if nothing else. In the past, MITCH has taken the following retributive actions towards CHRISTINA, all of which have negatively impacted the children:

1. **EDUCATION**. MITCH withheld his consent to allow MIA to continue to attend Alexander Dawson private school this year, even though CHRISTINA offered to pay 100% of the tuition. MITCH ridiculously reasoned to "allow MIA to attend Dawson would be to reward CHRISTINA's bad behavior." MITCH did not refute this fact in his opposition/countermotion, nor can he now refute such fact.

2. **COMMUNICATION**. MITCH cannot explain why it is that the children must suffer his hatred of CHRISTINA by being absolutely prohibited from calling her whenever they are in his care. CHRISTINA allows the children to call MITCH, and has not denied any request MITCH has ever made (he has made none in over a year) to facilitate telephonic communication. It is not true, as he contends in his opposition, that Judge Sullivan is considering modifying the parties' current "daily telephone call rule" because no such petition was ever submitted to the Court.

3. **HEALTH INSURANCE**. MITCH unjustifiably terminated his coverage of the children's health insurance based upon his false claim that CHRISTINA had intentionally violated his privacy by deliberately changing the address with his health insurance provider. *See* E-mails, attached hereto as Exhibit "8". Yet, MITCH apparently received immediate confirmation from his insurance provider in April 2010 that CHRISTINA did nothing wrong. MITCH recently submitted, to this Court, Exhibit "30" [stet] attached to his opposition. MITCH's Exhibit "30" [stet] reveals that Sierra Health and Life Insurance Company confirmed that the company changed the policy

address in response to a mail forwarding request by the USPS for MIA or ETHAN, not because of nefarious conduct by CHRISTINA, as MITCH falsely claimed. Just this week, on September 29, 2010, MITCH's sister handed CHRISTINA an already opened, but obviously unpaid, bill for MIA's annual cord blood storage. It was addressed to "Mitch and Christina Stipp, 2055 Alcova Ridge Drive." CHRISTINA did not seek to punish the parties' children through MITCH for the wrongly addressed bill, not to mention his or his sister's actions in opening it. MITCH has decided to inflict further emotional and financial punishment upon CHRISTINA. MITCH simply has refused to pay his share of the new insurance premiums she procured after she had already acquired the new polices per MITCH's direction. Prior to obtaining the coverage, CHRISTINA had reminded MITCH of his obligation of support in this regard, i.e., the parties are to share such costs equally. MITCH initially remained silent on the issues and induced CHRISTINA to rely on his obligations in the Martial Settlement Agreement at Section I., 1.1(a)(iv). *See* E-Mails, attached hereto as Exhibit "9". After CHRISTINA made her first demand for reimbursement of MITCH's share of the premiums MITCH wrongfully resurrected, and reasserts a previous premium reimbursement claim in his latest opposition and countermotion. MITCH, once again claims he is entitled to an "offset" for premiums which were previously paid for by his employer. *Id.*; *see also* Order, entered on April 9, 2009, attached hereto as Exhibit "10". In his E-mails to her on the subject, MITCH continued to tell CHRISTINA that she should pursue the matter in Family Could where she could, he threatened, "explain [her actions] to the Judge." *See* Ex. "9". Indeed, MITCH constantly tells CHRISTINA to pursue any and all issues in Court.

Not only do the principles of *estoppel* and *res judicata* apply to defeat MITCH's newest, vindictive "offset" claims, but MITCH has never provided CHRISTINA proper and timely demand and documentation for this "offset" pursuant to the parties' 30/30 rule. MITCH's newfound figure of $2,400.00, which is the first time MITCH has attributed an exact sum regarding his "offset" is apparently and magically created out of thin air. MITCH is well aware of the parties' 30/30 rule ordered by this Court. The Orders on file reveal MITCH's offset claims are invalid.

4. CPS

In his opposition/countermotion, MITCH cannot contain his antagonism toward CHRISTINA

for "appropriately" reporting ETHAN's sexual abuse to Child Protective Services. MITCH personalizes the valid report made by CHRISTINA, and he incorrectly asserts that CHRISTINA reported MITCH, when, instead, CHRISTINA did not "report MITCH." Rather, CHRISTINA reported her suspicions of abuse to the appropriate authorities. She ensured that MITCH was fully informed of the facts and circumstances of the report. CPS caseworker, Kemi Daramola, as quoted by MITCH, said that, "[u]ltimately, as parents, you ***both*** responded ***appropriately*** to the incident by addressing it and taking action, which means you are protective." *See* Email from Kemi to MITCH and CHRISTINA, dated July 23, 2010, attached as Exhibit "6" to CHRISTINA's Motion.

Contrary to MITCH's vicious attacks against CHRISTINA claiming that she lied and fabricated the allegations pertaining to ETHAN's abuse, CPS had no concerns whatsoever that CHRISTINA was coaching, lying, or acting inappropriately with respect to the incidents reported. Of course, CPS did not believe that such misconduct was occurring. Indeed, CPS and Metro reported that ETHAN's disclosure and the mannerisms he displayed in his forensic video, which included regression to "baby talk" when discussing the fellatio Cody forced upon him, were "credible." The investigation did not end at the initial interview stage. Instead, both CPS and LVMPD Detective Tomaino believed that ETHAN may have been victimized given their professional training and observations of ETHAN. Yet, the authorities could not "prove" the abuse occurred and formally open a case because Cody did not confess to his own wrongdoing or divulge a perpetrator.

MITCH's member's self-serving family Affidavits should be carefully scrutinized by the Court and disregarded to the extent that they are substantively "cookie cutter" replicas of each other. The Affidavits are obviously drafted by MITCH, containing the exact same wording discounting, unbelievably, any possibility that Cody and ETHAN were "ever" alone together in MITCH's 5,300 square foot home, or the 7,000 square foot home into which he moved and for which he paid $2 million in cash just a few months ago. Having been married to MITCH for over 10 years and together with him for a combined 18.5 years, CHRISTINA attended many family functions of the Stipp Family. CHRISTINA frequently observed that the children of the family were

often left unattended, even if for short periods of time, in playrooms and/or outside. See CHRISTINA's Supporting Affidavit , Exhibit "15" attached hereto. If necessary, Cody's own mother, Mindi Gellner (MITCH submits an affidavit on behalf of Cody's step-mother, not his biological mother) is willing to testify via subpoena regarding the following matters:

1. That she observed Cody's father, Marshall Stipp, allow Cody to watch a pornographic movie at age 4; *see* LVMPD Det. Tomaino's email documenting Mindi's disclosure to him of this criminal act, at Exhibit "1" to CHRISTINA's Motion;

2. That Cody recently asked her sister (his aunt) to "have sex" with him;

3. That Mindi no longer allows Cody to be alone and unsupervised with her 2-year-old son, Chase, who is Cody's half-brother (Cody also has two other half-brothers, toddler sons of Marshall and wife, Juanita);

4. That Detective Tomaino warned Mindi that, after observing the dynamics of the situation, in his opinion, though Cody was not of prosecutable age now, Cody is headed for juvenile hall and will surely have a criminal record, if he does not get help now.That Marshall and his family have hidden pertinent information regarding Marshall's criminal history from her contrary to the best interests of Cody.

The Court should instruct MITCH as to the repercussions of witness intimidation should it be discovered that Mindi is subjected by MITCH, or anyone else on his behalf, including Marshall, Cody's father, to retaliatory conduct for her intended testimony. *See* NRS 199.230 ("Preventing or dissuading a witness from testifying") and NRS 199.240 ("Witness intimidation").

Marshall's ongoing, criminal history has been discovered from Mindi. Cody's father,

case. Although Mitchell would prefer simply to disregard most of Christina's motion (which he leaves to this Court to do), he does not want this Court, new to this case, to be mislead by Christina's warped view of the previous proceedings. Mitchell asks this Court for its understanding because he has filed an opposition and countermotion in which he attempts comprehensively to address all of the matters raised in Christina's motion, not just those relevant to her pleading. The point of thoroughly addressing all of the matters raised by Christina's motion is to prevent Christina and her counsel from continuing to present false statements as fact during the hearing on October 6, 2010, or in any of her motions that are sure to follow. Throughout this opposition and countermotion, Mitchell will reference and provide the evidence supporting his statements and arguments; such support is noticeably absent in Christina's pleading.

This Court should note that Mitchell has not filed a single affirmative motion with the Court since October 29, 2009 (almost twelve (12) months ago), and Christina has filed ***five (5) motions*** in that same time period. Christina's claims that Mitchell has engaged in a path of indefinite post-divorce litigation does not comport with the actual facts (which is typical of her allegations). Christina's bad faith motion should be reviewed in the context it is filed. This Court should deny her motions, grant Mitchell attorney's fees and costs, and sanction Christina and her counsel for their joint failure to observe the Eighth Judicial District Court Rules.

. . .

. . .

. . .

. . .

. . .

. . .

II.

BACKGROUND

1. Procedural History

The Court entered the parties' Decree 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"). At the time of the parties' divorce, Christina was represented by Robert Dickerson, Esq.[2] Christina received approximately $2.1 million in cash and property in the divorce.[3] Mitchell also pays $2,000 per month as child support (which exceeds the amount required by Nevada law).

Mitchell and Amy married on October 8, 2008. A few short months later, on December 17, 2008, Christina fired the first salvo of the parties' post-divorce litigation battle by filing a motion for the sole purpose of seeking judicial designation as "primary physical custodian" of the children. She was represented by James Jimmerson, Esq. and his associate Shawn Goldstein, Esq. Mitchell opposed Christina's motion and filed a countermotion seeking the additional time with the children he requested in the months following the parties' divorce. Mitchell and Christina always desired to be joint physical custodians of the children; however, at the time of their divorce, Mitchell worked full time and Christina did not work. After Mitchell began dating Amy, Christina would not provide Mitchell additional time with the children, even after Mitchell's work schedule changed dramatically to allow him to have more time with the children.

---

[2] Christina was previously represented by Bruce Shapiro, Esq. when she first filed for divorce from Mitchell in 2006. Christina dismissed her petition in 2007 when the parties reconciled (although reconciliation was only short-lived).

[3] Christina seems to indicate in her motion that she is struggling financially. This picture is not consistent with the significant financial settlement she received in the divorce.

Unfortunately, the parties attended mediation and no resolution occurred. At the hearing on February 24, 2009, the Court denied all motions. 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 (but also scheduled an evidentiary hearing to resolve outstanding issues if mediation was unsuccessful). 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 the Court on August 7, 2009 ("SAO"). The parties remained joint legal and physical custodians of the children.

Shortly after entry of the SAO, the parties' daughter, Mia, began suffering the ill effects of a constant barrage of disparagement about Mitchell and Amy from Christina. Under these circumstances, Mitchell had no alternative but to seek judicial intervention by filing his Motion to Confirm Parties as Joint Physical Custodians and to Modify Timeshare Arrangement on October 29, 2009 pursuant to which he asked the Court for equal time with the children. On November 30, 2009, Christina filed her opposition, and to punish Mitchell for his allegations that Christina was emotionally abusing Mia, filed a countermotion to, among other things, set aside the financial terms of the parties' divorce. In essence, Christina wanted more money and discovery of Mitchell's personal financial affairs for litigation leverage. At this point, Christina represented herself.[4] Mitchell filed his opposition and reply to Christina's opposition and countermotion on December 7, 2009, and Christina filed her reply to Mitchell's opposition on December 8, 2009. The Court held a hearing on the foregoing matters on December 8, 2009. At the hearing, the Court ordered a child custody evaluation to be performed by Dr. John Paglini. Christina engaged Donn Prokopius, Esq. after the December 8, 2009 hearing to handle

[4] Christina is a licensed Nevada lawyer who graduated from Georgetown University and has handled family law matters.

Christina's numerous other motions.[5] Ultimately, Dr. Paglini completed his child custody assessment and submitted the report to the Court on April 29, 2010. The Court held a hearing on May 6, 2010 to consider the findings and recommendations of Dr. Paglini and the other motions and matters pending before it. The Court had not issued its decision from the May 6, 2010 hearing as of the date Christina filed her new motion.

2. Factual Matters

Mia began to show signs of emotional trauma in August/September of 2009. She had severe mood swings and significant anger management issues. Mia was prone to frequent emotional outbursts (or meltdowns). These behaviors had nothing to do with Mia's clothing and seatbelt issues as claimed by Christina in her motion.

Christina engaged Dr. Joel Mishalow, Ph.D., a licensed clinical psychologist, to evaluate and treat Mia. Dr. Mishalow evaluated and treated Mia from September of 2009 until December of 2009. Dr. Mishalow did not diagnose Mia as having any specific conditions or disorders. Christina communicated to Dr. Mishalow that she believed that Mia suffered from an obsessive compulsive disorder.

Mitchell engaged Dr. Melissa Kalodner Psy.D., RPT-S, BCPC, a child/adolescent psychologist, to evaluate Mia and assist them with divorce related issues affecting Mia. Dr. Kalodner treated Mia

---

[5] Christina filed a Motion to Stay Discovery pending the completion of the child custody evaluation on January 28, 2010. Christina did not want to answer questions under oath about her disparagement of Mitchell and Amy to the children. Mitchell filed an opposition on February 2, 2010. The Court held a hearing on February 3, 2010 and ordered limited discovery. The Court also denied Christina's countermotion to set aside the financial terms of the parties' divorce filed on November 30, 2009. Christina filed a Motion for Reconsideration/Clarification on February 15, 2010. Mitchell filed an opposition on or about March 8, 2010. The Court held a hearing on April 13, 2010 and denied Christina's requested relief. Christina filed a Motion for Reconsideration/Clarification on April 30, 2010. Mitchell filed an opposition on or about June 3, 2010. The Court held a hearing on June 22, 2010 and denied Christina's requested relief. The Court also awarded Mitchell attorney's fees and costs.

from approximately September of 2009 until January of 2010. Attached hereto as Exhibit 2 are Dr. Kalodner's treatment notes (including Dr. Kalodner's letter to Mitchell dated December 4, 2009). During the evaluation, Mia made numerous statements to Dr. Kalodner confirming Mia's desire to spend more time with Mitchell and the fact that Mia was exposed to derogatory statements about Mitchell and Amy likely from Christina. Dr. Kalodner also consulted with a neurological psychologist, Dr. Julie Beasley, and concluded that Mia ***does not suffer from an obsessive compulsive disorder*** and likely suffers only from a sensory processing disorder. Id. (Dr. Kalodner's treatment notes dated September 26, 2009). Dr. Kalodner and Dr. Beasley referred Mia to Dr. Tania Stegen-Hanson, OTD, OTR/L, C/NDT, a pediatric occupational therapist, at Achievement Therapy Center. Dr. Stegen-Hanson evaluated Mia and concluded that Mia does in fact suffer from a sensory processing disorder. Attached as Exhibit 3 hereto is Dr. Stegen-Hanson's Evaluation dated November 17, 2009.

Dr. Paglini completed his child custody evaluation and submitted it to Judge Sullivan on April 29, 2010. Dr. Paglini specifically concluded in his report that there are no contraindications that exist that would preclude Mitchell from having more physical time with the children. Dr. Paglini determined that Mitchell is a fit parent: he does not exhibit any significant parenting deficits, he has positive qualities, and possesses numerous resiliency factors. Dr. Paglini also concluded that Mitchell provides excellent care toward the children and he is actively involved in the children's lives.

Dr. Paglini was concerned in his report only with the fact that Mitchell obtained therapy for Mia from Dr. Kalodner without Christina's consent,[6] and Mitchell obtained an evaluation (but no treatment) of Mia from Dr. Tania Stegen-Hanson, also without Christina's consent. However, Dr. Paglini did not

---

[6] The record before Judge Sullivan makes it clear that Christina provided her consent to treatment but later revoked it after Dr. Kalodner asked Christina to supply evidence of financial need that Christina falsely claimed in order for Dr. Kalodner to reduce her hourly rates, and Dr. Kalodner refused to evaluate Mia subject to Christina's terms and conditions (e.g., Mitchell could not make appointments for Mia, Amy could not participate, and Christina must be present during Mia's evaluation sessions).

conclude that Mitchell should not be provided additional time by the Court for this reason. Dr. Paglini's concern should be viewed in light of the Court's ruling at the December 8, 2009 hearing (which occurred before Dr. Paglini even began the evaluation) that if the parties could not work together and agree, the parties may each obtain their own therapist for Mia." See Paragraph 3 of the Order attached hereto as Exhibit 4.

Dr. Paglini identified several areas of concern to be considered by the Court with respect to Christina. The primary areas for concern detailed by Dr. Paglini in his report are as follows: (1) Christina's failure to co-parent effectively by attempting to control the therapeutic process and her mistreatment of healthcare professionals providing services to Mia, (2) Christina's communication of derogatory statements about Mitchell and Amy to Mia, and (3) Christina's unresolved issues toward Mitchell because of Mitchell's marriage to Amy.

Dr. Paglini interviewed Dr. Kalodner for purposes of the child custody evaluation. During that interview, Dr. Kalodner communicated the following to Dr. Paglini with respect to Christina: (1) Dr. Kalodner felt that Christina was attempting to dictate the pace of her practice (e.g., Christina wanted to bring Mia in for the sessions and exclude Amy); (2) Christina made threats to Dr. Kalodner; (3) Dr. Kalodner felt that Christina was manipulating Mia's therapy and was litigious; (4) Dr. Kalodner reported that Christina's correspondence to her had numerous untruths and manipulated their conversations; (5) Dr. Kalodner felt manipulated by Christina and felt that she lacked trust in Christina because she misrepresented the facts of their meetings; and (6) Dr. Kalodner reported that she felt very harassed by Christina, and as such engaged an attorney.

While Dr. Paglini does not believe Mia was emotionally abused by Christina and Christina's bad acts did not actually result in alienation according to his report, Dr. Paglini reached this conclusion because at the time of his assessment (i.e., four (4) months after Mitchell filed his motion), Mia showed

no signs of significant trauma and appeared bonded both with Mitchell and Amy. In other words, there was no lasting effect on Mia.

Dr. Paglini concluded in his report that Christina likely had unresolved issues towards Mitchell. He indicated that Christina was angry about alleged affairs (which Mitchell has denied and Dr. Paglini did not confirm). She had to deal with Mitchell moving on with his life and marrying Amy after their divorce and Amy moving into the home previously occupied by the parties, and she had to negotiate the emotions of having Amy involved in the children's lives. Dr. Paglini indicated that there is no doubt that these dynamics resurfaced after the parties entered into the SAO in August of 2009. Accordingly, Christina is clearly prone to relapses with respect to her inability to deal with the parties' divorce and Mitchell's life with Amy.

III.

STATEMENT OF FACTS

1. **Mia successfully received occupational therapy from Dr. Stegen-Hanson and her staff, but Christina attempted to sabotage it.**

Dr. Stegen-Hanson and her staff at Achievement Therapy Center began treatment of Mia's sensory processing disorder with Christina's full knowledge, consent and participation in January of 2010. See Email Correspondence by and between Mitchell and Christina attached hereto as Exhibit 5. In fact, Christina agreed with Dr. Stegen-Hanson's diagnosis and participated in Mia's occupational therapy until June 9, 2010.

During the course of Mia's therapy at Achievement Therapy Center, Mia made significant progress. Dr. Paglini confirmed this success as reported from both parties in his report. However, Mia developed spitting/licking behaviors that both Christina and Mitchell recognized as issues in March/April of 2010 when Mia's weekly occupational therapy sessions were reduced to bi-weekly appointments because of her prior success. Christina never communicated to Dr. Paglini that she had

any concerns regarding this behavior (or that she rejected Dr. Stegen-Hanson's diagnosis before Dr. Paglini completed his report). Mitchell believed Mia's spitting/licking behavior was related to Mia's sensory processing disorder which was being treated through occupational therapy.

Christina did not seem to want a diagnosis finding that Mia could be readily treated. Instead, a short time later, Christina began to attribute Mia's spitting/licking behavior to autism (despite the evaluations performed by Dr. Mishalow, Dr. Kalodner, Dr. Beasley, Dr. Stegen-Hanson and her staff, and Dr. Paglini). See Email Correspondence attached hereto as Exhibit 6 (Email from Christina to Dr. Stegen-Hanson dated May 20, 2010). Dr. Stegen-Hanson rejected Christina's diagnosis and suggested that parties consult with Dr. Kalodner if necessary but "continue to provide opportunities for Mia to explore messy, tactile-based activities." See id. (Email from Dr. Stegen-Hanson to Christina dated May 23, 2010). Dr. Stegen-Hanson specifically communicated to Christina that Mia's "tactile system continues to require opportunities to grow - especially discriminating and localizing tactile input." See id. Christina rejected the idea of Mia solely receiving occupational therapy and insisted on Mia being evaluated and treated by multiple new healthcare providers. See id. (Emails from Christina to Dr. Stegen-Hanson dated May 23, 2010 and May 24, 2010).

On May 24, 2010, a few short weeks after Dr. Paglini completed his child custody evaluation **(pursuant to which he recommended no therapy for Mia)** and the hearing was held to consider the same, Christina requested that Mitchell consent to an evaluation of Mia by Dr. Nicole Cavenagh, a pediatric neuropsychologist, for her spitting/licking behavior, counseling by Donna Wilburn, MS, LMFT, a family therapist who specializes in children's issues, and an evaluation by Nevada Child Find.[7] See id. (Email from Christina to Mitchell dated May 24, 2010). Given the recommendations of Dr.

[7] According to Nevada Child Find's website (http://sssd.ccsd.net/childfind.html), Child Find is a project that serves as a free resource for children in Clark County, Nevada and their families, by providing services that help identify potential special education needs and educating the community about child development and the importance of intervention. See Exhibit 18 attached hereto.

Paglini (which were substantially based upon Christina's input), the pending decision from Judge Sullivan at the time, and Mia's participation in and success with occupational therapy, Mitchell carefully considered Christina's request and informed Christina on May 25, 2010 that he did not consent to any more evaluations or treatment of Mia. See id. (Email from Mitchell to Christina dated May 25, 2010).

Furthermore, Mitchell could not approve Christina's request because the parties are prohibited from having Mia treated by any psychologist. At the hearing held on April 13, 2010, the Court ruled that Mia shall not be treated by any psychologist until further order of the Court (although Mia could continue to receive occupational therapy from Dr. Stegen-Hanson and her staff). See Paragraph 4 of the Order attached hereto as Exhibit 7. This order was entered after Christina filed a motion for reconsideration/clarification of the Court's rulings from the December 8, 2009 hearing. Christina vehemently opposed the Court's decision to allow the parties to obtain their own therapists for Mia. At the present time, the selection of psychologists and continued therapy for Mia is being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing. Again, however, Dr. Paglini recommends no therapy for Mia in his report.

Christina was upset that Mitchell would not provide his consent to more evaluations and treatments for Mia that he determined were unnecessary or unwarranted. As a result, Christina decided to sabotage Mia's occupational therapy. On June 9, 2010, shortly after Mitchell disapproved Christina's request, Christina invited her brother, Anthony Calderon,[8] to attend Mia's therapy session. The events that transpired are described in Mitchell's email to Christina dated July 18, 2010 attached hereto as Exhibit 8 (a copy of which was provided to Dr. Stegen-Hanson).[9] The following is an excerpt from that email:

---

[8] Anthony Calderon has a criminal history for domestic violence and alcohol and cocaine problems as discussed in Exhibit 9 referenced in footnote below and in Dr. Paglini's child custody evaluation.

If you recall, you invited your brother Tony to attend the therapy session on June 9th. This was the first time he attended Mia's therapy during the entire 6 months of treatment. ***While Mia was in therapy, you and Tony spent the time criticizing the facility, Dr. Stegen-Hanson's staff and Mia's treatment. In fact, Tony referred to it as a "joke" and communicated to you that he could not wait to get Mia out of there and to stop Mia's treatment. You laughed and agreed.*** When you and I attempted to discuss Mia's spitting/licking behavior during the session, Tony interjected and said that communicating with me was a "waste of time." This session was also the session Tony threatened to beat me up and kill me (which caused me to file an incident report with LVMPD and request a protection order which was granted by the justice court). ***When Amy tried to remove Ethan from the facility while Tony continued his threats against me (solely to protect Ethan from witnessing your brother's behavior), you chased after her calling her a "bitch" and a "whore." You told her that she was not Ethan's mother and she needed to release Ethan. At the end of Mia's session, you screamed at Dr. Stegen-Hanson for returning my telephone call and answering my questions regarding Mia's treatment (although you have spoken to Dr. Stegen-Hanson multiple times on the telephone).*** You also informed her that you did not want Mia treated by her anymore because of this event and stormed out of the facility. Your treatment of Dr. Stegen-Hanson occurred in front of Mia and while ***Dr. Stegen-Hanson communicated her professional thoughts on Mia's spitting/licking behavior. You simply did not bother to listen.*** It is disingenuous for you now to claim Dr. Stegen-Hanson is withholding information regarding Mia's treatment from you. You have received all relevant information. In fact,

---

[9] Mitchell filed an incident report with the Las Vegas Metropolitan Police Department ("LVMPD") on June 9, 2010 and an application for a protective order with the Las Vegas Justice Court on June 10, 2010 which are attached hereto as Exhibit 9. LVMPD investigated the matter and could not refer the case to the Clark County District Attorney's Office for prosecution because there were no independent witnesses. However, the Las Vegas Justice Court held a hearing on July 6, 2010 and granted Mitchell's application for a protective order against Mr. Calderon. See Order attached as Exhibit 10 hereto. Mr. Calderon refused to appear at the hearing and successfully avoided service of the order. Mitchell provided Christina a copy of the order. See Email Correspondence from Mitchell to Christina attached as Exhibit 11. More than a month after the event and with notice of Mitchell's protective order, Christina prepared and assisted Mr. Calderon with the filing of his own application for a protective order which Mitchell opposed at the hearing on the matter held on July 26, 2010. Christina's counsel, Patricia Vaccarino, represented Mr. Calderon at the hearing, which was attended by Christina. Rather than hold an evidentiary hearing and allow testimony from the parties, the Las Vegas Justice Court dissolved Mitchell's protective order, denied Mr. Calderon's application, and issued a minute order for Mitchell and Mr. Calderon to "stay away from each other." A status check on the matter is scheduled for October 25, 2010. This Court should be aware that Christina quoted portions of Dr. Paglini's child custody report in Mr. Calderon's filings, and Ms. Vaccarino referred to and asked that the Las Vegas Justice Court consider the report during the open hearing on the matter. Christina and Ms. Vaccarino falsely communicated to the judge that Dr. Paglini concluded that Mitchell had personality and behavioral problems relevant to the case before it. Dr. Paglini made no such findings.

> your letter makes it clear that you were aware of Mia's appointment on July 7, 2010 (and yet you chose not to attend). If you genuinely lack any information regarding Mia's treatment, it is a condition caused by your own [sic] choices.

(emphasis added).

After June 9, 2010, Christina refused to participate in Mia's occupational therapy with Dr. Stegen-Hanson. Instead, she embarked on a warpath of destruction that has jeopardized the welfare of the children and undercut any present chance of having a successful co-parenting relationship with Mitchell.

First, Christina filed an anonymous complaint on July 1, 2010 with Child Protective Services ("CPS") against Mitchell falsely alleging that Ethan was sexually abused by his nine (9) year old cousin, Cody, while Ethan was in Mitchell's care. The crux of Christina's complaint was Mitchell failed to supervise Ethan during his timeshare allowing Cody to abuse him. Second, without Mitchell's knowledge or consent, Christina participated in and subjected Mia to an evaluation by Nevada Child Find on July 2, 2010 (which included the administration of several psychological and behavioral tests by Clark County School District Psychologist Dr. Shirlee Williams). And finally, Christina began a campaign of harassment against Dr. Stegen-Hanson.

2. CPS and LVMPD investigated Christina's false sexual abuse claims, determined they could not be substantiated and do not recommend therapy for Ethan or any restrictions on Mitchell's timeshare.

Olukemi "Kemi" Daramola, MSW, a senior family services specialist for CPS, contacted Mitchell telephonically on July 3, 2010 to discuss Christina's confidential complaint regarding alleged sexual abuse of Ethan. Mitchell cooperated fully with the inquiry including voluntarily consenting to a home visit by Ms. Daramola on July 7, 2010. He provided Ms. Daramola a copy of an email exchange between Mitchell and Christina dated May 14, 2010 pursuant to which Christina first raised the issue with Mitchell and Mitchell addressed the matter. See Email Correspondence by and between Mitchell

and Christina dated May 14, 2010 attached hereto as Exhibit 12. Based on the telephone discussion, home visit, and email correspondence exchanged two (2) months earlier resolving the matter, Ms. Daramola informed Mitchell that CPS would not intervene and restrict Mitchell's timeshare with the children.

Christina sent Mitchell an email on July 12, 2010. In this email, Christina claimed that CPS "confirmed that our son, Ethan, was sexually abused and is currently investigating the matter." Christina also informed Mitchell for the first time that she had Mia evaluated by Nevada Child Find. Mitchell responded to this email on July 17, 2010. Attached hereto as Exhibit 13 is the email correspondence between the parties.

The investigation performed by CPS and LVMPD concluded that the sexual abuse allegations could not be substantiated, and as a result, CPS intended to close the investigation on July 31, 2010. See Email Correspondence attached hereto as Exhibit 14. Ms. Daramola's email to Mitchell dated July 23, 2010 included as part of Exhibit 14 provides the following:

> Cody was interviewed by law enforcement last week and made no disclosure of abuse or neglect. Detective Tomaino found his parents to be protective and he will be closing out his case. I will be doing the same on our end with CPS for the following reasons: ***Although Ethan made a statement to us that Cody showed him his private area, we cannot corroborate the story since Cody made no disclosure***. Additionally, Cody is a child himself and cannot be charged criminally or civilly. ***Ultimately, as parents, you both responded appropriately to the incident by addressing it and taking action, which means you are protective. Therefore, it really is not really necessary to have a Child and Family Team meeting since we will be closing the case but I am happy to communicate via phone or email if you have any questions or concerns.***
>
> I know Christina requested counseling services for Ethan. I can give her referrals for therapists that we use but she may have to use a provider through her insurance. You can forward this email to Christina if needed. I plan to close out this case by 7-31-10.

(emphasis added).

Christina refused to accept the findings of CPS and LVMPD. She contacted Ms. Daramola and demanded a meeting on July 30, 2010 to discuss ways to safeguard Ethan against sexual abuse and obtain referrals for counseling. Ms. Daramola invited Mitchell to attend the meeting.

Mitchell agreed to attend the meeting on July 30, 2010. However, CPS made it clear that it was not recommending counseling for Ethan. See id. Ms. Daramola's email dated July 28, 2010 to Mitchell included as part of Exhibit 14 provides the following:

> ***We are not formally recommending or requiring counseling for Ethan because we are not opening a case.*** There is nothing I can put into writing for her to take to a therapist or counselor for services. Sometimes we use words interchangeably so I apologize for the misunderstanding. I am simply providing Christina with referrals. ***You both have the right to make decisions regarding your child's mental health needs. I understand that there is a custody order in place. If a motion is filed and DFS records are requested, which happens frequently, then the Court will see that the allegations have been unsubstantiated and the case closed.*** You will also be receiving a letter in the mail detailing the outcome of the case for your records. If you have any questions, please feel free to email me. I am also available via phone, but I am often out in the field so emailing would be a better way to communicate.

(emphasis added).

The meeting with Ms. Daramola, Christina and Mitchell that was scheduled to occur on July 30, 2010 never occurred. Christina hijacked the meeting by inviting her counsel, Patricia Vaccarino, without informing Mitchell that Ms. Vaccarino would be present. Ms. Vaccarino also never informed undersigned counsel that she would be attending and participating in the meeting. Ms. Daramola was not previously aware that Christina invited Ms. Vaccarino. Recognizing that Mitchell's counsel was not present, Ms. Daramola offered to re-schedule the meeting so that Mr. Smith could attend and participate. Ms. Daramola re-scheduled the meeting for August 13, 2010. However, Christina and Ms. Vaccarino insisted on meeting anyway with Ms. Daramola privately to which Ms. Daramola agreed.[10]

---

[10] Ms. Vaccarino's conduct ignored her duty under Nevada Rules of Professional Conduct 4.2, as she fully intended to participate in a meeting with Mitchell without his counsel present.

Christina sent an email to Ms. Daramola and copied Mitchell regarding her private meeting that occurred on July 30, 2010. Mitchell responded to the email. Christina also sent Mitchell an email on the same date alleging, among other items, that now Mia may have been sexually abused by Cody as well because of the spitting/licking behavior in which Mia engaged. Mitchell addressed this matter directly with Ms. Daramola. Attached hereto as Exhibit 15 is the email correspondence.

As a result of the events of July 30, 2010, CPS understood Christina's true motivation: by inviting her counsel to the CPS meeting and bombarding CPS with new sexual abuse accusations on the day before the investigation was scheduled to be closed, Christina hoped to force CPS to open a case against Mitchell to support Christina's plan for continued litigation. Therefore, CPS cancelled the meeting scheduled for August 13, 2010. Ms. Daramola's supervisor, Cheryl Cooley, intervened and spoke with Christina telephonically. Ms. Cooley informed Christina that such a meeting was unnecessary and that CPS will be closing the investigation permanently. See Email Correspondence from Ms. Daramola to Mitchell dated August 7, 2010 attached hereto as Exhibit 16.

3. Christina had Mia evaluated by Nevada Child Find without Mitchell's knowledge or consent.

Mitchell continued occupational therapy with Dr. Stegen-Hanson after June 9, 2010 until August 27, 2010 with Christina's knowledge (but without her participation). As discussed above, Dr. Stegen-Hanson believed that Mia's spitting/licking behavior was related to her sensory processing disorder and prescribed continued occupational therapy and home therapy to resolve the same. Attached hereto as Exhibit 17 is Dr. Stegen-Hanson's Progress Report dated July 19, 2010.

Although Mia was continuing to participate in occupational therapy, Mitchell voluntarily provided his written input as part of Nevada Child Find's evaluation process while he attempted to resolve any disputes with Christina regarding Mia's healthcare. Mitchell planned to schedule his personal interview with Nevada Child Find after the parties met at a settlement conference. According

Dr. Shirlee Williams, Mia would not be eligible for services after Mia is enrolled in the Clark County School District (i.e., after Mia started kindergarten). See Exhibit 18 attached hereto ("[t]he service [is] designed to identify and evaluate the needs of children ages 3 to 21 who are suspected of having a disability or delay and **not** currently enrolled in the district.") (emphasis in original). Mitchell completed the necessary medical history and behavioral assessment forms for Mia and agreed to complete Mia's evaluation with Christina, but only if Mia could continue occupational therapy. Below is an excerpt from Mitchell's email to Christina dated July 29, 2010 (which is more than a month before the school year began) attached hereto as Exhibit 19:

> Since I have no idea when the settlement conference will occur, I proposed the following: I will consent to Child Find re-scheduling the meeting to discuss the results of its evaluation (now that Child Find has my input) and provide its recommendations, provided, that you consent to and take Mia to weekly occupational therapy sessions at Achievement Therapy Center as recommended by Dr. Stegen-Hanson's revised evaluation of Mia recently provided to you. Mia has a sensory processing disorder which still requires treatment and your election not to schedule therapy for Mia is impacting her. Clearly, this is not in Mia's best interest. Whether you have changed your mind and now believe Mia does not have this condition, the therapy prescribed by Dr. Stegen-Hanson will not (and has not) hurt Mia in any way. Please carefully consider my offer.

Christina rejected Mitchell's proposal. Christina would not propose or agree to any offers by Mitchell to resolve any of their disputes. Christina only wanted to meet at a settlement conference ***if and only if*** Mitchell would stipulate to the appointment of Dr. Gary Lenkeit, Ph.D as the parties' parenting coordinator. See Email Correspondence by and between Mitchell and Christina attached hereto as Exhibit 20; see also Letter Correspondence by and between Ms. Vaccarino and Mr. Smith attached hereto as Exhibit 21. Mitchell did not agree (because the matter was still pending before Judge Sullivan) and the settlement conference scheduled for August 13, 2010 was cancelled by Christina.

...

...

4. Christina harassed Dr. Stegen Hanson-Hanson (although Mia is doing well and is not longer receiving occupational therapy).

Christina sent several letters to Dr. Stegen-Hanson in July and August of 2010 misrepresenting the facts and circumstances surrounding Mia's occupational therapy, personally attacking the therapist and her family, criticizing the quality of the facility, and threatening to report Dr. Stegen-Hanson to the State of Nevada Board of Occupational Therapy. Christina proudly attaches her final letter dated August 25, 2010 to Dr. Stegen-Hanson as Exhibit 4 to her motion.

Fortunately, due to occupational therapy received during the months of July and August of 2010 at Achievement Therapy Center and home therapy provided by Mitchell, Mia's licking/spitting behavior was resolved. Consequently, Mia is no longer receiving occupational therapy by Dr. Stegen-Hanson and her staff.[11] See Email Correspondence from Mitchell to Christina dated August 29, 2010 attached hereto as Exhibit 22; see also Email Correspondence from Mitchell to Christina attached hereto as Exhibit 23 (Mitchell's emails regarding Mia's progress). At the present time, Mia is not exhibiting any behaviors that require an evaluation or treatment. Mia's elementary school teacher at Linda R. Givens, Ms. Leslie Thompson, reports that Mia does not possess any issues that cause her any concern. See Email Correspondence by and between Mitchell and Ms. Thompson dated September 10, 2010 attached hereto as Exhibit 24. And finally, Christina has even communicated to Mitchell that Mia's pediatrician, Dr. DeSimone, examined Mia on August 17, 2010 for a "wellness check" prior to the start of the school year and reported that Mia is doing well and developing normally. See Email Correspondence from Christina to Mitchell dated August 18, 2010 attached hereto as part of Exhibit 25.

...

...

---

[11] Dr. Stegen-Hanson has also decided to close Achievement Therapy Center as of December 1, 2010.

IV.

ARGUMENT

1. **The parties have joint physical and legal custody of the children; the parties' physical custody arrangement is not relevant to the matters before this Court; and this Court is not bound by Judge Sullivan's oral pronouncements at prior hearings unless they have been entered as orders.**

The parties agreed in the MSA that they would have joint legal and physical custody of the children. See Section 1.1 of the MSA. The terms and conditions of the MSA were incorporated into the Decree except where changed by the SAO. The SAO did not change the custody status of the children. Section 1.1(a)(ii) of the MSA provides that all healthcare providers and counselors shall be selected ***jointly*** by the parties.

The Nevada Supreme Court in Rivero v. Rivero, 216 P.3d. 213, 221-22 (Nev., 2009), defined "legal custody" as follows:

> Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing. Mack v. Ashlock, 112 Nev. 1062, 1067, 921 P.2d 1258, 1262 (1996) (Shearing, J., concurring); Hearing on S.B. 188 Before the Senate Judiciary Comm., 61st Leg. (Nev., Feb. 12, 1981). Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents. Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J. concurring); Cal. Fam. Code §§ 3003, 3006 (West 2004)[2] (defining sole and joint legal custody). Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child. See Mosley v. Figliuzzi, 113 Nev. 51, 60-61, 930 P.2d 1110, 1116 (1997) (stating that if disagreement between parents affects the welfare of the child, it could defeat the presumption that joint custody is in the best interest of the child and warrant modifying a joint physical custody order); Hearing on S.B. 188 Before the Assembly Judiciary Comm., 61st Leg. (Nev., Apr. 2, 1981) (discussing that joint legal custody requires agreement between the parents).
>
> ...

> Joint legal custody can exist regardless of the physical custody arrangements of the parties. NRS 125.490(2); Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J. concurring).
>
> ...
>
> If the parents in a joint legal custody situation reach an impasse and are unable to agree on a decision, then the parties may appear before the court "on an equal footing" to have the court decide what is in the best interest of the child. Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J., concurring); Fenwick, 114 S.W.3d at 777 n. 24.

Christina argues in her motion that she has primary physical custody of the children under Rivero. Judge Sullivan had not ruled on the matter of physical custody at the time Christina filed her motion. Therefore, until Judge Sullivan issues his written decision, the parties remain joint physical custodians under the Decree and MSA. See id. at 226 ("the terms of the parties' custody agreement will control except when the parties move the court to modify the custody arrangement."). This Court has not been asked by the parties to modify the parties' physical custody arrangement. Christina only makes her argument in an attempt to support her position that Mitchell's consent should be disregarded because she has "more time" with the children. Even if Christina had primary physical custody as she argues (which she does not), her position does not affect the analysis because joint legal custody can exist regardless of the physical custody relationship. Id. at 221. Despite any differences in the parties' timeshare arrangement or calculation thereof under Rivero, the parties may appear before this Court "on an equal footing" to have this Court determine what is in the best interest of the children if the parties are unable to agree on decisions involving legal custody. Id. at 222. Christina's motion incorrectly focuses on the physical custody status of the parties which was pending before Judge Sullivan at the time she filed her motion and wholly ignores the best interests of the children in her analysis. For this reason, Christina's motion should be denied.

Christina spends a significant portion of her motion quoting and examining select portions of transcripts for hearings on December 8, 2009, February 3, 2010, April 13, 2010 and May 6, 2010 which

have not been included in any orders entered by Judge Sullivan as of the date she filed her motion. The Nevada Supreme Court in Division of Child & Family Services v. Eighth Judicial District, 120 Nev. Adv. Op. No. 50 (Nev 7/12/2004), 120 Nev. Adv. Op. No. 50 (Nev 2004) (quoting Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (emphasis in original)), held the following:

> "Entry" involves the filing of a signed written order with the court clerk. Before the court reduces its decision to writing, signs it, and files it with the clerk, the nature of the judicial decision is impermanent. The court remains free to reconsider the decision and issue a different written judgment. Consequently, a "[c]ourt's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose."
>
> ...
>
> We hold that dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective.

Christina's motion is an attempt to re-litigate the matters pending before Judge Sullivan at the time she filed her motion with the hope that this Court will provide Christina more favorable rulings.[12] Noticeably absent from Christina's analysis of the transcripts is Judge Sullivan's conclusion at the May 6, 2010 hearing that ***there was no doubt that Christina made derogatory comments about Mitchell and Amy to Mia and his pronouncement that Mitchell and Christina shall remain joint physical***

---

[12] Under Nevada law, Mitchell is not required to prove that Mia was abused by Christina as set forth in Nevada Revised Statutes ("NRS") 432B. If the parties have joint physical custody as determined by the Court in Rivero, the Court can alter the parties' timeshare arrangement by providing Mitchell equal time with the children if it is in the best interests of the children. Rivero at 227. However, if Christina has primary physical custody, the Court can alter the custody arrangement and provide Mitchell equal time if it is in the best interests of the children and there has been a substantial change in circumstance affecting the children. Id. (citing Ellis v. Carlucci, 123 Nev. 150, 161 P.3d 242 (2007)). Mitchell believes he has satisfied the standards set forth in Rivero for the Court to provide him equal time with the children.

custodians but with Mitchell having forty percent (40%) of the physical timeshare under Rivero.[13] Judge Sullivan specifically told Christina at the hearing that, if she objected to the additional timeshare, Christina could file an appeal with the Nevada Supreme Court. With these pronouncements, the Court took the matters pending before it (including the recommendations of Dr. Paglini set forth in his child custody evaluation) under advisement and indicated that the Court would issue a final written order. Until Judge Sullivan issues his decision, he remains free to issue a written judgment which may be different than any of his conclusions or pronouncements cited by Christina in her motion,[14] and until Judge Sullivan issues his order, this Court is not bound by any of them. See id.

a. Counseling for Ethan is not in his best interest, and no restrictions should be placed by this Court on Mitchell's timeshare (including prohibiting contact by Cody of the children).

On May 14, 2010, Christina claimed that Ethan was sexually abused by his nine (9) year old cousin, Cody. The parties exchanged a series of emails that are attached hereto as Exhibit 12. Christina's email to Mitchell occurred on the day ***after*** Ethan first allegedly made disclosures to Christina. Mitchell immediately responded to the email explaining to Christina that Ethan never made any such disclosures to him and that disclosures allegedly made to Christina are inconsistent with the actual facts and circumstances that existed while Ethan was in his care. Contrary to Christina's assertion that Mitchell disregarded the issue, Mitchell communicated to Christina the following:

> Rest assured, I take full responsibility for the children while they are in my care and nothing inappropriate has ever occurred. ***I take these matters very seriously and will take all necessary and appropriate action to make sure that the children are not exposed to any inappropriate and/or sexually abusive behavior.*** The issue [sic] has been raised and discussed. I am on notice and so are you. Let's trust each other that each of us will do the right thing on the matter.

---

[13] A copy of the transcript of the May 6, 2010 hearing will be provided to this Court and counsel prior to the hearing of this motion; Mitchell has ordered the transcript but has not yet received it.

[14] Judge Sullivan may in fact order an evidentiary hearing which Christina claims is necessary for any change to the parties' timeshare arrangement.

See id. (Email Correspondence from Mitchell to Christina dated May 14, 2010 at 5:39 p.m.) (emphasis added). Mitchell received no further communication from Christina on the matter until July of 2010. Christina filed an anonymous complaint on July 1, 2010 with CPS against Mitchell alleging that Ethan was sexually abused by Cody while in the care of Mitchell. Christina's tactics raise the following questions: Why did Christina elect to file a complaint with CPS if the matter was resolved two (2) months earlier based on the email exchange between the parties? Why did the complaint with CPS need to be anonymous? If Ethan made new disclosures after May 13, 2010, why did Christina fail to inform Mitchell? If Cody supposedly abused Ethan and he is a child and cannot be held responsible for his alleged acts, why did Christina file a complaint with CPS at all? Christina's true motivation was to harass Mitchell through an investigation by CPS with the objective of restricting Mitchell's timeshare with the children. Based on the telephone interview conducted by CPS of Mitchell, a home visit, and the email correspondence exchanged on May 14, 2010, CPS informed Mitchell that he handled the matter appropriately and it would not intervene and restrict Mitchell's timeshare with the children (including prohibiting contact between Cody and Ethan).[15]

Christina repeatedly communicated to Mitchell during the period of the investigation that CPS and LVMPD "concluded," "found," and "determined" that Ethan was sexually abused. She also demanded that Mitchell consent to counseling for Ethan because CPS "recommended" counseling for him. Unfortunately, Christina's statements to Mitchell were false. CPS unequivocally concluded that Christina's allegations of sexual abuse could not be substantiated and that it was closing its case and not requiring or recommending counseling for Ethan. See Email Correspondence attached hereto as Exhibit 14 (Emails from Ms. Daramola dated July 23, 2010 and July 28, 2010).

---

[15] Mitchell voluntarily agreed at the request of CPS to restrict contact between Cody and Ethan when CPS contacted Mitchell on July 3, 2010 until CPS performed its home visit on July 7, 2010.

Christina now argues in her motion that it does not matter whether the allegations have been substantiated. She believes it is sufficient that CPS believed that Ethan's disclosure was credible and that LVMPD founded his mannerisms to be the same. Christina communicated to Mitchell that Ethan has made several disclosures regarding sexual abuse. These disclosures have been set forth in multiple emails to Mitchell, CPS and discussed in Christina's motion.[16] However, according to CPS which interviewed Ethan, Ethan ***only*** disclosed that Cody exposed his private area. See id. (Email from Ms. Daramola to Mitchell dated July 23, 2010). No details have been provided about the circumstances under which Cody's private area was allegedly exposed, and it appears that this "disclosure" was not confirmed by LVMPD's interview of Ethan or Cody. Neither Ethan nor Cody made any disclosures when interviewed by LVMPD. Christina attaches as Exhibit 1 to her motion email correspondence from Detective Tomaino of LVMPD dated July 23, 2010 which provides as follows:

> [A]lthough your child gave signs of possible abuse ***he gave no disclosure***, so there is nothing that would be done criminally. If the abuser was of a prosecutable age and there was a disclosure, then this would be a criminal matter. As we discussed, our concern turns to the alleged perpetrator, and where he learned his behavior. ***Unfortunately, the perpetrator and your son both gave no disclosure.*** The most information that I have to follow-up on now was given by the perpetrators mother as it pertains to her ex-husband. ***Unfortunately believing that something possibly happened and proving that it happened are two separate things. I cannot present a case to a District Attorney and likewise an attorney cannot submit a case to court that is based on speculation.*** Since this case has been reported, your son will still have an opportunity through his life to still produce this disclosure, if he at any time remembers these occurrences. As well it is incumbent to stay perseverant in your own actions to protect him. ***I have no avenues left to me to make this case go further. I have no legal recourse to deny his father or Cody access to him. I don't believe the courts have a say in it either, seeing as there is no precedent for gaining a TPO against a 9 y/o or the parents there of, as has been learned through this case.***

---

[16] Christina claimed that Cody "stuck a stick in Ethan's butt." However, Christina did not take Ethan to be examined by his pediatrician or any other physician. This Court should consider this failure as evidence that the allegation was false and Christina knew it (which is why she did not take him to be examined).

> As far as your son and the credibility of his actions, his mannerisms were consistent but not conclusive of a victim. ***So I believe in the possibility that he could have been a victim, but the signs don't guarantee its likelihood.*** Mannerisms are part of the puzzle to credibility. I hope this answers your questions.

The matter of credible "mannerisms" versus substantiated allegations of sexual abuse is not an issue of semantics or legal maneuvering as Christina argues in her motion. Disclosures can still be false (even if delivered in a manner interpreted by someone as "credible" actions of a three (3) year old), and unsubstantiated allegations are evidence of nothing. While mannerisms may be used to assess credibility, mannerisms are not disclosures and are also subject to wide interpretation. The fact is that ***Ethan made no disclosures of any sexual abuse.*** Christina is a lawyer and she is capable of understanding and communicating accurately these matters to Mitchell and this Court. However, she elects not to tell the truth and Ms. Vaccarino facilitates this behavior by filing Christina's motion with this Court. Detective Tomaino clearly explained these matters to Christina, yet she falsely claims in her motion that CPS and LVMPD closed their respective investigations because Cody was too young to prosecute. The investigations were closed because ***Christina's allegations could not be substantiated.***

The reason CPS and LVMPD were not able to substantiate Christina's allegations of sexual abuse is because they are false. Christina alleges this abuse occurred while Ethan was in Mitchell's care. Ethan and Cody have been in contact with each other approximately eight (8) times in 2010. Ethan and Cody have never been alone together and Ethan has always been supervised by Mitchell while in his care. In these few instances of contact, Ethan and Cody were present together with other family members at the residences of Mitchell, Cody's father (who is Mitchell's brother), or Mitchell's parents during family events. Amy and Mitchell's other family members (including Cody's parents) who observed Ethan and Cody at these events have provided affidavits attached hereto as Exhibit 26

confirming that Ethan was not sexually abused by Cody.[17] Christina was never present during Mitchell's timeshare with the children (including during any of these family events). Therefore, if Christina is the only source of the sexual abuse claims and they are demonstrably false, Mitchell believes that Christina intentionally fabricated them.

Ethan has been traumatized by the CPS/LVMPD investigation and insistence by Christina that he has been sexually abused. Ethan was likely forced to submit to numerous interrogations and coaching sessions by Christina and her family members. He was also interviewed separately by CPS and LVMPD (which apparently was videotaped). Christina argues in her motion that therapy should be prescribed. If this Court grants Christina's motion, Ethan, who knows that he has not been abused, will receive therapy that reinforces the story that Christina has fabricated. Generally, therapists are not well-equipped to deal with mothers who fabricate such facts. Most therapists (as opposed to forensic psychologists trained to evaluate these matters) will likely just accept the fact that Ethan has been abused simply because Christina claims that he was abused. This Court should note that Ethan is only three (3) years old. Christina who fabricated these allegations will have no qualms about coaching, coercing, or rewarding Ethan for "correct" answers throughout therapy. In time, Mitchell's fear is that Ethan will actually believe he was abused and this may result in emotional trauma and alienation from Mitchell and his family (including Cody). As discussed above, Christina's objective of seeking therapy for Ethan is to manipulate the therapeutic process in order to gather "evidence" so that she can use it in litigation to restrict Mitchell's timeshare with the children. If this Court permits Ethan to receive therapy, Mitchell predicts that Christina will file another frivolous motion with this Court attaching a letter from Ethan's therapist or treatment notes "confirming the abuse" (although it never occurred).

---

[17] Christina fails to attach to her motion any affidavits other than her own supporting her claims of sexual abuse. Any affidavits attached to future pleadings by Christina in this matter should not be considered by this Court.

The emotional trauma to Ethan from Christina's tactics may be life-long. The interference with Mitchell's relationship with Ethan and Ethan's relationship with Mitchell's family members (including Cody) and the mental and emotional damage to Ethan are all very real possibilities of Christina's false abuse accusations. Christina's false sexual abuse allegations, while designed to serve her litigation purposes, is destructive to all parties involved, including the nine (9) year old boy she has falsely accused. Christina should not be allowed to perpetuate that harm by trying to find a therapist that will support her already investigated and rejected falsehoods.

Further, Christina has not made any attempt in her motion to demonstrate how Ethan would benefit from the counseling she suggests. Christina has never communicated to Mitchell at any time that Ethan was manifesting any physical or behavioral indicators that he was sexually abused. In fact, Christina recently communicated to Mitchell that Ethan's pediatrician, Dr. DeSimone, examined Ethan on August 17, 2010 for a "wellness check" prior to the start of the school year and reported that Ethan is doing well and developing normally. See Email Correspondence from Christina to Mitchell dated August 18, 2010 attached hereto as part of Exhibit 25. Christina claims in her motion that Ethan "wets the bed," uses "baby talk," kisses other adults and children inappropriately, and has frequent erections. She does not attach any affidavits from any witnesses to support these claims. Mitchell believes these behaviors (if they are exhibited by Ethan at all while in Christina's care) likely have another cause: they are the consequence of Christina telling Ethan that he has been abused (when he has not been). This Court should note that neither Mitchell nor Amy has observed Ethan "wetting the bed" or using "baby talk" in the last twelve (12) months or exhibiting any of the other behaviors claimed by Christina while in Mitchell's care. See Affidavits of Mitchell and Amy attached hereto as Exhibits 1 and 26. ***Furthermore, Ethan's pre-school teacher at Temple Beth Shalom has not observed any regressive or other concerning behaviors exhibited by Ethan***. See Email Correspondence from Ms. Gerstz to

Mitchell dated September 21, 2010 attached hereto as Exhibit 27 ("Ethan is doing great at school; no signs of regressive behavior. He is happy to come to school and is very busy interacting with his friends daily. He is going potty regularly by himself and does not speak baby talk; no kissing either.").

If Mitchell believed there was even a chance that Ethan was abused or in any way exposed to inappropriate behavior, Mitchell would readily and swiftly take corrective and remedial measures. Here, however, the only person who has alleged any abuse of Ethan is Christina. None of the people who would have witnessed the abuse (Mitchell, Amy and his family) corroborate Christina's story, none of the people who investigated the allegations of abuse (CPS and LVMPD) corroborate Christina's story, none of the people who would observe the effects of such abuse (Ethan's pediatrician and his schoolteacher) corroborate Christina's story, and, perhaps most important, Ethan does not corroborate Christina's story. Nevertheless, Christina, desperate for someone to take up her cause, demands that Ethan go to counseling for sexual abuse. Her request should be summarily denied.

Mitchell knows with complete certainty that no abuse or inappropriate behavior ever occurred during his timeshare. Ethan and Cody enjoy their relationship as cousins. Cody is also only nine (9) years old. He has no history of being abused or abusing anyone. See Affidavits of Marshall and Juanita Stipp who are Cody's parents attached hereto as part of Exhibit 26. CPS and LVMPD also found Cody's parents to be protective of him. See Email Correspondence from Ms. Daramola to Mitchell dated July 23, 2010 attached as part of Exhibit 14. CPS and LVMPD have not imposed any restrictions on Mitchell's timeshare or the children's contact with Cody. Accordingly, no restrictions should be placed by this Court on Mitchell's timeshare including prohibiting any contact by Cody of the children.

. . .

. . .

. . .

b. Mia's best interest are not served by new evaluations and treatments (including by Nevada Child Find)

Christina has not demonstrated that Mia's best interest will be served by new evaluations and treatments by additional healthcare professionals. Mia has been evaluated and treated by multiple therapists in the last twelve (12) months (e.g., Dr. Mishalow, Dr. Kalodner, Dr. Julie Beasley, Dr. Stegen-Hanson and her staff, Dr. Shirlee Williams, and Dr. DeSimone). Dr. Paglini also evaluated Mia as part of his child custody evaluation and recommended no therapy for her. None of these qualified professionals concluded that Mia possesses any disorder or condition other than a sensory processing disorder for which Mia received occupational therapy. Mia's elementary school teacher at Linda R. Givens, Ms. Leslie Thompson, reports that Mia is not exhibiting any behaviors that cause her any concern. See Email Correspondence from Ms. Thompson to Mitchell dated September 10, 2010 attached hereto as Exhibit 24. And finally, Christina has communicated to Mitchell that Mia's pediatrician, Dr. DeSimone, examined Mia on August 17, 2010 for a "wellness check" prior to the start of the school year and reported that Mia is doing well and developing normally. See Email Correspondence from Christina to Mitchell dated August 18, 2010 attached hereto as part of Exhibit 25.

Christina raises only two (2) areas of concern in her motion (which she apparently associates with the term "special needs") that she believes warrant this Court's consideration: (1) spitting/licking behavior; and (2) teeth grinding. Neither of these "special needs" are emergency conditions or matters of life or death.

Dr. Stegen-Hanson already concluded that Mia's spitting/licking behavior was related to her sensory processing disorder. See Dr. Stegen-Hanson's Progress Report dated July 19, 2010 attached hereto as Exhibit 17. Even if Christina now rejects the diagnosis, Mia's spitting/licking behavior was resolved through occupational therapy (although Mia still has a sensory processor disorder which may in the future require additional occupational therapy).

Mitchell is aware that Mia's dentist found evidence that Mia was grinding her teeth (but that damage to her teeth could also have been caused by the manner of Mia's biting) during a regularly scheduled dental appointment on August 18, 2010. See Email Correspondence from Christina to Mitchell dated August 18, 2010 attached hereto as part of Exhibit 25. Mitchell also understands that Mia's dentist filled the backs of Mia's two (2) front teeth on August 26, 2010. See Email Correspondence from Christina to Mitchell dated August 26, 2010 attached hereto as part of Exhibit 25. Apparently, Mia's minor dental issues have been resolved, and Mitchell has not objected to Mia's dental care.

Christina's motion also requests this Court to enter an order to release to Christina any results/recommendation of the evaluation performed by Nevada Child Find and to permit Mia to accept any services recommended by this organization. If Nevada Child Find's policy is not to provide services to children without the consent of both parents, then why should this Court enter an order to the contrary? Regardless, Mia does not have a learning disability. According to Christina, the only issue identified by Nevada Child Find was Mia's spitting/licking behavior. Again, Dr. Stegen-Hanson concluded that Mia's spitting/licking behavior was related to her sensory processing disorder, and it was resolved through occupational therapy.

Christina's request regarding Nevada Child Find is moot because Mia is no longer eligible to participate in the program because she is currently enrolled in the Clark County School District. See Exhibit 18 attached hereto ("The Child Find Project is a free Clark County School District service designed to identify and evaluate the needs of children ages 3 to 21 who are suspected of having a disability or delay and **not** currently enrolled in the district.") (emphasis in original).

And finally, Mia's records from Nevada Child Find should not be released to Christina by order of this Court. The evaluation process has not been completed; therefore, the records are incomplete.

Although Mitchell has submitted medical history questionnaires and behavioral assessments of Mia, Nevada Child Find desired to interview Mitchell as part of the process. Mitchell intended to schedule his personal interview with Dr. Shirlee Williams after meeting with Christina at their settlement conference on August 13, 2010. Unfortunately, Christina cancelled the settlement conference because Mitchell would not stipulate to the appointment of a parenting coordinator. Furthermore, the evaluation process requires that the parties meet and confer with the Clark County School District employees that actually performed various tests and assessments on Mia (school psychologist, nurse, occupational therapist, etc.) to discuss and agree upon any problems identified by them, referrals to diagnose any problems actually identified and provide services, and an individualized education program (or IEP) for Mia if necessary. This meeting also never occurred, and should never occur without Mitchell's consent and participation.

Now, as the Court is fully aware, Mia is no longer eligible to receive services at Nevada Child Find, but Christina still wants Mia's records. Why? Nevada Child Find does not diagnose problems; it only identifies areas of concern. If Nevada Child Find has already determined that Mia should be evaluated and treated by a psychiatrist according to Christina, Mitchell does not understand the nature of Christina's requested relief. Releasing Mia's records to Christina has no value to Mia (and may in fact harm her) because the evaluation remains incomplete (and certainly a psychiatrist would not rely on them for purposes of evaluating and treating Mia). Mitchell believes Christina only desires the records for litigation purposes and predicts that Christina will file another frivolous motion with this Court if the Court orders the records to be released claiming that Mia requires treatment based on Christina's own diagnosis from the records provided to her.

...

...

2. This Court lacks jurisdiction to rule on issues already decided by Judge Sullivan and issues being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing.

This Court's jurisdiction is qualified by Rule 19 of the State of Nevada District Court Rules ("NDCR"). NDCR 19 provides: "When an application or petition for any writ or order shall have been made to a district judge and is pending or has been denied by such judge, the same application or motion ***shall not again be made*** to the same or another district judge, ***except upon the consent in writing of the judge to whom the application or motion was first made.***" (emphasis added). When this case was transferred from Department O to Department M, Judge Sullivan retained exclusive jurisdiction to decide the matters taken under advisement at the May 6, 2010 hearing. Judge Sullivan has not provided consent to this Court to decide any of such matters or to reconsider any of his prior rulings. Therefore, to the extent that Christina's motion requests that this Court consider (or reconsider) such matters, it should be dismissed.

In the event that Judge Sullivan issues his written decision prior to the October 6, 2010 hearing, the matters decided by his ruling still cannot be considered by this Court under NDCR 19 unless Judge Sullivan provides his written consent. Even so, it would be improper for this Court to re-consider such matters at the October 6, 2010 hearing because Judge Sullivan's decision would be subject to EDCR 2.24 regarding motions for reconsideration and the parties' rights to appeal to the Nevada Supreme Court.

a. Judge Sullivan has ruled that Mia is permitted to receive occupational therapy from Dr. Stegen-Hanson and her staff.

Christina's motion requests this Court to enter an order prohibiting Mia from receiving occupational therapy from Dr. Stegen-Hanson. At the hearing held on April 13, 2010, the Court specifically ruled that Mia could continue to receive occupational therapy from Dr. Stegen-Hanson and her staff. See Paragraph 4 of the Order attached hereto as Exhibit 7. This matter already has been

decided by Judge Sullivan. Furthermore, Christina did not file a motion for reconsideration in accordance with the time constraints of EDCR 2.24 and her right to appeal the ruling to the Nevada Supreme Court has expired.

Christina's request for an order prohibiting Mia from receiving occupational therapy from Dr. Stegen-Hanson and her staff is also moot. Fortunately, due to occupational therapy received in July and August of 2010 and home therapy provided by Mitchell, Mia's licking/spitting behavior was resolved, and Mia is no longer receiving treatment at Achievement Therapy Center. See Email Correspondence from Mitchell to Christina dated August 29, 2010 attached hereto as part of Exhibit 22; see also Email Correspondence from Mitchell to Christina attached hereto as Exhibit 23 (Mitchell's emails regarding Mia's progress). Christina was made aware of this fact that Mitchell ceased therapy at Achievement Therapy Center prior to filing her motion on September 2, 2010. Furthermore, Dr. Stegen-Hanson has decided to close Achievement Therapy Center as of December 1, 2010.

b. Judge Sullivan has ruled that Mia is not permitted to be treated by any psychologist until further order of the court.

Christina's motion requests this Court to enter an order to allow Christina over Mitchell's objections to obtain evaluations and treatments for Mia from additional healthcare professionals. At the hearing held on April 13, 2010, the Court specifically ruled that the parties are prohibited from having Mia treated by any psychologist until further order of the court. See Paragraph 4 of the Order attached hereto as Exhibit 7. This order was entered after Christina filed a motion for reconsideration/clarification of the Court's rulings from the December 8, 2009 hearing during which the Court ruled that the parties could select their own therapists for Mia. However, Christina did not want Mitchell to obtain therapy for Mia without her consent (even though she would have the right to do the same). Now, Christina has reversed her position and is asking this Court to enter such an order for her benefit.

The dispute between the parties regarding psychological treatment for Mia is being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing. Therefore, to the extent Christina's motion asks this Court for such relief, NDCR 19 prohibits this Court from considering it.

c. Dr. Paglini's recommendation for the appointment of a parenting coordinator is being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing.

Christina requests in her motion that this Court enter an order appointing Dr. Gary Lenkeit, PH.D, as the parties' parenting coordinator. Dr. Paglini recommended to Judge Sullivan in his child custody evaluation that the parties be involved in a co-parenting class/program ***or*** work with a parenting coordinator. Dr. Paglini suggested either Dr. Lenkeit or Dr. Stephanie Holland, PH.D, if a parenting coordinator is appointed. It is unclear why Christina prefers Dr. Lenkeit over Dr. Holland (but it appears that she has already contacted Dr. Lenkeit regarding this case and scheduled meetings with him). On the basis of this inappropriate contact, Mitchell would object to Dr. Lenkeit's consideration as a parenting coordinator. Regardless, Dr. Paglini's recommendations contained in the child custody evaluation are being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing. Contrary to Christina's statements in her motion, Judge Sullivan never indicated that he would be appointing a parenting coordinator. Even so, Judge Sullivan is free to accept or reject Dr. Paglini's recommendations; however, NDCR 19 prohibits this Court from considering Christina's requested relief.

Nevada Rules of Civil Procedure ("NRCP") 53(a) provides the authority for the appointment of parenting coordinators as special masters. However, NRCP 53(b) qualifies the reference to a special master as "the exception and not the rule" and, in this case, a reference shall be made "only upon a showing that some exceptional condition requires it." Mitchell's right as the children's joint legal

custodian to withhold his consent to new evaluations and treatments of Mia is reasonable, in Mia's best interests, and consistent with his duties and responsibilities as a parent. Mia's only issue is a sensory processing disorder which has been properly diagnosed and treated by Dr. Stegen-Hanson and her staff. Mia received occupational therapy from Dr. Stegen-Hanson for more than six (6) months with Christina's consent, knowledge and participation. Currently, Mia is not exhibiting any behaviors that require continued treatment. Additionally, Mitchell has the right to withhold his consent to therapy for Ethan because he has not been sexually abused.

If Judge Sullivan orders the appointment of a parenting coordinator, pursuant to NRCP 53(c), the order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts. At this point, the identity of any parenting coordinator and his/her powers are unknown because Judge Sullivan has not made a decision. However, the Nevada Supreme Court in Russell v. Thompson, 96 Nev. 830, 619 P.2d 537 (1980), provided as follows:

> Where, as here, the trial court made a general reference of nearly all of the contested issues, giving the master the authority to decide substantially all issues in the case, as well as be the fact finder, the trial court's function has been reduced to that of a reviewing court. Masters are appointed 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause,' Ex parte Peterson, 253 U.S. 300, 312, 40 S.Ct. 543, 547, 64 L.Ed. 919 (1920), and not to place the trial judge into a position of a reviewing court. Irrespective of the trial court's doubtless good faith, this type of blanket delegation approaches an unallowable abdication by a jurist of his constitutional responsibilities and duties.

Despite Christina's belief to the contrary, a parenting coordinator appointed by the Court will not be able to decide substantive issues that affect custody or matters already agreed upon in the MSA. See id. The Nevada Supreme Court in Rivero also makes it clear that "[i]f the parents in a joint legal custody situation reach an impasse and are unable to agree on a decision, then the parties may appear before the court on an 'equal footing' to have the court decide what is in the best interest of the child."

216 P.3d. at 221. Accordingly, the Court may not delegate its duty to decide matters of joint legal custody that require joint agreement by the parties under Nevada law and the MSA.

3. This Court should award sole decision-making authority regarding healthcare matters to Mitchell because it is in the best interests of the children.

Mitchell has done everything he can do to cooperate with Christina on issues affecting the health of the children. Dr. Paglini expressed reservations about Christina's ability to co-parent with Mitchell on healthcare matters based on her dealings with Dr. Kalodner. This Court should have the same reservations given Christina's decision to have Mia evaluated by Nevada Child Find without Mitchell's knowledge or consent and Christina's mistreatment of Dr. Stegen-Hanson. Christina only wants Mia to be evaluated and treated by healthcare professionals that agree with her diagnosis (which appears to change weekly)[18] and treatment plan (which most certainly will exclude Mitchell's input and participation). The last twelve (12) months have been extremely challenging for Mitchell since he filed his October 2009 motion, which was pending before Judge Sullivan at the time Christina filed her motion, but solely due to Mitchell's efforts, Mia has been properly diagnosed and she has received therapy for all of her issues.

In Nevada, parents do not need to have equal decision-making power in a joint legal custody situation. See Rivero, 216 P.3d. at 222 (citing Fenwick, 114 S.W.3d at 776). In fact, Rivero expressly provides that one parent may have decision-making authority regarding certain areas or activities of the children's life, such as healthcare, and the parents still have joint legal custody. Id. Mitchell requests that this Court enter an order providing him sole decision-making authority over matters concerning the children's healthcare.

---

[18] Christina has attributed Mia's spitting/licking behavior to all of the following: autism, an obsessive compulsive disorder, sexual abuse by Cody, other anxiety disorders, and unspecified neurological problems.

When deciding issues pertaining to custody, this Court's paramount consideration should always be the welfare (or best interests) of the children. See Culbertson v. Culbertson, 91 Nev. 230, 533 P.2d 768 (1975). This Court has broad discretionary powers in determining questions of child custody, and the Nevada Supreme Court will not disturb this Court's determination absent a clear abuse of discretion. Primm v. Lopes, 109 Nev. 502, 853 P.2d 103 (1993). In fact, it is even presumed on appeal that this Court has exercised its judicial discretion in determining the best interest of the children. Howe v. Howe, 87 Nev. 595, 491 P.2d 38 (1971).

The children's best interests are served if Mitchell has sole decision-making authority over matters concerning the children's healthcare. Such an order will not affect the status of the parties as joint legal custodians. Christina and Mitchell still will be required to agree on all other matters affecting joint legal custody as required by Nevada law and the MSA. Furthermore, Mitchell is not asking this Court to relieve him of his obligations under the MSA that are consistent with his requested relief. For example, Mitchell would ***still be*** required to consult and cooperate with Christina on substantial questions relating to the healthcare of the children, Christina would ***still have*** access to medical records pertaining to the children and be permitted to independently consult with any and all professionals involved with the children, Mitchell would ***still be*** required to advise Christina of any of the children's appointments with all medical providers and provide her a reasonable opportunity to participate therein, and Christina would ***still be*** empowered to obtain emergency healthcare for the children without Mitchell's consent. See Sections 1.1(a)(i)-(iii) of the MSA.

Mitchell agrees with Christina that the children are entitled to certainty with respect to decisions concerning healthcare. If there is anything clear about the record in this case, the parties have been unable to agree on healthcare decisions affecting their children. As stated above, the appointment of a parenting coordinator will not achieve certainty as Christina argues in her motion. The Court cannot

delegate its authority to decide matters of joint legal custody with the parties' current parenting plan which requires both parties to jointly select healthcare providers and counselors for the children. The alternative is for this Court to modify custody to provide Mitchell sole custody which is not presumed to be in the children's best interests under Nevada law. See Mosley v. Figliuzzi, 113 Nev. 51, 930 P.2d 1110 (1997). Because the welfare of the children is of paramount importance in matters related to custody, the Nevada Supreme Court has stated that custody may not be denied or changed as a means to punish a parent. Dagher v. Dagher, 103 Nev. 26, 731 P.2d 1329 (1987); Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993)).

Unlike Christina who formulated her requested relief as a motion for contempt and sanctions, Mitchell does not desire to punish Christina by seeking sole custody. However, Mitchell believes Christina should be held accountable by this Court for fabricating claims of sexual abuse and its impact on Ethan, reporting Mitchell to CPS based on these allegations to limit his timeshare with the children, subjecting Mia to an evaluation at Nevada Child Find without Mitchell's knowledge or consent, harassing and threatening Dr. Stegen-Hanson and her staff, and sabotaging Mia's occupational therapy. These acts are clear instances where Christina's behavior falls miserably short of acting in the best interests of the children. Although this Court cannot (and should not) punish Christina by awarding Mitchell sole custody, it is directed by statute to reward cooperation and discourage obstinacy. See NRS 125.460. Under the circumstances, Christina should not have decision-making authority on healthcare issues. She is more interested in litigation (and winning at all costs) than the best interests of the children.

Dr. Paglini has determined in his child custody evaluation that Mitchell is a fit parent: he does not exhibit any significant parenting deficits, he has positive qualities, and possesses numerous resiliency factors. Dr. Paglini also concluded that Mitchell provides excellent care toward the children

and he is actively involved in the children's lives. Accordingly, Mitchell is more than capable of having sole decision-making authority over healthcare issues affecting the children.

4. Christina's motion for contempt and sanctions should be denied.

The fact that Mitchell disagrees with Christina on healthcare matters concerning the children does not mean that Mitchell is guilty of contempt. Mitchell has communicated and cooperated with Christina with respect to all matters concerning the children in accordance with the provisions of Section 1.1(a) of the MSA. Cooperation, however, does not mean that Mitchell must agree with Christina's choices particularly where such agreement is not in the best interests of the children.

a. Christina consented to Dr. Stegen-Hanson and her staff to provide occupational therapy for Mia.

To support her motion for contempt, Christina cites to Section 1.1(a)(ii) of the MSA which requires that all healthcare and counselors shall be jointly selected by the parties. Mitchell has not violated this provision. Dr. Stegen-Hanson and her staff began treatment of Mia in January of 2010 with Christina's knowledge, consent and participation. See Email Correspondence by and between Mitchell and Christina attached hereto as Exhibit 5. At the hearing held on April 13, 2010, the Court ruled that Mia shall not be treated by any psychologist until further order of the Court, but Mia could continue to receive occupational therapy from Dr. Stegen-Hanson and her staff. See Paragraph 4 of the Order attached hereto as Exhibit 7. Mitchell's decision to continue treatment after Christina refused to participate after June 9, 2010 does not mean that Mitchell violated any provision of the MSA or order of the court. Christina's consent to treatment was unnecessary after she agreed to therapy at Achievement Therapy Center and the Court entered its order from the hearing on April 13, 2010. Furthermore, Mitchell complied with the Court's order by refusing to permit Christina from having Mia evaluated and treated by new psychologists as requested by Christina.

b. Christina has not facilitated telephonic communication with the children; however, this issue is being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing.

The disagreement between Mitchell and Christina regarding facilitating telephonic communication is also being considered by Judge Sullivan as part of the matters taken under advisement at the May 6, 2010 hearing. While the SAO does require the custodial parent to facilitate daily telephonic communication between the non-custodial parent and the children by placing at least one (1) telephone call per day, neither party has complied (nor currently complies) with the terms of this provision. Rather duplicitously, Christina fails to inform this Court in her motion that she does not facilitate daily telephone contact with the children either. Mitchell describes these events extensively in his October 29, 2009 motion and anticipates that Judge Sullivan will provide new guidelines for the parties when he issues his written decision.

c. Mitchell has paid his share of the children's medical costs and expenses; however, Christina owes Mitchell money and Christina has violated Mitchell's medical privacy.

Christina references in her motion that Mitchell has failed to reimburse Christina for one-half (1/2) of the medical expenses and costs she has incurred for the children. However, she does not provide any support for this conclusion in her motion. Mitchell has reimbursed and/or intends to reimburse Christina in the time required by the MSA for all such expenses. See Email Correspondence from Mitchell to Christina dated August 20, 2010 attached hereto as part of Exhibit 25. The only matter of dispute between them is whether Christina will reimburse Mitchell for her share of Mia's occupational therapy at Achievement Therapy Center and whether Mitchell should pay one-half (1/2) of the insurance premiums incurred by Christina for insurance covering the children since June of 2010.[19]

---

[19] Christina's claim will amount to less than $400.00 as of October 6, 2010. Mitchell is paying one-half (1/2) of all co-payments, prescriptions, and other medical costs and expenses for the children without offset for amounts due and owing to him.

Mitchell is entitled to reimbursement for the costs and expenses of Mia's occupational therapy at Achievement Therapy Center even if Christina elected not to participate after June 9, 2010. Attached hereto as Exhibit 28 are the invoices from Achievement Therapy Center showing the charges incurred and the amounts paid by Mitchell. The amount owed by Christina is $312.50, which Christina refuses to pay because she did not participate in the therapy after June 9, 2010. Mitchell has not attempted to collect this nominal amount by litigation.

After the parties divorced, Mitchell's former employer continued to provide insurance coverage for the children at no cost or expense to Mitchell until approximately June of 2008. After June of 2008, Mitchell was forced to obtain and pay for a policy of insurance for the children. Mitchell obtained group coverage (coverage for the children and Mitchell) and paid the premiums for two (2) years because Christina refused to reimburse him for the amount allocable to the children. Mitchell did not file a motion for contempt (or any other motion). He simply paid the policy premiums until June of 2010 when Christina separately obtained insurance coverage for the children. The amount of the unreimbursed premiums is approximately $2,400.00.

Mitchell asked Christina to obtain insurance policies for the children in May of 2010 because Christina violated his medical privacy by changing the address on Mitchell's account with Sierra Health & Life Insurance Company ("SHL") without any right or authority to do so. See Email Correspondence by and between Mitchell and Christina dated March 11, 2010 attached hereto as Exhibit 29. SHL investigated the matter and determined that Mitchell's address "was changed on [his] group coverage to 11757 Feinberg Place in November 2008 based on a Form 3547 received from USPS[,] and [i]n May 2009, SHL received returned mail with a forwarding address from the USPS and [Mitchell's] home address for [his] current individual policy was changed to the 11757 Feinberg Place address" See Letter from SHL dated April 28, 2010 attached hereto as Exhibit 30. The address referenced in SHL's letter is

Christina's address for the home she purchased after the parties' divorced. Certainly, Mitchell did not change the address to Christina's home (and Christina had no right or authority to do so in November of 2008 even for the children who also reside at Mitchell's residence). Attached hereto as Exhibit 31 are explanations of benefits from SHL sent to Christina's address for medical treatment received by Mitchell from the end of 2008 through the beginning of 2010. Mitchell was unaware that Christina was receiving this information until April of 2010.

Included in the explanations of benefits is detailed information on medical tests performed by Dr. Eva Littman, a fertility specialist. At the time, Mitchell and Amy were attempting to conceive a child. Armed with this information, Christina specifically communicated to Amy at Mia's occupational therapy session on June 9, 2010 that ***"God is punishing you because you can't have children of your own."*** See Affidavit of Amy attached hereto as part of Exhibit 26.

Mitchell is entitled to credit for the two (2) years of insurance premiums and the costs of Mia's occupational therapy that Mitchell paid without reimbursement from Christina. However, Mitchell is not asking for this Court to intervene. Mitchell is content simply to deduct amounts owed to Christina presently and in the future for insurance premiums from amounts owed to him for the same until they are paid (after which time he will reimburse Christina for insurance premiums as required by the MSA). Under these circumstances, Mitchell is certainly not guilty of contempt.

5. Christina's request for sanctions and attorney's fees should be denied; however, Mitchell is entitled to an award of attorney's fees and costs incurred for opposing Christina's motion.

Christina's motion is an attempt to re-litigate the matters pending before Judge Sullivan at the time she filed her motion or have been previously decided by Judge Sullivan with the hope that this Court will provide Christina more favorable rulings. Mitchell has demonstrated that Ethan has not been sexually abused by Cody and that Christina fabricated these allegations for litigation purposes. The

record also clearly shows that Mia does not require further evaluations or treatments. And finally, it is clear that Christina's only intent is to harass Mitchell through continued litigation. Therefore, Christina's motion should be denied and she should be required to pay Mitchell's attorney's fees and costs.[20] NRS 18.010 and Section 4.7 of the MSA provide that the prevailing party in any legal action related to or arising out of the MSA shall be entitled to an award of attorney's fees and costs incurred by the party.

6. Christina and her counsel, Patricia Vaccarino, should be sanctioned for their conduct in this case under EDCR 7.60(b).

EDCR 7.60(b)(1), (3) and (4) provides the following:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> ...
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
>
> (4) Fails or refuses to comply with these rules.

Christina and Ms. Vaccarino filed Christina's motion knowing that it is replete with factual errors, intentional misrepresentations and personal attacks of Mitchell. The goal of the motion is to re-litigate the matters pending before Judge Sullivan at the time the motion was filed or have been previously decided by Judge Sullivan with the hope that this Court will provide Christina more favorable rulings. As such, the motion is unnecessary and unwarranted. Furthermore, the only matter properly before this Court is whether Ethan should receive counseling services to which Mitchell objects

---

[20] At the hearing on matters before it on June 22, 2010, the Court ordered Christina to pay Mitchell's attorney's fees and costs as the prevailing party.

because Ethan has not been sexually abused. Christina's motion is completely frivolous because the sexual abuse allegations were not substantiated by the investigations performed by CPS and LVMPD, CPS does not recommend counseling for Ethan, and no restrictions on contact between Ethan and Cody have been imposed by CPS or LVMPD.

Further, Christina and Ms. Vaccarino violated EDCR 5.13 by revealing facts and information contained in the confidential report of Dr. John Paglini. See supra footnote nine (9) and accompanying text. Christina and Ms. Vaccarino improperly, unethically and falsely communicated to the Las Vegas Justice Court through pleadings and oral argument at an open hearing that Dr. Paglini concluded that Mitchell had personality and behavioral issues relevant to the case before it. Even though Dr. Paglini made no such findings, Christina and Ms. Vaccarino referred to items in the report. Dr. Paglini's report is confidential and cannot be used by Christina and Ms. Vaccarino to defend Christina's brother, Mr. Calderon.

Moreover, Christina (who is also an attorney) and Ms. Vaccarino have improperly attempted to influence Judge Sullivan's decision on outstanding matters from the May 6, 2010 hearing. See Exhibit 32 attached hereto. Ms. Vaccarino's office contacted Judge Sullivan's law clerk via email and provided the clerk a copy of Christina's motion even before it was served on Mitchell's counsel. Ms. Vaccarino also did not inform Mitchell's counsel of this written communication until almost a week later when Ms. Vaccarino personally wrote another letter to Judge Sullivan's law clerk requesting that Judge Sullivan consider Christina's new motion before issuing his written decision. This conduct violated EDCR 7.74 which provides that "[n]o attorney may argue to or attempt to influence a law clerk on the merits of a contested matter pending before the judge or judicial officer to whom that law clerk is assigned."

Accordingly, in light of the conduct described above, Christina and Ms. Vaccarino should be sanctioned pursuant to EDCR 7.60(b).

V.

CONCLUSION

Based upon the foregoing, Mitchell requests that this Court:

1. Dismiss Christina's motion for lack of jurisdiction and/or deny the motion in its entirety; and

2. Grant Mitchell's countermotion to have sole decision-making authority regarding healthcare matters affecting the children; and

3. Grant Mitchell's countermotion to be reimbursed his attorney's fees and costs for opposing Christina's motion; and

4. Sanction Christina and her counsel, Patricia Vaccarino, Esq., pursuant to EDCR 7.60(b).

DATED this 23rd day of September, 2010.

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 "Opposition to Plaintiff's Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Willful Violations of Court Orders; To Resolve Parent/Child Issues; For the Appointment of a Parenting Coordinator; For Other Related Relief and for Attorney Fees, Costs and Sanctions, and Defendant's Countermotion for Sole Decision-Making Authority Regarding Healthcare Decisions Affecting the Children, for Attorney's Fees, Costs and Sanctions Against Plaintiff and Patricia Vaccarino, Esq." on this 23rd day of September, 2010, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117

Lauren Cavell

An employee of Radford J. Smith, Chartered

DOCKETING STATEMENT TAB #6

Electronically Filed
09/02/2010 02:52:01 PM

CLERK OF THE COURT

MOT
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: 10/6/2010
TIME OF HEARING: 2:00pm

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED 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 A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR WILFUL VIOLATIONS OF COURT ORDERS; TO RESOLVE PARENT/CHILD ISSUES; FOR THE APPOINTMENT OF A PARENTING COORDINATOR; FOR OTHER RELATED RELIEF AND FOR ATTORNEY FEES, COSTS AND SANCTIONS

COMES NOW, Plaintiff, CHRISTINA CALDERON STIPP, ("CHRISTINA"), by and through her attorney of record, PATRICIA L. VACCARINO, ESQ. of the VACCARINO LAW OFFICE, and hereby submits her Motion to this Court. CHRISTINA respectfully requests the following Orders from this Court.

1. An Order requiring Defendant, MITCHELL STIPP, ("MITCH"), to appear and show cause why he should not be held in contempt of Court for wilfully failing to abide by Court Orders concerning joint legal custody provisions, healthcare treatment for MIA and her special needs and concerning healthcare insurance and expense

reimbursement issues;

2. An Order allowing CHRISTINA to obtain counseling for the parties' three-year-old son, Ethan, in light of the likelihood that he has been sexually abused and/or exposed to inappropriate sexual conduct and/or materials by a nine-year-old cousin, "Cody," during MITCH'S timeshare;

3. An Order restricting MITCH from allowing Cody contact with Ethan or the parties' five-year-old daughter, MIA;

4. An Order confirming the termination of occupational therapist's, Tania Stegen-Hanson's, treatment of MIA and allowing MIA to receive appropriate evaluations, opinions and treatments from qualified, healthcare professionals for her special needs. The Order should specifically permit CHRISTINA to obtain necessary opinions from a qualified psychiatrist and/or neurologist for behaviors which MIA has been developing before and since May 2010. Most recently, MIA has been expressing fear of germs and spitting/licking upon her fingers and wiping saliva over her body in a self-professed effort to rid herself of germs, and she has been aggressively grinding her teeth, requiring dental attention;

5. An Order requiring Nevada Child Find to release to CHRISTINA the results/recommendations of the evaluation conducted upon MIA in July 2010 and permitting MIA to avail herself of any and all services recommended by Child Find (MITCH unreasonably refuses to consent to Child Find's release of such information to CHRISTINA);

6. An Order forthwith appointing parenting coordinator Dr. Gary Lenkeit for the parties pursuant to the recommendation of custody evaluator Dr. John Paglini made in his report dated April 29, 2010;

7. An Order awarding CHRISTINA attorney's fees and costs of no less than $10,000.00 and all of CHRISTINA's fees and costs incurred;

8. An Order sanctioning MITCH pursuant to EDCR 7.60, for his abuse of court process by awarding CHRISTINA a further sum of fees and costs; and,

9. Any further Orders this Court deems just and proper.

This Motion is made and based upon the following Points and Authorities, all pleadings and papers on file herein, the Exhibits attached hereto, Dr. Paglini's April 29, 2010 report, CHRISTINA's Affidavit, as well as any oral argument to be made by the undersigned counsel at the time of the hearing in this matter.

DATED this 2nd day of September 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

. . .

. . .

. . .

NOTICE OF MOTION

TO: MITCHELL DAVID STIPP, Defendant; and

TO: RADFORD J. SMITH, ESQ., Attorney for Defendant.

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above- entitled Court on October 6, 2010 at 2 pm.

in Dept. M.

DATED this 2nd day of September 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

POINTS AND AUTHORITIES

I.

INTRODUCTION

The extensive and intricate procedural history of this case must be noted by this Court. The parties divorced by agreement in 2008. At the May 6, 2010 return hearing on Dr. John Paglini's custody evaluation, Judge Frank Sullivan again did not grant an evidentiary hearing upon MITCH's Motion. Judge Sullivan has his Decision under advisement through this date.

The custodial timeshare has remained status quo, with CHRISTINA exercising a primary amount of custodial time with the parties' two young children for almost four more months and for almost three years now since the parties were first separated. The case has since been reassigned to Judge William Potter.

Unfortunately, several urgent matters concerning the children have arisen since May 6, 2010. The obstinate manner in which MITCH is addressing the problems counsels in favor of reducing and/or restricting his visitation with the children, and, certainly, against increasing his timeshare.

After exhaustive, yet failed, attempts by CHRISTINA to have MITCH agree to see a Parenting Coordinator, to coparent with MITCH, to ensure the safety and well-being of the parties' minor children, MIA (five years of age) and ETHAN (three years of age), CHRISTINA has no other choice than to request this Court's immediate assistance in obtaining her requested Orders. MITCH has refused to permit counseling for ETHAN and MIA; to restrict the known danger of his nephew, Cody, from the parties' children; had refused to cease his exclusive, unilateral, and harmful treatment of MIA with an occupational therapist who is untrained in the mental health field; and has refused to obtain a much-needed mental health diagnosis and treatment for MIA's obsessive/compulsive and new troubling behaviors. Of great concern, MITCH refuses to consent to a parenting coordinator, which was recommended by Dr. John Paglini in April 2010 and begged for from the Court by MITCH'S own counsel at the May6, 2010 hearing. A Parenting Coordinator would provide the parties a means to resolve disputes without resorting to MITCH's preferred method of "coparenting", to wit: litigation.

The need for stability, peace and finality for the parties and children can no longer continue to be neglected by MITCH. His unreasonable refusal to follow orders and provide required care and treatment for the children is not only troubling conduct, but MITCH's pattern is endangering the safety and well being of the parties' children. Hence, the necessity of the filing of the present Motion.

II.

RELEVANT, RECENT FACTS WARRANT JUDICIAL INTERVENTION

With respect to ETHAN, Child Protective Services ("CPS") and the Las Vegas Metropolitan Police Department ("LVMPD") recently investigated what they have deemed to have been "credible" allegations of sexual abuse committed against ETHAN by Cody during MITCH's timeshare. ETHAN credibly disclosed the sexual abuse and sexual encounters with Cody to CHRISTINA, to CPS and to the Las Vegas Metropolitan Police Department, ("LVMPD"), during a forensic interview on July 2, 2010. Yet, CPS was unable to substantiate, or "prove," the abuse because, as it claimed, Cody did not "admit" to abusing ETHAN or divulge an older perpetrator when interviewed by the LVMPD. Regardless, a minor would not be criminally prosecuted for sexual abuse, which was never CHRISTINA's intent or goal. In addition to repeated verbal disclosures and sexually charged encounters with Cody, ETHAN also manifested symptoms of sexual abuse, including bed-wetting (he has been fully-potty trained since he was just two-years old), regressing into "baby talk," kissing adults and children inappropriately (with his tongue), and exhibiting frequent erections.

ETHAN told CHRISTINA and others that Cody had "touched his pee pee" and "put a stick in [ETHAN's] butt." ETHAN told his aunt, CHRISTINA's sister, Elena Petsas, that Cody "put his 'dick' in [ETHAN's] mouth." LVMPD Detective, Dan Tomaino, witnessed ETHAN's disclosure to CPS, indicating fellatio on July 2, 2010. MITCH's unreasonable, legal stance on the sensitive issue is that because CPS could not "prove" the abuse, the sexual encounters Cody had with ETHAN absolutely did not happen. MITCH feels it is easier to ignore the troubling issues. Therefore, MITCH refuses to permit CHRISTINA to take ETHAN to counseling for the trauma which ETHAN has encountered. CPS gave CHRISTINA and MITCH numerous referral forms

for therapeutic and other agencies which could assist this family. CPS could not require counseling, just make intelligent referrals, because a case could not be opened due to Cody's young age. MITCH will not attempt to receive any help for anyone in the family. Notwithstanding the CPS referrals and ETHAN's continuing disclosures of abuse and MITCH's own admission to a CPS supervisor that Dr. Paglini noted that both children could benefit from counseling to address the divorce, MITCH chooses to ignore important healthcare issues which need immediate attention. MITCH also immediately reintroduced Cody to the parties' children less than two weeks into CPS's investigation in the matter. MITCH will not agree to keep Cody away from the parties' children or even commit to writing his "promise" to CPS, and not CHRISTINA, to never leave Cody unsupervised around MIA and/or ETHAN.

Cody is clearly a sexually aggressive nine-year-old who is perpetrating upon ETHAN. Cody recently admitted to LVMPD that he has watched a "Girls Gone Wild" video. Cody's mother informed CHRISTINA that he recently asked his teenage aunt to have sex with him. Cody has been exposed to pornography by his own father, MIA's and ETHAN's uncle. Cody's mother reported these facts to Detective Tomaino. See E-mails from Tomaino to CHRISTINA, attached as Exhibit "1". Cody, himself, admitted to LVMPD that he has been exposed to sexually explicit and mature television shows. *Id.* Det. Tomaino took the time to thoughtfully explain to CHRISTINA how the criminal process operates. As Detective Tomaino wrote to CHRISTINA: unfortunately, believing that ETHAN has been abused and "proving" it are two different things, especially when the 9-year-old perpetrator does not admit wrongdoing. *Id.*

CHRISTINA had previously notified MITCH on May 14, 2010 of similar statements made by ETHAN indicating sexual abuse to CHRISTINA. MITCH minimized CHRISTINA'S concerns, and failed to effectively communicate and coparent to ensure the children's welfare is protected. MITCH accused CHRISTINA of wrongdoing. MITCH refused to restrict the children's contact with Cody in any manner whatsoever.

MITCH's response to the problems with sexual abuse is unreasonable. Not only is MITCH now willfully exposing the children to the threat of Cody, but he refuses to allow CHRISTINA to get ETHAN and/or MIA counseling. Again, CPS has recommended counseling and the CPS

officer and supervisor assigned to the case opined that a Parenting Coordinator could help this family. CPS representatives advised CHRISTINA to address her valid concerns in Family Court.

Also, MITCH is frequently on "errands" and busy when the children are in his care. The children's aunt, Megan, MITCH's sister, babysits the children "all the time" according to the children. Megan is unfit to provide care for the children for many reasons, including a history of drug use, driving recklessly and aggressively when with the children and disparaging CHRISTINA and her family to the children on her routine pick-ups and drop-offs of the children. MITCH assigns the duty of the child-exchange to his sister, whom he will only admit is his "housekeeper". Megan also mentally abuses the children, particularly MIA, to constantly challenge the "fairness" of the current timeshare to CHRISTINA. At minimum, due to MITCH'S reckless or, at least negligent, care of the children, ETHAN was and both children may continue to be victimized in a heinous manner. CHRISTINA fears ETHAN and MIA are currently being exposed to a continuing threat of abuse with a sexually charged boy.

MIA is encountering serious problems as well, and is in need of special services for her special needs. Since shortly after the May 6, 2010 return hearing on Dr. Paglini's custody evaluation in this matter, MIA began to exhibit alarming new behaviors wherein she began to express obsessive fear of "germs," especially of her brother, ETHAN's germs. MIA has been performing rituals, such as compulsive hand-washing, wipe usage, and, ultimately, spitting onto her body repeatedly to "rid herself of the germs." Previously, MIA's reactions and resistance to the "tightness" of clothing and seatbelts was the subject of MITCH's third motion in nine months to modify custody. MITCH filed his last custody Motion only three months after agreeing to a timeshare that allowed CHRISTINA to remain as primary custodian of the children. MITCH falsely attributed MIA's reactions to clothing and seatbelts to "emotional abuse" by CHRISTINA.

Dr. Paglini completely rejected MITCH's false and strategic allegations. Instead, an occupational therapist, Dr. Stegen-Hanson, diagnosed MIA's reactions to clothing as stemming from a "sensory processing disorder." CHRISTINA now believes the diagnosis may be erroneous. What was to have been 12 weeks of occupational therapy with Dr. Stegen-Hanson, turned into eight, long and tragic months of consecutive occupational therapy. In that setting, Dr.

Stegen-Hanson has, at MITCH's urging, "diagnosed" MIA's new behaviors as also being "sensory processing disorder". Yet, the qualified mental health professionals at Nevada Child Find disagree with the diagnosis. In July 2010, Child Find recommended treatment and evaluation of MIA by a psychiatrist. MITCH refuses to cooperate in getting MIA the necessary evaluation and treatment.

When first presented with the new behaviors, even Dr. Stegen-Hanson recognized that MIA's behaviors were troubling and not within her area of expertise. *See* Email from Dr. Stegen-Hanson to CHRISTINA, dated May 23, 2010, attached as Exhibit "2". Dr. Stegen-Hanson told CHRISTINA via email that Dr. Stegen-Hanson and the parties needed to seek the advice of psychologist, Melissa Kalodner. Instead of seeking the advice from proper mental health professionals, Dr. Stegen-Hanson and MITCH conspired to prevent CHRISTINA from obtaining an evaluation of MIA by anyone other than Dr. Stegen-Hanson. MITCH's unreasonable position on the important medical issue is that because Dr. Paglini did not recommend and the Court did not authorize treatment of MIA by anyone other than Dr. Stegen-Hanson in April 2010, prior to the onset of MIA's new behaviors, he does not agree to allow MIA to receive even a second opinion on the healthcare issues. See E-mails dated May 24 through 25, 2010, attached as Exhibit "3". Against CHRISTINA's consent, MITCH continued to take MIA to see Dr. Stegen-Hanson. Dr. Stegen-Hanson is clearly not trained to diagnose and treat mental health disorders. CHRISTINA has repeatedly addressed her valid requests and concerns, verbally, and in writing, regarding her objection to such treatment. Both MITCH and Dr. Stegen-Hanson understood CHRISTINA's position. CHRISTINA's valid concerns fell upon purposely deaf ears until August 29, 2010 when MITCH informed CHRISTINA that MIA was miraculously "cured". CHRISTINA does not agree that MIA's problems have resolved. *See* Letter from CHRISTINA to Dr. Stegen-Hanson, dated August 25, 2010, and MITCH's responsive E-mail, attached as Exhibit "4". Far from being "cured", MIA, in addition to continuing to spit and express fear of germs, is now manifesting a new behavior, i.e., aggressive teeth grinding, that recently required dental repair work.

. . .

Nevada Child Find, a Clark County School District (CCSD) project designed to identify special needs of children who have yet to begin kindergarten, conducted an evaluation of MIA in July 2010. Child Find has received all required input from both CHRISTINA and MITCH in order to complete the evaluation and tender formal results and recommendations. Although MITCH initially agreed to meet with Child Find to discuss the evaluation, he then revoked his consent. MITCH now unreasonably refuses to allow Child Find to release the results/recommendations to CHRISTINA unless CHRISTINA agrees to take MIA to Dr. Stegen-Hanson for indefinite and harmful treatment. MIA may qualify for special education services through CCSD, which would be helpful to the child and parents. Yet, CHRISTINA cannot even determine the results and what steps must next be taken given MITCH's sabotaging her ability to obtain such information. MIA stands to greatly benefit from CHRISTINA's receipt of such information.

MIA has started public school (although she has been in private school for the past three years). MIA will be in a classroom of 30 children because MITCH refused to allow MIA to continue to attend private school at Alexander Dawson where she had 13 children in her class. MITCH told CHRISTINA that "to send MIA to Alexander Dawson would be to reward your [CHRISTINA's] bad behavior". MITCH was referring to his unfounded insecurity in believing that CHRISTINA had "turned the private school against him." MITCH curiously wanted to visit MIA every day at school. No parent is so aggressive with unnecessary school visits which are distracting to the students. MITCH's refusal and, later, conditioning MIA's attendance on yet another "gag order" upon CHRISTINA continues, even though CHRISTINA generously offered to pay the entire amount of what would have been MIA's $20,000 annual tuition. Immediately after the parties' divorce, MITCH reneged on his verbal promise to pay for 50% of the children's private education. MITCH prefers that the parties spend hundreds of thousands of dollars litigating parenting matters over the past two-and-one-half years instead of providing the children the best education and health care possible.

Indeed, MITCH is playing costly games with the health, education, welfare and safety of the parties' children. MITCH is unreasonably withholding critical health information about MIA

from CHRISTINA. MITCH is prohibiting ETHAN from getting the counseling treatment CPS recommends for him. The myriad of E-mails between the parties regarding these issues reveal that MITCH is upset at the way CHRISTINA "handled the matters," i.e., he resorts to name-calling ("liar") and constantly tells CHRISTINA to take several matters up with the Court. If MITCH really believed CHRISTINA was "lying" about ETHAN's credible reports of sexual abuse, he certainly would have and should already have filed a Motion with this Court!

When in the presence of the Court and/or professionals appointed thereby, MITCH and his counsel pay lip service to their desire for a Parenting Coordinator, but when the parties' children need MITCH to coparent and reach resolution on important matters with CHRISTINA, MITCH readily abandons his false desire for cooperation and tells CHRISTINA to "litigate" the matters. MITCH is intent on punishing CHRISTINA by not allowing the children to get the assistance and care they need.

For the foregoing reasons, CHRISTINA respectfully requests that the Court immediately grant CHRISTINA's motion in its entirety, and issue the specific Orders referenced above. Without Court intervention, further troubling issues will ensue for the children and parties. If MITCH continues to be so impossible in coparenting and deciding healthcare issues, CHRISTINA should receive sole legal custody.

III.

STATEMENT OF FACTS SUPPORTING CHRISTINA'S MOTION

A. BACKGROUND

The parties married on July 18, 1997. Prior to their divorce on May 2, 2008, the parties had been together for over 18 years and married for almost 11 years. They welcomed their daughter, MIA Elena Stipp ("MIA"), into the world on October 19, 2004, and their son, ETHAN Christopher Stipp ("ETHAN"), on March 24, 2007. MIA is now age five, and ETHAN is now age three. The parties entered into a Marital Settlement Agreement ("MSA") on February 20, 2008, which was incorporated into the Decree of Divorce. The Court entered the Decree on May 2, 2008. CHRISTINA received the children for a primary amount of time each month, by agreement of the parties, in which MITCH readily agreed to only receive six days per month with the

children.

B. PROCEDURAL HISTORY

On December 17, 2008, CHRISTINA filed a motion requesting confirmation from the Court of her primary physical custodial status (MITCH had approximately six days per month or a 20% timeshare) and enforcement of the parties' educational, cost-sharing agreement. MITCH had refused and continues to refuse to honor his agreement, at least with respect to MIA, by conditioning his additional assistance for the children upon the execution by CHRISTINA of an improper and unnecessary "gag order."

On January 8, 2009, MITCH filed an Opposition and purely defensive Countermotion in which he requested modification of the parties' timeshare which was only in existence for less than one year. On February 24, 2009, the Court held a hearing, heard argument, and denied all Motions and Countermotions.

Only three months later, on April 27, 2009, MITCH filed a frivolous Motion for Reconsideration requesting, yet again, that Court modify the parties' timeshare. At the June 4, 2009 hearing on the matter, the Court ordered the parties to attend a second Family Mediation Center (FMC) mediation. On July 8, 2009, the parties met for their FMC mediation session. They resolved the dispute in its entirety. Together, the parties drafted and executed a stipulation documenting their agreement. The Court entered the Stipulation and Order (SAO) on August 7, 2009. The parties' SAO documented a timeshare modification from an 80% (CHRISTINA)/20% (MITCH) arrangement to an approximately 70% (CHRISTINA)/30% (MITCH) arrangement. The Stipulation and Order contained Orders to hopefully assist with correcting MITCH'S pattern in refusing and/or failing to effectively coparent with CHRISTINA. MITCH immediately violated the SAO less than one month after its entry by refusing to allow daily phone calls from the children to CHRISTINA while in his care. This vindictive practice of depriving CHRISTINA phone contact, unfortunately, continues through today.

Two weeks after the Court's entry of the SAO, on August 27, 2009, the Nevada Supreme Court decided the case of Rivero v. Rivero, 125 Nev. Adv. Op. 34 (2009) (Rivero II). Rivero II held that a party needs to exercise at least 40% time in order to be considered a "joint physical

custodian". The joint custodian may then enjoy certain offsets, financial and other legal benefits and standards.

On October 29, 2009, only two-and-one-half months after the entry of the August 2009 Stipulation and Order, MITCH filed another, frivolous Motion in which he falsely accused CHRISTINA of emotional abuse upon the parties' daughter. MITCH sought modification of custody for the third time in only nine months. MITCH only sought "joint" custody, not primary custody, even though he alleged "abuse" by CHRISTINA. If MITCH was sincere in his beliefs, he should have requested sole custody of the children.

CHRISTINA opposed MITCH'S practice of filing "serial Motions" citing the parties' recently executed Stipulation and Order granting CHRISTINA a timeshare which allowed the children to primarily live at her residence. CHRISTINA raised issue with MITCH's parental fitness and MITCH'S alcoholism, including his previously hidden arrest and prosecution for DUI. CHRISTINA also filed a Motion to partition non-disclosed marital assets pursuant to the express terms of the parties' Decree and Marital Settlement Agreement. MITCH was then and is now self-professing "lifetime retirement," and anomalous post-divorce real estate acquisitions, allowing him "more" time to care for the kids.

Dr. John Paglini, the custody evaluator appointed by the Court at the hearing on the motion on December 8, 2009, later exonerated CHRISTINA of the false charges of emotional abuse. Dr. Paglini was specifically concerned about increasing MITCH'S time with the children due to the "deceit and deception" MITCH undertook with respect to his actions. MITCH had secretly taken MIA to a new and different psychologist for five months without CHRISTINA's knowledge and consent. MITCH obtained an evaluation of MIA from an occupational therapist (Dr. Stegen-Hanson) to whom he falsely identified his new wife as MIA's mother, not CHRISTINA. *See* Dr. Paglini's Confidential Custody Evaluation, dated April 29, 2010.

Dr. Paglini's report, coupled with the Court's previous rulings indicating that in the absence of "NRS 432B abuse" by CHRISTINA the Court would not alter the recently agreed-upon timeshare reveals how meritless MITCH's Motion is at this time. Judge Sullivan's statement was made at the April 13, 2010 hearing, evidencing MITCH's Motion to change custody must be

denied. However, at the May 6, 2010 hearing, the Court was uncertain as to the exact, actual timeshare to which the parties agreed. The Court understands the parties had called themselves "joint custodians" when they divorced in 2008, notwithstanding the 80%/20% timeshare they agreed upon. MITCH wanted to call himself a "joint" custodian, and CHRISTINA did not object to the legal semantics, understanding she had a primary amount of time with the children. The labels did not matter, and pursuant to new Nevada law, the true timeshare must be the Court's focus. Yet, the child support award calculated recognized CHRISTINA's status as primary custodian. The relocation provision of the MSA also correctly characterized MITCH as the non-custodial parent.

At the May 6, 2010 hearing, a return on Dr. Paglini's report, the parties met to hear whether or not the Court was going to order an evidentiary hearing or not. The Court reviewed the report and heard argument about the current, agreed-upon timeshare and took the issue of whether the parties' actual timeshare would be modified under advisement. The Court cannot now change MITCH's timeshare to allow him more time to joint physical custody, without notice, the presentation of any evidence, and without providing CHRISTINA an opportunity to rebut evidence. If the timeshare was summarily modified when "NRS 432B abuse" was not evidenced as MITCH plead existed, the Court would be depriving CHRISTINA of due process. Pursuant to Wiese v. Granata, 887 P.2d 744, 110 Nev. 1410 (Nev., 1994), before losing custodial rights, a parent is entitled to a full evidentiary hearing. The parties are awaiting the final written decision of Judge Sullivan. If MITCH really wanted or believed he should have more time with the children, he would have already petitioned the Court asking Judge Sullivan to schedule a hearing for status on the Decision. Yet, four months have passed.

C. **RECENT EVENTS AND HEARINGS REVEAL CHRISTINA MUST REMAIN THE PRIMARY CUSTODIAN**

The December 8, 2009 Hearing

The Court refused to change custody at the December 8, 2009 hearing on MITCH'S motion to confirm himself as a joint physical custodian and to change the parties' timeshare. MITCH currently has an approximate 33% timeshare; he asked the Court for an increase to *50%*

to due CHRISTINA'S alleged "abuse" of MIA. In response to concerns for MIA's welfare, the Court ordered the custody evaluation requested by MITCH, who had falsely attributed MIA's sensory issues upon "abuse" by CHRISTINA. The Court made it clear, however, that the need for a change of custody and an evidentiary hearing, if any, would not be determined until the Court reviewed the custody evaluation. Specifically, the Court clarified its reasoning as follows:

11:22:00

COURT: February 25th will be set here. We'll get a report by the end of February be here March 9th to see if that would...well it's gonna give you an evidentiary hearing so we can maintain that date for you, ***if we need to go there. Based on that report, I may decide there's no basis to change it and leave it as is. But we'll*** *give* ***you a return date so we can save that date for*** *you. Depending* ***on that*** *report* ***that we'll review in early March.*** *All* priorities will remain in full force and effect based on the last stipulation and order agreed by the parties on July 23rd [sic].

11:25:46

COURT: May 6th will be the evidentiary hearing date we'll preserve that for you depending on what happens. In the afternoon, May 6th, 2 o'clock and we'll be back here on March 9th with the report.

CHRISTINA: And that will be specifically on what topic you said?

COURT: As far as the trial? ***Will be if we need to do a change*** *of* ***custody based on the assessment. We need to do it for*** *any* ***change of*** *custody* ***or modification of custody. See if there*** is ***even any basis*** to ***do that which we'll have a better idea on March 9th.*** We're just preserving that date so it doesn't keep slipping on you.

CHRISTINA: March 6th or March 9th?
COURT: March 9th is the return date. May 6th is the evidentiary hearing date, if necessary.

The February 3, 2010 Hearing

On February 3, 2010, at the hearing on CHRISTINA'S motion to stay discovery, the Court further clarified its intentions with regard to Dr. Paglini's report. Judge Sullivan reiterated the fact that he was not going to change custody unless Dr. Paglini's report provided a reason to do so. In short, the Court stated the following;

10:28:43-10:28:52

COURT: I wanted to see what was going on with MIA. That's the only reason I did that outsourced evaluation is to see what's going on with MIA to see if she was having emotional problems on that OCD to see that this child was not

being subjected to any type of...issues by either parent.

10:43:46-10:44:11

COURT: _as far as I'm not sure if **it's a change** of **conditions or if it's a** Truax **pattern since there was** joint physical custody **that's the whole argument was it** joint physical custody **because** the parties **called it that but it** wasn't **the** time **and** Rivero **said it not** what **you call it, it's the time,** And you got the additional nine hours and I never recalculated the time. That was the issue so the burden is...that's not what I'm concerned about, **that's not what I'm worried about an evidentiary hearing...all I care about is MIA. What's going on with MIA?**

10:45:44-10:46:05

COURT There's time on that if we get that far. But the fact is, I think those records are pertinent. As far as your interrogatories, ma'am, and deposition, I don't think you should be subject to interrogatories and depositions at this time. There's time on that depending on what Dr. Paglini comes out, but I am going to allow discovery for the very limited purpose of Dr. Kalodner records who treated her and Dr. Mishalow and the school records.

10:46:38

COURT: As far as depositions and interrogatories, I am going to hold off on that and see what happens with Dr. Paglini.

The April 13, 2010 Hearing

On April 13, 2010, the Court went into great detail about the reasons behind its ordering of Dr. Paglini's evaluation. **It stated very clearly that it would only consider changing custody if it were determined that either party was abusing or neglecting the children as "abuse" and "neglect" is defined under NRS 432B.** The Court also admitted that CHRISTINA'S timeshare indicated that she enjoyed primary physical custody of the children:

13:08:14

COURT: All I knew was that MIA was experiencing problems according to everybody's representations. Even the pediatrician said that the child needed some recommended some psychological help issues.

13:08:34

COURT: That's the only reason I stepped into it was to get those issues. ***It was not*** *my* ***inclination to come in and make a modification change...I don't*** *change* ***custody flippant.*** *I* don't sit there and say oh now there's change, my only concern is what's really happening and I had two issues. I had Mom basically saying one thing I had dad on another issue my **only concern was** whether **this child was suffering abuse** whether **emotional or otherwise what was the cause of this child's problems**

this child was experiencing.

13:10:30

COURT: The issue I had with Dr. Paglini is what's going on with this child. I was not gonna go back in to change custody unless it came in there that this child is being abused and that there's something going on with this child. That was not my intent. *I figured you guys made a bargain, now you gotta stick by that bargain. It became a legal issue of whether it qualified the 40%.* Again Rivero answered some questions made some other ones ambiguous in the sense that you don't count hours you do who's got parental responsibility. So someone could have the child for less than half the day and still get credit for the full day depending on whose taking responsibilities.

13:11:08

COURT: I don't care if it's joint legal. I don't care if it's primary physical custody to be quite honest all I worried about is MIA. What's going on to see that this child gets treatment that both parties say this child needs to find out what's going on with this child.

13:12:10

COURT: I was going to deny everything at the very beginning. I probably would have been better off saying it's your guys' child you guys figure it out if you can't figure it out come in with more stuff but with the representations that this child needed counseling, I stepped in it. It is what it is.

13:14:01

COURT: If I saw abuse, if I saw neglect, then that would be grounds for this court to make a change if I saw abuse and neglect that I thought that was happening. But it wasn't that what happened before basically, seeing what's going on in this child's life that is best for this child and do I need to even look at it. I wasn't even inclined to do an evidentiary hearing until I see what Dr. Paglini said.

COURT: That's why I gave Dr. Paglini first and the trial, again, just to keep that date. So we may not even need to go there because I did not want to step into that.

13:40:41

COURT: The issue of shared physical custody /joint physical is a legal issue under Rivero. How much time you have, those things, we can get there. That's not a lot of issues on that. You dispute how much time they got; they challenge how much time he has if it's 40%. I don't care. You guys said joint physical custody and *while Rivero says it's not what you say* you guys aren't right off the street. You bright people, you knew that. You knew the ramifications of that. It doesn't change it. *It doesn't mean that it's not primary physical custody.* You guys have a little more sophistication. You know what's going on. Imagine that was negotiated. There was a reason you did it for whatever reason.

13:15:47

COURT My inclination right now, to be honest with both of you, was not to

change custody. **It was to see if it's a joint physical custody or not and see** what services **MIA needed or not because you both can't get on the same page.**

13:16:53

COURT **Let's see what Dr. Paglini has to say and if he** gives **me some issues and I think there's abuse and neglect then I** will **address that straight** up **with** everybody. I was the abuse and neglect judge for eight **years so** I look **at abuse** and **neglect under** NRS 432B, **so** I **don't take** it lightly. So look at that to see if its warranting to a level of something going on with this child that this child's emotional well-being is being affected. If it is, then we'll address that issue to both parties.

13:17:47

COURT: **To be quite honest, unless I see** something **that's** going **to hurt this or concern this court as to the safety or** well being of **the child. So I'm kinda telling both you** guys **it's really** going **to be a legal issue only as to** Rivero, **as far as I see** it, **unless** something jumps **out where Paglini is** saying **this child can't** sleep **at** night, that this **child is stressed out to the** point **that emotional duress** is impacting **it and it's because of mom or it's because of dad. Then I'm** going **to** look **at it very seriously and see if there's something I need to do** for **this child.**

13:19:14

COURT: I show that for May 6 now but we would not have it as an evidentiary trial. We'll get you a new one if we need one... May 6 is simply Dr. Paglni's report. And then we'll give you another trial date if we need one.

[Emphasis added.]

The May 6, 2010 Hearing

At the return hearing on Dr. Paglini's report on May 6, 2010, the Court noted that Dr. Paglini had not found abuse or neglect of MIA by CHRISTINA. In fact, he ordered MITCH to pay 100% of the cost associated with Dr. Paglini's report, an amount that exceeded $15,000.00, due to the fact that the reasons MITCH requested the evaluation, "abuse" by CHRISTINA, were completely disproven. MITCH'S actions were frowned upon by Dr. Paglini. Dr. Paglini did not agree that changing the timeshare would be best for the children. Specifically, Dr. Paglini concluded that "This evaluator's opinion is [sic] the fact that Mr.Stipp did not notify his ex-wife of psychological treatment with Dr. Kalodner and psychological assessment at the Achievement Therapy Center, is a significant error and a cause of concern."Dr. Paglini's Report at page 58. His reservation of increased time for MITCH was based upon, "Mr.Stipp's deceit pertaining to MIA being involved in therapy with Dr. Kalodner, and the subsequent evaluation of his daughter."

Dr. Paglini even cautioned the Court against allowing any future relocation by Mitch by saying that "[p]oor coparenting on Mr. Mitchell Stipp's part pertaining to MIA's therapy and evaluation. Mr. Mitchell Stipp deceived his ex-wife regarding treatment of his daughter, and also deceived both therapists. He also obtained an evaluation of MIA without his wife's consent. Hence, this could potentially indicate that if he had the children in a different state, he may not coparent effectively." Id. at 66.

Dr. Paglini's concerns about MITCH'S deceit and deception are well-founded. MITCH told CHRISTINA that Dr. Paglini's report is "ridiculous." ETHAN's sexual abuse may be the direct result of MITCH'S coparenting failures (CHRISTINA asked MITCH to keep Cody away from the children and MITCH refused), and he again excluded CHRISTINA from medical treatment of MIA, refuses to cooperate in allowing CHRISTINA to get MIA the healthcare and other services she needs.

At the May 6, 2010 hearing, the Court explained, in detail, how it calculates shared days under *Rivero* pursuant to which parent has the majority of "parental responsibility" with the child for the day. Under the Court's own test, the parties currently alternate 5/2, 4/3 weeks. CHRISTINA was alternating 5-day and 4-day weeks with the children. Initially, the Court was under the impression that MITCH had stipulated to add every Friday at 9 a.m. to his weekends under the SAO, which fact is not correct about the timeshare. The Court initially stated that it was going to hold the parties to their recently reached SAO bargain. The Court reiterated it would not change the timeshare unless Dr. Paglini found abuse or neglect.

MITCH'S timeshare falls short of 40%. There exists zero legal or factual basis for an evidentiary hearing or to modify the current timeshare in MITCH's favor. Judge Sullivan decided to take the entire matter under advisement in order to determine the parties' actual timeshare and consider Supplements filed by the parties, but not yet reviewed by the Court as of May 6, 2010.

Shortly after the hearing, at MIA's occupational therapy session (MITCH frequently uses the parties joint appearance at such sessions to harass CHRISTINA regarding their ongoing litigation), MITCH indicated his surprise to CHRISTINA regarding the Court's expressed inclinations. MITCH remarked that his counsel told him that he "knew what the Court was going

to rule, before the hearing." MITCH also told CHRISTINA that Dr. Paglini's report was "ridiculous," an unreasonable and "sour grapes" sentiment echoed by his counsel to the Court on May 6, 2010. MITCH told CHRISTINA, at the very least, what the Court should have done was "order an evidentiary hearing." MITCH prefaced his comments with the threat to CHRISTINA that he was not going to stop litigating against her unless he got a 50% timeshare. MITCH wants to ensure CHRISTINA spends hundreds of thousands of dollars on endless, needless litigation, a fact is substantiated by MITCH's newfound refusal to agree to a Parenting Coordinator to help facilitate cooperation and resolution, instead of constant litigation.

D. SEXUAL ABUSE ISSUES REVEAL THE NEED FOR IMMEDIATE COURT INTERVENTION

On May 14, 2010, ETHAN made alarming statements to CHRISTINA in which he admitted that his 9-year-old cousin, Cody, had "touched his pee pee" and that he had "touched [Cody's] pee pee" while he was in MITCH's care. CHRISTINA immediately notified MITCH of her concerns via E-mail. She asked MITCH to supervise their children and restrict Cody's presence from their children. See Email from CHRISTINA to MITCH, dated May 14, 2010, attached hereto as Exhibit "5". MITCH dismissed CHRISTINA'S concerns, falsely accused her of inappropriate conduct with the children, and refused to restrict Cody's presence from the children. See Email from MITCH to CHRISTINA, dated May 14, 2010, attached hereto as Exhibit "5".

On or about June 23-24, 2010, ETHAN informed CHRISTINA and her sister, Elena Calderon Petsas, during a trip to Walt Disney World, Florida, that Cody had "put his 'dick' in ETHAN's mouth and had touched his 'butt.'" Ethan called the acts playing the "nasty game" with Cody. Immediately upon CHRISTINA and the children's return home from Florida, on July 1, 2010, CHRISTINA and Elena, who is a school teacher licensed in Nevada and Oregon, reported the suspected abuse to Child Protective Services ("CPS"). CPS contacted MITCH with the information with CHRISTINA's knowledge and willing consent. CHRISTINA simply could not risk MITCH dismissing ETHAN's abuse once again, and chose to immediately contact CPS. MITCH retaliated against CHRISTINA's responsible conduct by reporting CHRISTINA to the LVMPD for allegedly violating his privacy two-and-one-half years ago when she discovered his infidelity with

Amy, now his current wife. The CPS case worker, Olukemi Daramola, was assigned to the case. Thereafter, Ms. Daramola contacted both parties and investigated the issues. Detective Dan Tomaino with LVMPD'S Special Victims Unit was also involved in the investigation.

As a preliminary finding, CPS and the LVMPD believed the allegations of abuse to be "credible" following the forensic interview of ETHAN. Less than two-weeks or so into the investigation, MITCH reintroduced Cody to ETHAN, although CPS asked MITCH to ensure Cody and ETHAN were not in contact. Thereafter, ETHAN disclosed to CHRISTINA that Cody was his "boyfriend" stating that it was because he "kisses him all the time." ETHAN began to act out the abuse by kissing Cody and other children in similar fashion. CHRISTINA reported the new disclosures and manifestations of further inappropriate sexual issues to MITCH and CPS. CPS recommends counseling for ETHAN to address these continuing disclosures and actions. CPS referred both parties to several outsourced services to assist the family, but MITCH refuses to get any help for the family. MITCH hangs his hat on "semantics". MITCH told CHRISTINA that CPS did not "officially" or "formally" require counseling to him for ETHAN, so he would not agree to such help. CPS informed MITCH that the fact that ETHAN may have been abused was not ruled out by CPS, as it unreasonably has been ruled out by MITCH. Ms. Daramola told both parties that ETHAN's disclosure of "abuse" should not be "thrown out the window." *See* Email, attached hereto as Exhibit "6".

The Court should impose a stay away order restricting MITCH from having the children around Cody at any time or at least until further investigation. CPS counsels that ETHAN may be able to better articulate the abuse in a therapeutic setting, something that MITCH, the perpetual attorney/litigant, seeks to prevent from happening even if it would be in ETHAN's best interest. Given MITCH'S previous reaction to CHRISTINA'S pleas for help to prevent ETHAN from being sexually abused, CPS's recommendations, and ETHAN's continuing disclosures and manifestations indicating abuse, CHRISTINA respectfully requests that the Court immediately protect the parties' children by issuing the stay away order and also ordering ETHAN and MIA to receive counseling.

. . .

E. **MIA'S TROUBLING BEHAVIOR ALSO REQUIRES IMMEDIATE ATTENTION**

In November 2009, occupational therapist Tania Stegen-Hanson diagnosed MIA with a sensory processing disorder due to her severe reactions to clothing and seatbelts. She recommended twelve weeks (once-per-week) occupational therapy sessions at her home/office. MIA was now into her eighth month of treatment as of August 2010. Although MITCH, CHRISTINA and Dr. Stegen-Hanson agreed to terminate MIA's treatment by the end of June 2010 given the progress she made with respect to wearing clothing and seat belts, CHRISTINA has discovered that MITCH has continued treatment of MIA with Dr. Stegen-Hanson without her involvement and against her express revocation of consent to further "treat" MIA. Her objections to the treatment were fully detailed in the letters from CHRISTINA to Dr. Stegen-Hanson.

CHRISTINA expressed her concerns to MITCH and Dr. Stegen-Hanson about new behavior MIA has been displaying since May 2010. MIA licks/spits into her hands and wipes it over her body in a routine fashion, repetitively, sometimes all day long, every day. When CHRISTINA first contacted Dr. Stegen-Hanson about the behavior in May 2010, Dr. Stegen-Hanson did not say that it was sensory-related and treatable by occupational therapy. Instead, she responded by saying that she needed to seek psychological advice on the matter. *See* Email, attached as Exhibit "2". Dr. Stegen-Hanson specifically suggested that the parties use Dr. Melissa Kalodner, the psychologist MITCH had secretly taken MIA to over a period of five months, who had referred MIA to Dr. Stegen-Hanson in the first place, and who was no longer treating MIA. Although CHRISTINA asked Dr. Stegen-Hanson to consider alternative psychologists under the circumstances, Dr. Stegen-Hanson refused. Such refusal violates NAC 640A.220(7) (requiring occupational therapists to provide a list of referrals containing more than one name if the patient representative does not wish to return to the referring health care provider).

CHRISTINA appealed to MITCH, directly, to obtain a second opinion from a child neuropsychologist referred by MIA's pediatrician, and, later, from a neurologist. Yet, MITCH refuses to consent to such a necessary assessment. MITCH stated that he would only permit Dr. Stegen-Hanson to treat MIA, notwithstanding Dr. Stegen-Hanson's previous admission that she

needed psychological advice on the matter. In addition, a second opinion is necessary due to conflicting opinions within Dr. Stegen-Hanson's own practice about MIA's behavior. Dr. Susan Holden, an occupational therapist who works for Dr. Stegen-Hanson and with whom the vast majority of MIA's therapy sessions have taken place, contradicted MITCH'S representations as to the behavior being treatable by occupational therapy. Dr. Holden told CHRISTINA and MITCH on June 9, 2010, that she believed MIA's new behavior was simply "negative attention seeking."

Dr. Holden's conclusion which contradicted MITCH's diagnosis prompted outrage from MITCH. MITCH began an argument with CHRISTINA, and he also threatened to "put a bullet" in the head of CHRISTINA'S brother who had accompanied CHRISTINA and the children to MIA's June 9, 2010 appointment . *See* TPO Application and Supplement of Anthony Calderon ("Anthony"), attached as Exhibit "7". In fact, MITCH was so aggressive at the appointment that CHRISTINA's brother filed a police report and, later, applied for a restraining order upon advice of the LVMPD.

On July 26, 2010, at the hearing on Anthony's application for a protective order, MITCH was again "wound up" and aggressive. MITCH told Anthony's attorney she was "ridiculous" before the hearing. Judge Abbatangelo had to ask MITCH to sit down until he "learned how to listen." MITCH could not answer Judge Abbatangelo adequately because he was so angry at Anthony and his counsel, an anger and hostility that is mirrored in his interactions with CHRISTINA. The hearing transcript is on order, and will be provided to the Court upon its receipt. MITCH is now restrained by Bench Order from further harassing Anthony.

MIA's behavior needs to be fully and properly assessed. MIA needs appropriate treatment, regardless of the previous diagnosis for previous issues. Unilateral treatment by MITCH with a non-medical occupational therapist who will not fully and promptly divulge critical health information regarding MIA's treatment and diagnosis to CHRISTINA is harmful to MIA. MIA has been primarily cared for by CHRISTINA since her birth. CHRISTINA was being excluded from MIA's occupational therapy. CHRISTINA repeatedly asked Dr. Stegen-Hanson to cease and desist her harmful treatment of MIA. MITCH had not volunteered any information about MIA's treatment with Dr. Stegen-Hanson to CHRISTINA since July 23, 2010, even though MITCH

continued to take MIA to Dr. Stegen-Hanson. MITCH's practice of cutting CHRISTINA out of medical treatment for MIA was noted by Dr. Paglini to be problematic. Dr. Paglini did not recommend increasing any custodial time in MITCH's favor. *See* Dr. Paglini's Report, dated April 29, 2010. MITCH appears to welcome situations in which he can exclude CHRISTINA from MIA's care. Finally, MITCH determined, on August 29, 2010, that MIA has been "cured", another false and troubling assessment.

On July 2, 2010, CHRISTINA initiated the evaluation process by the Clark County School District's Child Find program for MIA in order to have MIA's eligibility for special education services determined. MITCH would not consent to Child Find or anyone else evaluating MIA except Dr. Stegen-Hanson. Yet, again, Dr. Stegen-Hanson, herself, said in May 2010 she needed the advice of a psychologist to assess MIA's new behaviors. MITCH unreasonably based his refusal to allow a second opinion on the fact that, as he claimed, CHRISTINA's counsel had not informed the Court of the need for such opinion and CHRISTINA had not specified the need for such help to Dr. Paglini even though the behaviors only manifested themselves after the May 6, 2010 hearing and after Dr. Paglini had already concluded his evaluation. See E-mails dated May 24 through 25, 2010, attached as Exhibit "3".

A mere week after initiation of the evaluation (during which CPS was interviewing ETHAN and investigating the report of abuse), CHRISTINA informed MITCH of the evaluation process and encouraged him to contact Child Find directly to add his input. CHRISTINA invited MITCH to attend the August 4, 2010 Child Find appointment to discuss the results of the evaluation and MIA's eligibility for services, if any, as well. CHRISTINA also gave MITCH's information to Child Find and encouraged them to contact MITCH directly, which they agreed to do. Child Find is not a treatment provider. They agency did not "treat" MIA as MITCH falsely claims. Eligibility for assessment through the program ends upon a child's commencement of kindergarten, hence the need to have MIA assessed immediately given MIA's impending entry into kindergarten this Fall due to alarming, new behaviors from MIA. MITCH has not learned any lessons by his past refusal to coparent to meet their children's needs. The Court should now allow CHRISTINA to solely make healthcare and educational decisions for the children.

MITCH initially agreed to CHRISTINA and Child Find to attend the August 4, 2010 meeting. Then, MITCH immediately reversed position, canceled the meeting, and even threatened legal action against Child Find for allegedly "violating" the Court's April 13, 2010 Order. MITCH even violated the Seal in this case, providing copies of pleadings to Child Find. MITCH persists in refusing to allow Child Find to release any results or recommendations for MIA to CHRISTINA. Informally, Child Find's director told CHRISTINA that MIA needed a mental health evaluation for the behaviors she observed, and stated that she would be "shocked" if the spitting/licking and germ phobia were diagnosed to be "sensory processing disorder." Child Find personnel informed CHRISTINA that such a diagnosis is controversial.

The Court indicated on May 6, 2010, that it would be appointing a parenting coordinator for the parties pursuant to the recommendation of Dr. John Paglini. However, the order is still pending, as the matter remains under advisement with Judge Sullivan. MITCH's counsel repeatedly asked for a parenting coordinator from the Court on May 6, 2010. When first presented with CHRISTINA's requests for a second opinion as to MIA's new behaviors, MITCH refused to allow for a second opinion, but told CHRISTINA that he would be willing to discuss the matter with a Parenting Coordinator. See E-mails dated May 24 through 25, 2010, attached as Exhibit "3". Yet, MITCH and his counsel now refuse to execute a Stipulation and Order to let the Parent Coordinator sessions start. On July 12, 2010, CHRISTINA contacted MITCH and requested that they stipulate to the appointment of Dr. Gary Lenkeit, who was recommended by Dr. Paglini, to be their parenting coordinator to assist them to immediately address the urgent needs of their children and resolve their disputes without Court intervention. MITCH reversed his position again, and now refuses to agree to a parenting coordinator. MITCH's position on any issue raised by CHRISTINA is usually the exact opposite, even when logic, reason, and the safety of their children dictate that MITCH should agree and coparent. MITCH's refusal to coparent and, now, refusal to agree to the appointment of a parenting coordinator that could certainly help lower the conflict between the parties and bring about resolution is indicative of MITCH's true desire, as he has repeatedly expressed, to indefinitely continue litigation against CHRISTINA. This Court has plenty of legal authority and new facts warranting the current appointment of a Parenting

Coordinator.

IV.

CHRISTINA'S MOTION HAS FACTUAL AND LEGAL MERIT

A. THE COURT IS AUTHORIZED TO ENSURE THE CONTINUING SAFETY AND WELL-BEING OF THE PARTIES' CHILDREN IN LIGHT OF MITCH'S CONTINUING REFUSAL TO DO SO

NRS 125.510(a) provides, in pertinent part,

> . . .[i]n determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS: (a) during the pendency of the action, at the final hearing at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest.

An order limiting and/or restraining MITCH'S visitation by requiring him to restrict the children's contact with Cody is in the best interest of the parties' children. CHRISTINA respectfully submits that such a safety order is not only authorized under Nevada law, but it is mandated to protect the parties' children from any further harm while in MITCH'S care. CHRISTINA also seeks orders permitting counseling for ETHAN, additional healthcare opinions for MIA, terminating forever MIA's treatment with Dr. Stegen-Hanson, releasing the results and recommendations of Nevada Child Find to CHRISTINA, permitting MIA to avail herself of services recommended by Child Find, and appointing Dr. Gary Lenkeit as the parties' parenting coordinator. Such Orders are in the best interest of the children and should forthwith issue from the Court.

B. MITCH'S CONTINUING REFUSAL TO COPARENT AND COOPERATE ON JOINT LEGAL CUSTODY ISSUES IS SANCTIONABLE AS CONTEMPT

NRS 1.210(3) states that "[t]he Court has the power to compel obedience to its orders" and NRS 22.010(3) provides that "[t]he refusal to abide by a lawful order issued by the Court is contempt." NRS 22.100 provides, "Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged; and if it be found that he is guilty of the contempt, a fine may be imposed on him but not exceeding $500.00, or he may be imprisoned not exceeding 25 days except as

provided in NRS 22.110."

With respect to the parties' obligations as joint legal custodians of their children, their Marital Settlement Agreement, which is incorporated into their Decree of Divorce, provides, in pertinent part, that, "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 **jointly selected** 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.

MSA, at Section 1, 1.1(a).

MITCH has done the opposite of cooperate with CHRISTINA with respect to almost each and every issue involving the children to date. Most recently, as described in detail above, MITCH has manipulated Dr. Stegen-Hanson into believing that the Court's April 13, 2010 Order abrogates his requirement to "jointly agree" upon other, necessary medical treatment providers for MIA. MITCH has persisted in obtaining exclusive treatment of MIA with Dr. Stegen-Hanson even when

it is clear that Dr. Stegen-Hanson is not a trained mental health provider and is incompetent to treat MIA's behaviors that manifested since the last Court hearing in May 2010. By her own admission, Dr. Stegen-Hanson told the parties that she required psychological consultation regarding MIA's new behaviors, but has somehow chosen to proceed without such necessary advice at MITCH's direction. MITCH neither apprises CHRISTINA, in advance, of such appointments, nor has he bothered to continually inform CHRISTINA, after-the-fact, of the "progress" or recommendations, if any, of MIA's treatment since July 23, 2010. When confronted with CHRISTINA's pleas to coparent, MITCH directs CHRISTINA, time and again, to take the matter to Family Court for resolution through litigation. CHRISTINA and her present counsel asked MITCH and his counsel to stipulate to the Parenting Coordinator his own attorney asked for reach resolution on the several critical and outstanding matters affecting the health of the parties' children. MITCH has responded by calling CHRISTINA a "liar". MITCH has complained that he "doesn't like the way [she] handles matters," and refuses to agree on any dispute resolution other than her forfeiting 50% custody or forcing CHRISTINA to litigate the matters.

MITCH is vindictive and not focused on what the children need. MITCH recently initiated a bogus, criminal investigation against CHRISTINA as direct retaliation for her valid CPS report. MITCH uses the children to "punish" CHRISTINA in furtherance of his poor opinion of her. To illustrate his cruelty, in Section I, 1.1 (d) of the MSA, the Parties agreed that they "shall encourage liberal and unhampered communication between the Children and the other Party. Each Party shall be entitled to reasonable telephonic communication with the Children, at reasonable times of the day and night." When, during the entire first year following the parties' divorce, MITCH refused to provide any telephonic communication between the Children and CHRISTINA when they were in his care, CHRISTINA requested and MITCH stipulated to provide one daily phone call in return for CHRISTINA's agreement to augment his timeshare. *See* Stipulation & Order, dated August 7, 2009.

Since August 2009, however, MITCH has been in wilful breach of the SAO. MITCH has not facilitated a single telephone call from the Children to CHRISTINA when they are in his care. This was also true during the entire two-week period of time MITCH had the children during his

vacation time in July 2010 (the entire first week of the vacation period the children were home with MITCH in Las Vegas and CHRISTINA e-mailed MITCH requesting one simple telephone call, to no avail). Such conduct by MITCH is also contemptuous.

MITCH has little, if any, desire to coparent with CHRISTINA in an attempt to meet the special needs of their children. MITCH's primary goal in life, as he articulated in his rage-filled rant at MIA's occupational therapy session on June 9, 2010, is to "keep litigating until all of CHRISTINA's divorce settlement proceeds are gone." MITCH is making good on his threat as CHRISTINA's settlement proceeds are dwindling rapidly in response to MITCH's two-and-one-half years of constant, post-divorce litigation and purposeful, unnecessary disagreements. The best interests of the children is a foreign concept to Mitch, whose "narcism" and "selfishness" was well-documented by Dr. Paglini. Dr. Paglini also noted that MITCH's "deceit and deception" with regard to his former attempts to exclude CHRISTINA from his secret, psychological treatment of MIA were problematic. MITCH's actions in wilfully refusing to coparent, his refusal to allow proper treatment for the children and refusal to allow phone contact are acts constituting contempt of Court. MITCH should be ordered to appear and show cause. MITCH should be sanctioned for this contempt to the fullest extent of the law.

C. **THERE WAS NO "ABUSE" OR "NEGLECT" BY CHRISTINA, AND CHRISTINA'S PRIMARY PHYSICAL CUSTODIAN STATUS HAS REMAINED UNCHANGED SINCE THE FILING OF MITCH'S FRIVOLOUS MOTION**

To the extent that the pending decision regarding custody of the parties' children is entertained by the Court at the hearing on the present motion, CHRISTINA reiterates the following, further information for judicial consideration. Dr. Paglini's report completely exonerated CHRISTINA of MITCH'S false allegations of abuse. Moreover, the report contained detailed analysis regarding the health and well-being of MIA, who was reported to be a happy and loving child, who was not alienated against either parent or stepmother. CHRISTINA's status as the children's primary custodian must remain unchanged given the lack of any basis for a change. Judge Sullivan simply took the matter under advisement to carefully assess the Supplements filed and carefully calculate the timeshare set forth in the parties' Stipulation and Order.

. . .

This Court must acknowledge that MITCH lacks the 40% timeshare required to be considered a "joint physical custodian" as defined under recently modified Nevada law. Changing MITCH's timeshare from less than 40% to 40% or greater would result in a change of custody, which would necessitate the need for an evidentiary hearing prior to such a change. Judge Sullivan said a trial would not take place if no abuse was found by Dr. Paglini. In fact, MITCH and his counsel acknowledged such privately and in oral argument by MITCH's counsel to the Court. MITCH's counsel repeatedly requested an evidentiary hearing. The Court correctly declined to order an evidentiary hearing on May 6, 2010, because it recognized that there was no basis for one in the absence of MITCH evidencing that the allegations in his Motion were true.

It is incumbent upon the Court **to first define the custodial arrangement between the parties**, as such definition will determine the appropriate standard for modifying physical custody,' Rivero v. Rivero, 216 P.3d 213 (Nev., 2009) *(Rivero*[1]*.* *. The Court may modify joint physical custody if it is in the best interest of the child. Id. at n.4 (citing NRS 125.510(2); Potter v. Potter, 121 Nev. 613, 618, 119 P.3d 1246, 1249 (2005)). However, "to modify a primary physical custody arrangement, the court must find that it is in the best interest of the child and that there has been a substantial change as cited in Ellis v. Carlucci, 123.Nev., No. 18, 161, P.3d. 239, (2007).

The "changed circumstances" prong of the test for determining whether a change of custody is warranted in the primary custody setting, i.e., "that there is a substantial change in circumstances affecting the welfare of the child,' serves "the important purpose of guaranteeing stability unless circumstances have changed to such an extent that a modification is appropriate." Ellis at 243. Moreover, notes the Ellis decision, the "changed circumstances" prong should not be taken lightly and "any change in circumstances must generally have occurred since the last custody determination because the 'changed circumstances' prong "is based on the principle of res judicata" and "prevents 'persons dissatisfied with custody decrees," like MITCH here, from filing "immediate, repetitive, serial motions until the right circumstances or the right judge allows

---

[1] The definition is also critical when dealing with relocation and/or child support awards. Rivero II, at 1 1 -12. circumstances affecting the welfare of the child." *Id.* (emphasis in original) (citing Ellis v. Carlucci, 123.Nev., No. 18, 161, P.3d. 239, (2007)

them to achieve a different result, based on essentially the same facts." *Id.* (citing Castle v. Simmons, *120 Nev.* 98, 103-04, 86 P.3d 1042 (2004) (quoting Mosley v. Figliuzzi, 930 P.2d 1110, 1114, 113 Nev. 51, 58 (1997).

Neither Dr. Paglini nor the Court has determined that changing custody was in the children's best interests nor that there was any change of circumstance affecting the welfare of the children such that modification of custody was in order. There was no abuse or neglect by CHRISTINA revealed after a $15,000.00 custody evaluation ensued. MITCH's allegations were false and frivolous, and CHRISTINA is entitled to fees, costs and sanctions.

In assessing the true nature of the parties' arrangement, the Court must 1) first, ***disregard the parties' definition of their own custody arrangement,*** and 2) second, determine the parties' actual custody arrangement by applying the terms and definitions provided under Nevada law. Rivero at 219. Under Rivero, the definition of joint physical custody under Nevada law now "requires that each party have physical custody of the child at least 40 percent of the time." *Id.* at 224. There exists no factual or legal basis for the Court to increase MITCH'S time to 40% in order to "match" the title MITCH wanted attributed to their timeshare in 2008 upon their divorce and thereafter. If the Court took such reversible action, it would, in effect, be modifying a primary physical custodianship to a joint physical one without meeting the Ellis two-pronged test as well as without notice, evidence, a hearing, or an opportunity to rebut evidence, directly contrary to CHRISTINA'S right to due process under Nevada law. In Wiese v. Granata, 887 P.2d 744, 110 Nev. 1410 (Nev., 1994), the High Court reversed the district court's modification of joint custody to primary custody in favor of mother without notice to father, evidence, or an evidentiary hearing.

As demonstrated clearly in the transcript citations noted above, Judge Sullivan stated he would NOT modify the custody timeshare in this case in the absence of abuse or neglect as defined by NRS 432B. If the Court had found that abuse or neglect was committed by either party and was reported in Dr. Paglini's report, which it did not, then the Court clearly stated that it would have ordered an evidentiary hearing on the matter. The Court never indicated to the parties that at the date set for the return hearing on Dr. Paglini's report it was going to summarily

change custody in any manner. If Judge Sullivan was concerned, a temporary change of custody would have already been ordered four months ago pending a full custody trial.

Regardless of the parties' status as attorney/litigants, Rivero is controlling to the extent that Courts must disregard the "title" that even attorneys/litigants attribute to their timeshares. The Court is required to determine what is the actual timeshare they are practicing by applying the definition found in Rivero. MITCH should not be permitted to turn his "sow's ear" of 33% time into a "silk purse" of 40% time simply because the parties labeled their timeshare "joint physical custody". Nevada recognizes *de facto* primary physical custodianships pursuant to Khaldy v. Khaldy, 11 Nev. 374, 892 P.2d 584, Nev., March 30, (1995), the parties' timeshare was reflective of CHRISTINA's primary custodial status. The parties child support and relocation provisions reflected CHRISTINA's primary custodial status. State of Mont. Dept. of Social and Rehabilitation Services ex rel. Riley v. Lopez, 925 P.2d 880, 112 Nev. 1213 (Nev., 1996) ("...assignment of a sow's ear to the county cannot transform it into a silk purse. If the evidence shows that [the assignor custodial parent] is estopped from receiving or has waived her rights to child support accrued prior to her assignment to the county, that waiver or estoppel would also bar the county"). Such a decision which MITCH is requesting of the Court would turn Rivero on its head, and result in the illogical result of holding an attorney/litigant to a "title," rather than to the "timeshare" to which he or she agreed.

Rivero stands for the proposition that the actual timeshare that the parties practice is more important than what the parties call the timeshare "on paper". MITCH well understood the timeshare he would be exercising was less than "joint" when he voluntarily agreed to the custodial timeshare in 2008. MITCH agreed to receive only six days per month upon divorce. Again in 2009, MITCH agreed to receive ten days per month. MITCH just wanted to feel like a hero, wearing a false badge of "Joint Custodian." MITCH should be held to his agreement given the lack of any reason to modify custody.

Indeed, MITCH's wilful refusal to coparent and properly serve the children's health and educational needs warrants a reduction of his timeshare. MITCH's motion did not even survive the Rooney standard, to wit, that there is no adequate cause to hold an evidentiary hearing. *See*

Rooney v. Rooney, 853 P.2d 123, 124, 109 Nev. 540 (1993) ("a district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates 'adequate cause' for holding a hearing"). If MITCH had previously agreed to 40% time under the SAO, he never would have moved the Court for an unnecessary custody evaluation, made the parties unnecessarily undergo five months of scrutiny by Dr. Paglini, and endure ten months of continuing litigation in the first place. CHRISTINA and the parties' children deserve clear, helpful orders and an end to this litigation. CHRISTINA seeks immediate help from a Parenting Coordinator with the urgent needs of their children in the wake of MITCH'S continuing, adamant refusal to coparent and cooperate.

C. **CHRISTINA IS ENTITLED TO ATTORNEY'S FEES, COSTS AND SANCTIONS**

NRS 18.010 states as follows:

> **Award of attorney's fees.**
>
> 1. The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.
>
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When he has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party.
>
> 3. In awarding attorney's fees the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
>
> 4. No oral application or written motion for attorney's fees alters the effect of a final judgment entered in the action or the time permitted for an appeal therefrom.
>
> 5. Subsections 2, 3 and 4 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

EDCR 7.60 states as follows:

> **Sanctions.**

> (a) If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, at the time set for the hearing of any matter, at a pre-trial conference, or on the date of trial, the court may order any one or more of the following:
>
> (1) Payment by the delinquent attorney or party of costs, in such amount as the court may fix, to the clerk or to the adverse party.
> (2) Payment by the delinquent attorney or party of the reasonable expenses, including attorney's fees, to any aggrieved party.
> (3) Dismissal of the complaint, cross-claim, counter-claim or motion or the striking of the answer and entry of judgment by default, or the granting of the motion.
> (4) Any other action it deems appropriate, including, without limitation, imposition of fines.
> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
> (2) Fails to prepare for a presentation.
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
> (4) Fails or refuses to comply with these rules.
> (5) Fails or refuses to comply with any order of a judge of the court.

The Nevada Supreme Court has held that an award of post-divorce fees and costs is discretionary with the District Court. The Supreme Court relied upon NRS 18.050 as well as Ormachea v. Ormachea, 67 Nev. 273, 301, 271 P.2d 355 (1950), in reaching this holding. These actions were deemed to be equitable actions, and subject to discretionary assessment of costs.

Further, in Halbrook v. Halbrook, 971 P.2d 1262, 114 Nev. 1455 (1998), the Supreme Court stated that this Court has jurisdiction to award post-divorce attorney's fees to a party. Clearly, in this matter, CHRISTINA is entitled to fees and costs pursuant to the above-referenced authority as well as the attorney fee provision contained in the parties' Decree of Divorce and the facts of this case. Pursuant to the Decree, NRS 18.010 and the above-referenced authority, CHRISTINA should be awarded all of the fees and costs incurred with respect to this Motion and no less than $10,000.00.

Sanctions must also issue against MITCH. At the June 9, 2010, confrontation at MIA's occupational therapy appointment wherein MITCH threatened to kill CHRISTINA's brother by "putting a bullet in his head," MITCH screamed that he would not stop litigating against CHRISTINA until all of her money was gone. MITCH resentfully declared to CHRISTINA's brother that it was "his money" that paid for the house CHRISTINA lived in and the car she drove. The E-mails from MITCH to CHRISTINA are replete with taunts to take the matters up with the Family Court instead of genuine coparenting, communication and assistance of a Parenting Coordinator. Name-calling, threats and gamesmanship pervade MITCH's communications over and above the clear and urgent needs of the parties' children.

Taking unreasonable positions for the sake of continuing litigation is certainly illustrative of MITCH's successful desire to "**[s]o multipl[y] the proceedings in a case as to increase costs unreasonably and vexatiously.**" EDCR 7.60(b)(3). Moreover, wilfully refusing to coparent violates the legal custodial requirements set out above that are contained in the parties' Decree. MITCH's repeated violations of those provisions constitutes "[f]ail[ure] or refus[al] to comply with any order of a judge of the court." EDCR 7.60(b)(5). Unless there are real consequences for his behavior, MITCH will likely never abide by the Decree.

. . .

. . .

. . .

V.

CONCLUSION

Based on the foregoing, CHRISTINA respectfully requests that her Motion be granted in its entirety. CHRISTINA is entitled to an attorney's fees and cost award as set forth above.

DATED this 2nd day of September 2010.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

AFFIDAVIT OF CHRISTINA CALDERON STIPP

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

CHRISTINA CALDERON STIPP, being first duly sworn on oath, states as follows:

1. That I am the Plaintiff in the above-entitled action. That I read the foregoing motion, including the points and authorities and any exhibits attached hereto and the same are true and correct to the best of my knowledge and belief.

2. For these reasons, I am requesting that the Court grant me the relief sought in my motion.

Christina Calderon Stipp
CHRISTINA CALDERON STIPP

Subscribed and sworn to before me this
27th day of August 2010.

MATTHEW J. LAYTON
Notary Public State of Nevada
No. 09-9449-1
My appt. exp. Feb. 6, 2013

Notary Public, in and for the State of Nevada
County of Clark

DOCKETING STATEMENT TAB #5

Electronically Filed
09/23/2010 04:22:42 PM

CLERK OF THE COURT

OPP
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
Email: rsmith@radfordsmith.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION** **ORAL ARGUMENT REQUESTED** **YES** ☒ **NO** ☐

OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR WILLFULL VIOLATIONS OF COURT ORDERS; TO RESOLVE PARENT/CHILD ISSUES; FOR THE APPOINTMENT OF A PARENTING COORDINATOR; FOR OTHER RELATED RELIEF AND FOR ATTORNEY FEES, COSTS AND SANCTIONS

AND

DEFENDANT'S COUNTERMOTION FOR SOLE DECISION-MAKING AUTHORITY REGARDING HEALTHCARE DECISIONS AFFECTING THE CHILDREN, FOR ATTORNEY'S FEES, COSTS AND SANCTIONS AGAINST PLAINTIFF AND PATRICIA VACCARINO, ESQ.

DATE OF HEARING: October 6, 2010
TIME OF HEARING: 2:00 p.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, hereby submits Mitchell's opposition and countermotion captioned above to this Court.

This opposition and countermotion is based upon the following points and authorities, the affidavit of Mitchell Stipp attached hereto as Exhibit 1 and the other affidavits and exhibits attached hereto as Exhibits 2 through 32, all pleadings and papers on file in this action, including Dr. John Paglini's Child Custody Report dated April 29, 2010, and any oral argument made or evidence introduced at the time of the hearing on October 6, 2010.

DATED this 23RD day of September, 2010.

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

I.

INTRODUCTION

The parties, Mitchell Stipp ("Mitchell") and Christina Calderon-Stipp ("Christina"), have two children, Mia, born October 19, 2004 (age 5), and Ethan, born March 24, 2007 (age 3). The parties were divorced by Decree on March 6, 2008, under which they were granted joint physical custody of the children. That status has never been modified by the previous court, Judge Sullivan, and indeed at the hearing of May 6, 2010, Judge Sullivan stated his intention to continue the parties as joint physical custodians.

Christina, a licensed attorney, was bitterly angered by the divorce and Mitchell's subsequent marriage to his current wife, Amy Stipp ("Amy") in 2008. Since that time, Christina has done everything in her power to harass Mitchell and Amy, and make parenting and the timeshare with the children difficult. The record of this case is replete with Christina's angry outbursts against Mitchell.

Even after the Court's May 6, 2010 hearing she has continued to demonstrate her anger and hostility. For example, at Mia's occupational therapy appointment on June 9, 2010, Christina called Amy a ***"bitch"*** and a **"whore"** and screamed that ***"God is punishing you because you can't have children of your own."*** Christina became aware of the difficulties Mitchell and Amy were experiencing at the time conceiving a baby (a fact she learned through a violation of Mitchell's medical privacy).

The parties have just finished addressing several motions, including motions relating to the children, in Judge Sullivan's court. Indeed, Judge Sullivan still has the custody issues under submission. Nevertheless, Christina has now seen fit to have her new counsel, Patricia Vaccarino, Esq., needlessly complicate the matters to be considered by this Court by filing a ninety (90) page motion that contains a mountain of false or misleading statements that are irrelevant to any issue raised in the pleading. Christina's motion is not brought in good faith, but instead, brought as an attempt to influence Judge Sullivan's decision. Indeed, Ms. Vaccarino has demonstrated that intent by demanding, in direct violation of Eighth Judicial Court Rule ("EDCR") 7.74,[1] that Judge Sullivan's law clerk review her new pleading. It is that action that explains why the bloated pleading is filled with unsupported allegations that have nothing to do with the requests in the motion.

Specifically, Christina filed her new motion on September 2, 2010, but Ms. Vaccarino waited until September 9, 2010 to serve it on Mitchell's counsel. Before serving it, Ms. Vaccarino's office contacted Judge Sullivan's law clerk via email on September 8, 2010 purportedly to provide Judge Sullivan a "courtesy copy" of Christina's filed motion. Judge Sullivan's law clerk informed Ms. Vaccarino's office via email on the same day that Judge Sullivan would issue his written decision from the May 6, 2010 hearing ***prior to*** the October 6, 2010 hearing scheduled in this matter, but Judge Sullivan ***would not*** consider any of the arguments contained in Christina's motion. Despite this refusal,

[1] EDCR 7.74 reads: "No attorney may argue to or attempt to influence a law clerk on the merits of a contested matter pending before the judge or judicial officer to whom that law clerk is assigned."

on September 14, 2010, Ms. Vaccarino personally wrote a letter to Judge Sullivan's law clerk asking again for Judge Sullivan to consider Christina's motion before issuing his decision. Ms. Vaccarino even referenced specific pages of Christina's motion that she wanted Judge Sullivan to review before making his decision. Ms. Vaccarino has notified this Court and Mitchell's counsel of these communications through a submission of requests filed with this Court.

Because certain matters continue to be under submission to Judge Sullivan, they are not ripe for any review by this Court. Christina's present motion can be reduced to three simple questions: (1) whether Christina should be permitted over the objections of Mitchell to submit Mia to additional evaluations and treatment from healthcare providers when Mia only possesses a sensory processing disorder for which she successfully received occupational therapy; (2) whether Christina should be permitted over the objections of Mitchell to obtain counseling for Ethan for sexual abuse that never occurred; and (3) whether this Court should appoint a parenting coordinator. The issues of Mia's medical care and the appointment of a parenting coordinator are expressly before Judge Sullivan, and were the subject of the recommendations of Dr. John Paglini in his report that was issued on April 29, 2010. Christina has asked that this Court usurp the decision making power of its sister court, and enter an order that second guesses the eight (8) months of proceedings before Judge Sullivan. This court, consistent with the applicable law set forth below, should refuse to do so. Indeed, the only matter in Christina's motion properly before it is whether Christina should be permitted to obtain counseling for Ethan. **Mitchell directs this Court's attention to pages 15-17 and 24-30 together with Exhibits 1, 12, 14, 15, 16, 25, 26, and 27 of his opposition and countermotion which specifically discusses this matter.**

Further, Christina's motion is crammed full of factual errors, intentional misrepresentations and personal attacks against Mitchell. These tactics are consistent with Christina's *modus operandi* in this

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL DAVID STIPP,	)	
	)	
Appellant,	)	**SUPREME COURT CASE NO. 57876**
	)	DISTRICT COURT CASE NO. D-08-389203-Z
vs.	)	
	)	DEPT. NO. M
CHRISTINA CALDERSON STIPP,	)	
	)	
Respondent.	)	

DOCKETING STATEMENT
CIVIL APPEALS

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 bane, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must he 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. Id. 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 obligations 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
   Department: M
   County: CLARK
   Judge: WILLIAM POTTER
   District Court Docket No.: D-08-389203-Z

2. **Attorney(s) filing this docket statement:**
   Attorney, RADFORD J. SMITH, ESQ., 002791; Telephone, (702)990-6448
   Firm, RADFORD J. SMITH, CHARTERED
   Address, 64 NORTH PECOS ROAD, SUITE #700, HENDERSON, NEVADA 89074

   Client(s), MITCHELL STIPP

   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(s), PATRICIA VACCARINO, ESQ. 009207; Telephone, (702) 258-8007
   Firm, VACCARINO LAW OFFICES
   Address, 8861 W. SAHARA AVE., STE. 210, LAS VEGAS, NV 89117

   Client(s), CHRISTINA CALDERON STIPP

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

□Judgment after bench trial	□ Grant/Denial of NRCP 60(b) relief
□ Judgment after jury verdict	□ Grant/Denial of injunction
□ Summary judgment	□ Grant/Denial of declaratory relief
□ Default judgment	□ Review of agency determination
□ Dismissal	□ Divorce decree:
□ Lack of jurisdiction	□Original □ Modification
□ Failure to state a claim	
□ Failure to prosecute	

X Other disposition (specify): Post-Divorce Order

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

X Child custody	□Termination of parental rights
□ Venue	□ Grant/denial of injunction or TRO
□ Adoption	□ Juvenile matters

N/A

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:

Christina Calderon Stipp v. Mitchell David Stipp, Nevada Supreme Court Case Number 57327.

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;

Motion by Christina Calderon-Stipp (Respondent) filed on March 10, 2011 before Eighth Judicial Court, State of Nevada, Department M as part of Christina Calderon Stipp v. Mitchell David Stipp, Case No. D-08-389203-Z. The motion concerns the same matters before the district court at the hearings on October 6, 2010 and December 1, 2010. Matters concerning the appointment of a parenting coordinator and the healthcare of the children are now before the Nevada Supreme Court in Case Numbers 57327 and 57876. The hearing in the district court is scheduled for April 12, 2011 at 1:30 pm.

8. **Nature of this 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 (i) respondent's motion for an order to show cause why appellant should not be held in contempt for willful violations of court orders, to resolve parent/child issues concerning the mental healthcare of the parties' children, for the appointment of a parenting coordinator, and for other related relief and for attorney's fees, costs and sanctions; and (ii) appellant's countermotion for sole decision-making authority regarding healthcare decisions affecting the parties' children, for attorney's fees, costs and sanctions. The district court held a hearing on the foregoing matters on October 6, 2010. The district court appointed a parenting coordinator, denied counseling for the parties son, Ethan Stipp, and deferred ruling on all other matters.

This post-divorce action also concerns: (i) respondent's motion for a new trial to amend findings and/or for rescission, reconsideration, modification and/or stay of another district court's order (Eighth Judicial District, Department O, Judge Frank Sullivan) entered on or about October 13, 2010, request for access to tax records of Aquila Investments, LLC, and order to compel appellant to cooperate in

commencing sessions with the parenting coordinator, and for attorney's fees and costs; and (ii) appellant's countermotion for attorney's fees, costs and sanctions. The district court held a hearing on the foregoing matters on December 1, 2010. At this hearing, the district court re-confirmed the appointment of a parenting coordinator, denied respondent's motions pending before it from the hearing on October 6, 2010 and denied respondent's motions scheduled to be heard at the hearing on December 1, 2010; however, the district court did not rule on appellant's countermotions from the hearing on October 6, 2010 and the countermotions scheduled to be heard at the hearing on December 1, 2010.

At the hearing on December 1, 2010, the district court closed the case and ordered the parties to refrain from filing any motions for at least 90 days.

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

May the district court appoint a parenting coordinator to resolve child custody matters (e.g., healthcare decisions affecting the parties' children) or elect not to decide such matters and others before it, close the case, and require the parties to file new motions to resolve any matters that remain unresolved by the parenting coordinator or otherwise but only after the passage of 90 days?

May the district court modify orders previously entered by another district court (which retained exclusive jurisdiction over the matters decided)?

May the district court enter an order that was prepared by respondent and submitted to the court for entry without the approval of appellant when such order fails accurately to reflect the rulings of the court at the hearing as set forth in the clerk's minutes and/or transcript of the hearing?

May the district court enter an order that was prepared by respondent and submitted to the court for entry without the approval of appellant when such order misrepresents the previous orders of the court regarding the discovery of appellant's tax records?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently 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:

Christina Calderon Stipp v. Mitchell David Stipp, Nevada Supreme Court Case Number 57327. Christina Calderon Stipp (Appellant/Cross-Respondent) in the foregoing case identified in her Docketing Statement filed on January 11, 2011 (Document 11-01086; Questions 24 and 25(a)) that the district court failed to adjudicate all rights and claims of the parties because the district court failed to appoint a parenting coordinator.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or 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 _____

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
X A substantial issue of first-impression
X 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:

This appeal concerns in part the authority of the district court to appoint a parenting coordinator to resolve child custody matters before it rather than decide them.

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 himself/herself from participation in this appeal. If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from:** January 25, 2011. **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.**

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

N/A

16. **Date written notice of entry of judgment or order served** January 26, 2011. **Attach a copy, including proof of service, for each order or judgment appealed from.**

Was service by: □ Delivery X Mail

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

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

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.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion___N/A____. **Attach a copy.**

(c) Date written notice of entry of order resolving motion served_N/A__. **Attach a copy, including proof of service.**

(i)Was service by delivery_____or by mail_____(specify).

18. **Date notice of appeal was filed:** February 18, 2011.

(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:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP4(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_____

Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

The judgment is a final judgment. At the hearing on December 1, 2010, the district court closed the case and ordered the parties to refrain from filing any motions for at least 90 days.

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 IN VOLVED IN THE ACTION. Attach separate sheets as necessary.

21. List all parties involved in the action in the district court:

CHRISTINA CALDERON STIPP

MITCHELL DAVID STIPP

(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.

See response set forth in Question 8 above. Note that the district court denied respondent's motion for an order to show cause and to compel appellant to cooperate in commencing sessions with parenting coordinator; however, these orders were omitted from the order prepared by respondent's counsel and entered by the district court but are clearly set forth in the minutes and written transcript from the hearing on December 1, 2010.

Appellant has attached as part of this docketing statement the Motions and Countermotions leading to the court's order arising from the hearings of October 6, 2010 and December 1, 2010, which order is attached hereto as Tab "1." Because of the volume of the exhibits attached to the Motions and Countermotions, only their text has been provided with this docketing statement. Appellant believes that the entirety of the text must be provided due to the complexity of the issues raised therein, but that the exhibits will be available to the Supreme Court as part of its review of the Appellant's Appendix.

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

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: N/A

a. Specify the claims remaining pending below:

The district court elected not to decided appellant's countermotions pending from the hearings on October 6, 2010 and December 1, 2010 when it closed the case

b. Specify the parties remaining below:
Christina Calderon Stipp
Mitchell David Stipp

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

Yes_____ No XX

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 XX

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)):

The order is independently appealable under NRAP 3A(b)(1).

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.

MITCHELL DAVID STIPP
Name of Appellant

RADFORD J. SMITH, ESQ.
Name of counsel of record

March 24, 2001
Date

Signature of counsel of record

Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24th day of March 2011, I served a copy of this Docketing Statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address:

PATRICIA VACCARINO, ESQ.
8861 W. Sahara Avenue, #210
Las Vegas, Nevada 89117

DATED this 24th day of March 2011

RADFORD J. SMITH, ESQ.

Electronically Filed
02/18/2011 12:02:33 PM

CLERK OF THE COURT

NOAS
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
Email: rsmith@radfordsmith.com

MITCHELL D. STIPP, ESQ.
Nevada Bar No. 007531
7 Morning Sky Lane
Las Vegas, Nevada 89135
T: (702) 378-1907
F: (702) 483-6283
Email: Mitchell.Stipp@yahoo.com

Attorneys for Defendant

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

CHRISTINA CALDERON STIPP, Plaintiff, v. MITCHELL DAVID STIPP, Defendant.	CASE NO.: D-08-389203-Z DEPT.: M **FAMILY DIVISION**

NOTICE OF APPEAL

Notice is hereby given that MITCHELL DAVID STIPP, defendant above named, hereby appeals to the Supreme Court of Nevada from the order entered in this action on the 25th day of January 2011, a copy of which is attached hereto as Exhibit A.

DATED this 18 of February, 2011.

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

NOTICE OF APPEAL
EXHIBIT A

NEOJ
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.m.

NOTICE OF ENTRY OF ORDER

TO: MITCHELL DAVID STIPP, Defendant; and,

TO: RADFORD J. SMITH, ESQ., Attorney for Defendant.

Please take notice that an Order was entered in the above-reference matter on the 25th day of January 2011, a copy of which is attached hereto.

Dated this 26th day of January 2011.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, NV 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the VACCARINO LAW OFFICE and that on the 26 day of January 2011, I deposited in the U.S. Mail, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the following document: **NOTICE OF ENTRY OF ORDER** and **ORDER** addressed to:

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

Matt Layton, an employee of the
VACCARINO LAW OFFICE

Electronically Filed
01/25/2011 12:49:13 PM

CLERK OF THE COURT

ORDR
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff
CHRISTINA CALDERON-STIPP

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON-STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.m.

ORDER

THIS matter having come before the Court upon Plaintiff's, CHRISTINA CALDERON STIPP ("CHRISTINA"); Motion for A New Trial, to Amend Findings and/or Stay of Order Filed on October 13, 2010, and allowing Plaintiff Immediate Access to Defendant's Tax Records As Previously Ordered, and to Compel Defendant to Cooperate in Commencing Sessions with the Parenting Coordinatory and For Attorney's Fees and Costs and upon Defendant's MITCHELL DAVID STIPP ("MITCH") Opposition and Countermotion fo an Award of Attorney's Fees and Costs and Sanctions; CHRISTINA appearing in person and through her attorney of record PATRICIA L. VACCARINO, ESQ. of the VACCARINO LAW OFFICE; MITCH appearing in person and through his attorney of record, RADFORD J. SMITH, ESQ.; upon the Court's inquiry, both counsel having confirmed that they have reviewed Judge Sullivan's orders from the May 6, 2010 and the June 22, 2010 hearings; the Court being fully apprized in the premise and good cause appearing;

F:\CLIENTS\Stipp, Christina\Orders\120110.wpd

RECEIVED
JAN 13 2011
DEPT. M

Now therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court reiterates its Order that the Parenting Coordinator, Dr. Gary Lenkeit, has not been appointed as a Master. To clarify the Court's Order from the October 6, 2010 hearing, if Dr. Lenkeit requests any pleadings and/or reports from parties and counsel, his requests will be granted. Both counsel shall provide Dr. Lenkeit with any requested information and documentation. The Court reserves jurisdiction to address any objections any party may make to any documentation or information requested by Dr. Lenkeit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's requests for an award of attorney's fees from the October 6, 2010 hearing and today's hearing are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the previous attorney's fees award in the amount of $4,590.00, granted to MITCH by Judge Sullivan is reduced to judgment. This judgment is collectable by all legal means if not paid in full within sixty (60) days of Judge Sullivan's order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's request for healthcare for the minor child, MIA, is deferred. The parties are directed to attempt to resolve this issue with the assistance of Dr. Lenkeit, the Parenting Coordinator. The Court will not entertain another Motion on this issue until 90 days of the date of this hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the "no contact" request for CODY is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for an order for counseling for the minor child ETHAN is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for a new trial is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request to amend findings is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for rescission, reconsideration, modification and/or stay of order filed October 13, 2010 is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's request to access MITCH's tax records as previously ordered is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as for the tax records of the Aquila, a business entity which is no longer in business, it appears that Judge Sullivan intended that tax returns from the years 2007 and 2008 for this business to be reviewed by a tax expert.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA, her chosen expert and Ms. Vaccarino shall provide the expert's name to MITCH and Mr. Smith. The selected expert, Ms. Vaccarino and CHRISTINA must also execute a Confidentiality Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA and her counsel are granted the authorization to receive the ordered documents from Aquila through discovery for only the years 2007 and 2008.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's counsel can file an Ex Parte Order to amend the order from the October 6, 2010 hearing if they believe there are portions of the order that need correction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the Court finds the next Motion filed by either party is not legally or factually warranted, the Court will sanction a party and award attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the return date previously scheduled for January 11, 2011 for status check on outsourced evaluation is vacated.

. . .

. . .

. . .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED if problems arise, counsel are directed to file a Motion.

Based upon the foregoing,

IT IS SO ORDERED this _____ day of JAN 24 2011 2010.

DISTRICT COURT JUDGE

Respectfully submitted by:

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff,
CHRISTINA CALDERON SMITH

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 "Notice of Appeal" on this 18TH day of February, 2011, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117

An employee of Radford J. Smith, Chartered

RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
64 N. Pecos Rd., Suite 700
Henderson, Nevada 89074
T: (702) 990-6448
F: (702) 990-6456
Email: rsmith@radfordsmith.com

MITCHELL D. STIPP, ESQ.
Nevada Bar No. 007531
7 Morning Sky Lane
Las Vegas, Nevada 89135
T: (702) 378-1907
F: (702) 483-6283
Email: Mitchell.Stipp@yahoo.com

Attorneys for Appellant Mitchell Stipp

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL DAVID STIPP,

Appellant,

v.

CHRISTINA CALDERON STIPP

Respondent,

SUPREME COURT CASE NO.: 57876

DISTRICT COURT CASE NO.: D389203

DEPT. NO.: M

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

Notice is hereby given that Mitchell David Stipp, Appellant, is not requesting the preparation of additional transcripts for this appeal. Transcript Video Services previously prepared and delivered the

. . .

transcript for the proceedings in the District Court held on December 1, 2010.

DATED this 25th day of March, 2011.

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 Appellant Mitchell 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 "Certificate That No Transcript Is Being Requested" on this 21st day of March, 2011, 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:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117

An employee of Radford J. Smith, Chartered

DOCKETING STATEMENT TAB #1

Electronically Filed
01/25/2011 12:49:13 PM

CLERK OF THE COURT

ORDR
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff
CHRISTINA CALDERON-STIPP

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON-STIPP,

Plaintiff,

vs.

MITCHELL DAVID STIPP,

Defendant.

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

DATE OF HEARING: December 1, 2010
TIME OF HEARING: 2:00 p.m.

ORDER

THIS matter having come before the Court upon Plaintiff's, CHRISTINA CALDERON STIPP ("CHRISTINA"); Motion for A New Trial, to Amend Findings and/or Stay of Order Filed on October 13, 2010, and allowing Plaintiff Immediate Access to Defendant's Tax Records As Previously Ordered, and to Compel Defendant to Cooperate in Commencing Sessions with the Parenting Coordinatory and For Attorney's Fees and Costs and upon Defendant's MITCHELL DAVID STIPP ("MITCH") Opposition and Countermotion fo an Award of Attorney's Fees and Costs and Sanctions; CHRISTINA appearing in person and through her attorney of record PATRICIA L. VACCARINO, ESQ. of the VACCARINO LAW OFFICE; MITCH appearing in person and through his attorney of record, RADFORD J. SMITH, ESQ.; upon the Court's inquiry, both counsel having confirmed that they have reviewed Judge Sullivan's orders from the May 6, 2010 and the June 22, 2010 hearings; the Court being fully apprized in the premise and good cause appearing;

DISPOSITIONS
- Converted from Bankruptcy
- Involuntary Dismissal
- Voluntary Dismissal
- Decision w/o Trial/Hearing
- Decision w/ Hearing
- Decision w/ Trial/Evidentiary Hearing
- Guardianship, Death, Age of Majority, Restoration of Competency
- Order Terminating Guardianship/ Final Acct.

F:\CLIENTS\Stipp\Ord120110.wpd

RECEIVED
JAN 13 2011
DEPT. M

Now therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court reiterates its Order that the Parenting Coordinator, Dr. Gary Lenkeit, has not been appointed as a Master. To clarify the Court's Order from the October 6, 2010 hearing, if Dr. Lenkeit requests any pleadings and/or reports from parties and counsel, his requests will be granted. Both counsel shall provide Dr. Lenkeit with any requested information and documentation. The Court reserves jurisdiction to address any objections any party may make to any documentation or information requested by Dr. Lenkeit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's requests for an award of attorney's fees from the October 6, 2010 hearing and today's hearing are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the previous attorney's fees award in the amount of $4,590.00, granted to MITCH by Judge Sullivan is reduced to judgment. This judgment is collectable by all legal means if not paid in full within sixty (60) days of Judge Sullivan's order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's request for healthcare for the minor child, MIA, is deferred. The parties are directed to attempt to resolve this issue with the assistance of Dr. Lenkeit, the Parenting Coordinator. The Court will not entertain another Motion on this issue until 90 days of the date of this hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the "no contact" request for CODY is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for an order for counseling for the minor child ETHAN is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for a new trial is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request to amend findings is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for rescission, reconsideration, modification and/or stay of order filed October 13, 2010 is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's request to access MITCH's tax records as previously ordered is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as for the tax records of the Aquila, a business entity which is no longer in business, it appears that Judge Sullivan intended that tax returns from the years 2007 and 2008 for this business to be reviewed by a tax expert.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA, her chosen expert and Ms. Vaccarino shall provide the expert's name to MITCH and Mr. Smith. The selected expert, Ms. Vaccarino and CHRISTINA must also execute a Confidentiality Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA and her counsel are granted the authorization to receive the ordered documents from Aquila through discovery for only the years 2007 and 2008.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CHRISTINA's counsel can file an Ex Parte Order to amend the order from the October 6, 2010 hearing if they believe there are portions of the order that need correction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the Court finds the next Motion filed by either party is not legally or factually warranted, the Court will sanction a party and award attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the return date previously scheduled for January 11, 2011 for status check on outsourced evaluation is vacated.

. . .

. . .

. . .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED if problems arise, counsel are directed to file a Motion.

Based upon the foregoing,

IT IS SO ORDERED this _____ day of JAN 21 2011 2010.

DISTRICT COURT JUDGE

Respectfully submitted by:

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff,
CHRISTINA CALDERON SMITH

DOCKETING STATEMENT TAB #2

NEOJ
PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

CHRISTINA CALDERON STIPP, Plaintiff, vs. MITCHELL DAVID STIPP, Defendant.	CASE NO. : D-08-389203-Z DEPT. NO.: M DATE OF HEARING: December 1, 2010 TIME OF HEARING: 2:00 p.m.

NOTICE OF ENTRY OF ORDER

TO: MITCHELL DAVID STIPP, Defendant; and,

TO: RADFORD J. SMITH, ESQ., Attorney for Defendant.

Please take notice that an Order was entered in the above-reference matter on the 25th day of January 2011, a copy of which is attached hereto.

Dated this 26th day of January 2011.

VACCARINO LAW OFFICE

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, NV 89117
Attorney for Plaintiff,
CHRISTINA CALDERON STIPP

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the VACCARINO LAW OFFICE and that on the 26 day of January 2011, I deposited in the U.S. Mail, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the following document: **NOTICE OF ENTRY OF ORDER** and **ORDER** addressed to:

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

Matt Layton, an employee of the
VACCARINO LAW OFFICE

DOCKETING STATEMENT TAB #3

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** December 01, 2010

D-08-389203-Z In the Matter of the Joint Petition for Divorce of:
Mitchell David Stipp and Christina Calderon Stipp, Petitioners.

December 01, 2010 2:00 PM **All Pending Motions**

HEARD BY: Potter, William **COURTROOM:** RJC Courtroom 10B

COURT CLERK: Sherri Estes

PARTIES:

Christina Stipp, Petitioner, present	Patricia Vaccarino, Attorney, present
Ethan Stipp, Subject Minor, not present	
Mia Stipp, Subject Minor, not present	
Mitchell Stipp, Petitioner, present	Radford Smith, Attorney, present

JOURNAL ENTRIES

- - CHRISTINA STIPP'S MOTION FOR NEW TRIAL TO AMEND FINDINGS AND/OR FOR RESCISSION, RECONSIDERATION, MODIFICATION AND/OR STAY OF ORDER FILED ON October 13, 2010, AND ALLOWING PLAINTIFF IMMEDIATE ACCESS TO DEFENDANT'S TAX RECORDS AS PREVIOUSLY ORDERED, AND TO COMPEL DEFENDANT TO COOPERATE IN COMMENCING SESSIONS WITH THE PARENTING COORDINATOR AND FOR ATTORNEY'S FEES AND COSTS...MITCHELL STIPP'S OPPOSITION AND COUNTERMOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS AND SANCTIONS

Mr. Smith requested a CLOSED HEARING, COURT SO ORDERED. Also present with Mr. Smith at Defendant's table is his assistant, Amy Wolf. Upon the Court's inquiry, both counsels have reviewed

the orders from the May 6th and the June 22nd hearings.

Arguments. COURT ORDERED the following:

As for Dr. Lenkeit, the Court specifically stated he was not being appointed as a Master, therefore, if Dr. Lenkeit requests any pleading and/or reports his request will be GRANTED and both counsel shall provide him with same.

Ms. Vaccarino's request for Attorney's fees from the October 5, 2010 and any other additional fees for this hearing today (12/1/10) are hereby DENIED. The previously awarded amount of $4,590.00 by Judge Sullivan is hereby REDUCED TO JUDGMENT collectable by any means if not paid in full within 60 days per of Judge Sullivan's order.

Regarding a doctor for Mia, the parties will attempt to work out this issue with Dr. Lenkeit; the Court will not entertain another motion regarding this issue in no less than 90 days.

The no contact request with Cody is DENIED. The request for counseling for Ethan is DENIED. The request for an Order to Show Cause is DENIED. The request for a new trial is DENIED. The request to amend findings is DENIED. The request for rescission, reconsideration, modification and/or stay of order filed October 13, 2010 is DENIED. The request to compel Defendant to cooperate in commencing sessions with the Parenting Coordinator is DENIED.

Allowing Plaintiff immediate access to Defendant s tax records as previously ordered is GRANTED. As for the tax records for Aquila (no longer in business) it appears that Judge Sullivan did intend that the taxes for 2007 and 2008 were to be reviewed by a tax expert. Ms. Vaccarino is permitted to hire her expert and that expert will be given access but must sign a non confidentiality disclosure agreement; Plaintiff and Ms. Vaccarino must also sign same disclosure. This Court for the record has not authority to compel Aquila to do anything. Ms. Vaccarino has authorization to obtain the documents from Aquila through discovery; Ms. Vaccarino is entitled to the documents STRICTLY for 2007 and 2008.

Ms. Vaccarino can file an Ex Parte order to amend the last order if she feels there are portions of the order that needs to be corrected.

If the Court does not feel the next motion is of legal authority, the Court will sanction and award attorney's fees.

The return date set for 1/11/11 regarding the outsourced parenting coordinator is VACATED. If there are problems that arise, the Court directed counsel to file a motion.

Ms. Vaccarino shall prepare the order, Mr. Smith to review and sign off.

CASE CLOSED

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: January 11, 2011 2:30 PM Return Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per Judge
RJC Courtroom 10B
Potter, William
Estes, Sherri

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** December 01, 2010

D-08-389203-Z In the Matter of the Joint Petition for Divorce of:
Mitchell David Stipp and Christina Calderon Stipp, Petitioners.

December 01, 2010 2:00 PM **Motion for New Trial**

HEARD BY: Potter, William **COURTROOM:** RJC Courtroom 10B

COURT CLERK: Sherri Estes

PARTIES:

Christina Stipp, Petitioner, not present	Patricia Vaccarino, Attorney, not present
Ethan Stipp, Subject Minor, not present	
Mia Stipp, Subject Minor, not present	
Mitchell Stipp, Petitioner, not present	Radford Smith, Attorney, not present

JOURNAL ENTRIES

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: January 11, 2011 2:30 PM Return Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per Judge
RJC Courtroom 10B
Potter, William
Estes, Sherri

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** December 01, 2010

D-08-389203-Z In the Matter of the Joint Petition for Divorce of:
Mitchell David Stipp and Christina Calderon Stipp, Petitioners.

December 01, 2010 2:00 PM **Opposition & Countermotion**

HEARD BY: Potter, William **COURTROOM:** RJC Courtroom 10B

COURT CLERK: Sherri Estes

PARTIES:

Christina Stipp, Petitioner, not present	Patricia Vaccarino, Attorney, not present
Ethan Stipp, Subject Minor, not present	
Mia Stipp, Subject Minor, not present	
Mitchell Stipp, Petitioner, not present	Radford Smith, Attorney, not present

JOURNAL ENTRIES

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: January 11, 2011 2:30 PM Return Hearing
Reason: Canceled as the result of a hearing cancel. Hearing Canceled Reason: Vacated - per Judge
RJC Courtroom 10B
Potter, William
Estes, Sherri

DOCKETING STATEMENT TAB #4