

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

KIRK ROSS HARRISON

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

No. 66072

DOCKETING STATEMENT
CIVIL APPEALS

FILED

JAN 13 2015

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

GENERAL INFORMATION

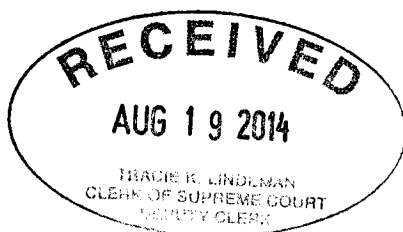
All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties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

WARNING

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

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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 Q
County Clark Judge Bryce Duckworth
District Ct. Case No. D443611

2. Attorney filing this docketing statement:

Attorney Robert L. Eisenberg, Esq. Telephone 775-786-6868
Firm Lemons, Grundy & Eisenberg
Address 6005 Plumas St., Third Floor
Reno NV 89509

Client(s) Kirk Ross Harrison

If this is a joint statement by 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 respondents(s):

Attorney Radford Smith, Esq. Telephone 702-990-6448
Firm Radford J. Smith, Chartered
Address 64 North Pecos Road, Suite 700
Las Vegas, Nevada 89074

Client(s) Vivian Marie Lee Harrison

Attorney Gary Silverman Telephone 775-322-3223
Firm Silverman, Decaria & Kattelman, Chtd.
Address 6140 Plumas Street, Suite 200
Reno, Nevada 89519

Client(s) Vivian Marie Lee Harrison

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input checked="" type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input checked="" type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>order on motion</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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:

Kirk Ross Harrison v. Vivian Marie Lee Harrison (Custody)
Supreme Court No. 66157

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:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a divorce action involving custody of minor children and financial issues. A Decree of Divorce was entered by the District Court on October 31, 2013, followed by post-decree motions. This appeal docket does not involve custody.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in its rulings dealing with attorneys' fee awards.

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

None.

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

☐ Yes

☐ No

If not, explain:

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

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Public policy reflected in the "American Rule" limits attorneys' fee awards. The award in this case was not supported by any statute or rule, giving rise to a public policy issue, particularly regarding family law cases.

13. Trial. If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? N/A

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Feb 10, 2014

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

October 31, 2013: Decree of Divorce

November 14, 2013: Motion to Alter, Amend, Correct and Clarify Judgment

February 10, 2014: Order appealed in this docket

June 13, 2014: Order on tolling motion (notice of entry served June 16, 2014)

July 7, 2014: Notice of Appeal

Winston Products v. DeBoer, 122 Nev. 517, 526, 134 P.3d 726, 732 (2006)(tolling motion tolls time to appeal from special order after final judgment)

16. Date written notice of entry of judgment or order was served 10/31/13 (divorce)

Was service by:

☒ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing Nov 14, 2013

☒ NRCP 59 Date of filing Nov 14, 2013

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion 6/13/14

(c) Date written notice of entry of order resolving tolling motion was served 6/16/14

Was service by:

☐ Delivery

☒ Mail

18. Date notice of appeal filed Jul 7, 2014

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Notice of Cross Appeal was filed by Respondent, Vivian Marie Lee Harrison, on 7/21/14.

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

NRAP 4(a)(1) and (4)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

A post-judgment order awarding attorneys' fees is an appealable special order after final judgment. *Winston Products v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff, Kirk Ross Harrison
Defendant, Vivian Marie Lee Harrison

(b) 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 date of formal disposition of each claim.

There were multiple claims and issues in the divorce, but this appeal docket only deals with the post-decree claim for attorneys' fees.

23. 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 or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

(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

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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.

Kirk Ross Harrison

Name of appellant

Robert L. Eisenberg, Esq.

Name of counsel of record

Aug 18, 2014

Date

Robert L. Eisenberg
Signature of counsel of record

Nevada, Washoe County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 18th day of August, 2014, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See attached sheet

Dated this 18th day of August, 2014

Margie Nuri
Signature

CERTIFICATE OF SERVICE

(Attachment)

Radford J. Smith, Esq.
Radford J. Smith, Chtd.
64 North Pecos Road, Suite 700
Las Vegas, NV 89074

Gary Silverman, Esq.
Silverman, Decaria & Kattelman, Chtd.
6140 Plumas Street, Suite 200
Reno, NV 89519

Lansford Levitt, Esq.
4747 Caughlin Parkway, Suite 6
Reno, NV 89519

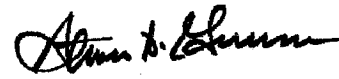
Edward L. Kainen, Esq.
Kainen Law Group
10091 Park Run Drive, Suite 110
Las Vegas, NV 89145-8868

Harrison v. Harrison; No. 66072

List of attachments for Docketing Statement question 26

1. Complaint filed March 18, 2011
2. Answer/Counterclaim filed November 23, 2011
3. Decree of Divorce filed October 31, 2013
4. Motion (to alter or amend; no exhibits) filed November 14, 2013
5. Findings, Conclusions and Orders (no exhibits) filed February 10, 2014
6. Notice of Entry of February 10, 2014 order
7. Order from hearing (on motion to alter or amend) filed June 13, 2014
8. Notice of Entry of June 13, 2014 order, served June 16, 2014

Docketing Statement Attachment No. 1


CLERK OF THE COURT

COMD

Howard Ecker, Esq.
Nevada Bar No. 1207
Andrew L. Kynaston, Esq.
Nevada Bar No. 8147
ECKER & KAINEN, CHARTERED
300 S. Fourth St., Suite 901
Las Vegas, Nevada 89101
(702) 384-1700
(702) 384-8150 (Fax)
adminstration@eckerkainen.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,
Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,
Defendant.

CASE NO. D-11-443611-D
DEPT NO. I

Date of Hearing: N/A
Time of Hearing: N/A

COMPLAINT FOR DIVORCE

COMES NOW, Plaintiff, KIRK ROSS HARRISON, and states his
cause of action against Defendant, VIVIAN MARIE LEE HARRISON, as
follows:

I.

That Plaintiff is a resident of the State of Nevada, and
for a period of more than six weeks before commencement of this
action has resided and been physically present and domiciled
therein, and during all of said period of time, Plaintiff has had,
and still has, the intent to make said State of Nevada, his home,
residence and domicile for an indefinite period of time.

.....

.....

II.

That Plaintiff and Defendant were intermarried in the City of Las Vegas, State of Nevada, on or about November 5, 1982, and are husband and wife.

III.

That there are two (2) minor children the issue of said marriage, to wit: EMMA BROOKE HARRISON, born June 26, 1999; and RYLEE MARIE HARRISON, born January 24, 2003. The parties also have three (3) adult children.

IV.

That the parties are fit and proper persons to have the joint legal custody of said minor children.

V.

That Plaintiff be awarded the primary physical care, custody and control of the minor children herein.

VI.

That the Court should retain jurisdiction to make an appropriate award of child support.

VII.

That such child support shall be payable through wage assignment pursuant to NRS Chapter 31A, should any child support obligation become over thirty (30) days delinquent, to the extent such child support is ordered.

VIII.

That Plaintiff will maintain the cost of major medical insurance coverage for the minor children herein, with the parties equally dividing all medical, dental (including orthodontic), psychological and optical expenses of said minor children not

covered by insurance, until such time as each child, respectively,
(1) becomes emancipated, or (2) attains the age of eighteen (18)
years, the age of majority, unless each child is still attending
secondary education when each child reaches eighteen (18) years of
age, in which event said medical coverage shall continue until
each child, respectively, graduates from high school, or attains
the age of nineteen (19) years, whichever event first occurs.

IX.

That neither party is entitled to alimony from the other
party herein.

X.

That there is community property of the parties herein
to be adjudicated by the Court, the full nature and extent of
which is unknown to Plaintiff at this time, and Plaintiff prays
leave of the Court to amend this Complaint when additional
information becomes available.

XI.

That there are no community debts of the parties herein
to be adjudicated by the Court.

XII.

That there exists separate property of the parties to be
confirmed to each party, the full nature and extent of which is
unknown to Plaintiff at this time, and Plaintiff prays leave of
the Court to amend this Complaint when additional information
becomes available.

XIII.

That Defendant has engaged in an individual act or
course of actions which, individually or together, have

1 constituted marital waste, and therefore Plaintiff should be
2 compensated for the loss and enjoyment of said wasted community
3 asset(s).

4 XIV.

5 That Plaintiff requests this Court to jointly restrain
6 the parties herein in accordance with the terms of the Joint
7 Preliminary Injunction issued herewith.

8 XV.

9 That Plaintiff has been required to retain the services
10 of ECKER & KAINEN, CHARTERED, to prosecute this action, and is
11 therefore entitled to reasonable attorney's fees and costs of
12 suit.

13 XVI.

14 That the parties hereto are incompatible in marriage.

15 WHEREFORE, Plaintiff prays judgment as follows:

16 1. That the bonds of matrimony now and heretofore
17 existing between Plaintiff and Defendant be dissolved; that
18 Plaintiff be granted an absolute Decree of Divorce; and that each
19 of the parties hereto be restored to the status of a single,
20 unmarried person;

21 2. That the parties be awarded joint legal custody of
22 the minor children herein;

23 3. That Plaintiff be awarded the primary physical
24 care, custody and control of the minor children herein;

25 4. That the Court retain jurisdiction to enter an
26 appropriate award of child support.

27 5. That child support be paid through wage assignment
28 pursuant to NRS Chapter 31A, should payment of any child support

obligation be thirty (30) days delinquent, to the extent child support is ordered;

6. That Plaintiff be ordered to provide the cost of major medical insurance coverage for the minor children herein, with the parties equally dividing all medical, dental (including orthodontic), psychological or optical expenses of said minor children not covered by insurance, until such time as each child, respectively, (1) becomes emancipated, or (2) attains the age of eighteen (18) years, the age of majority, unless each child is still attending secondary education when each child reaches eighteen (18) years of age, in which event said medical coverage and payment of the children's noncovered medical expenses shall continue until each child, respectively, graduates from high school, or attains the age of nineteen (19) years, whichever event first occurs;

7. That neither party be required to pay the other spousal support;

8. That this Court make an equitable division of the community assets;

9. That this Court confirm to each party his or her separate property;

10. That Defendant reimburse Plaintiff for one-half of the amounts and/or values of all community and jointly held property which she has wasted and/or dissipated;

11. That this Court issue its Joint Preliminary Injunction enjoining the parties pursuant to the terms stated therein;

.

12. That Defendant be ordered to pay a reasonable sum to Plaintiff's counsel as and for attorney's fees, together with the cost of bringing this action;

13. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 18th day of March, 2011

ECKER & KAINEN, CHARTERED

By: 

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
300 S. Fourth Street, #901
Las Vegas, Nevada 89101
Attorneys for Plaintiff

VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK) ss:

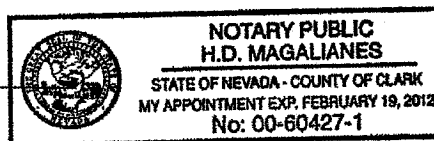
KIRK ROSS HARRISON, being first duly sworn, deposes and says:

That I am the Plaintiff herein; that I have read the foregoing Complaint for Divorce and the same is true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

Kirk R. Harrison
KIRK ROSS HARRISON

SUBSCRIBED AND SWORN to before me
this 18th day of March, 2011.

H. Magalanes
NOTARY PUBLIC in and for said
County and State



ECKER & KAINEN CHARTERED
A Professional Law Corporation

Tel (702) 384-1700 300 South Fourth Street Las Vegas, Nevada 89101 Fax (702) 384-8150
Bank of America Plaza, Suite 901

Docketing Statement Attachment No. 2

1 ANSW

2 RADFORD J. SMITH, CHARTERED

3 RADFORD J. SMITH, ESQ.

4 Nevada Bar No. 002791

5 64 N. Pecos Road, Suite 700

6 Henderson, Nevada 89074

Telephone: (702) 990-6448

Facsimile: (702) 990-6456

rsmith@radfordsmith.com

7 GARY R. SILVERMAN, ESQ.

8 SILVERMAN, DECARIA, & KATTLEMAN

9 Nevada State Bar No. 000409

10 6140 Plumas St. #200

11 Reno, NV 89519

12 Telephone: (775) 322-3223

13 Facsimile: (775) 322-3649

14 Email: silverman@silverman-decaria.com

15 Attorneys for Defendant/Counterclaimant

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 KIRK ROSS HARRISON,

19 Plaintiff/

20 Counterdefendant,

21 v.

22 VIVIAN MARIE LEE HARRISON,

23 Defendant/

24 Counterclaimant

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY DIVISION

25 **ANSWER TO COMPLAINT FOR DIVORCE**
26 **AND COUNTERCLAIM FOR DIVORCE**

27 COMES NOW, Defendant/Counterclaimant, VIVIAN MARIE LEE HARRISON, by and
28 through her attorneys RADFORD J. SMITH, ESQ., of the law offices of RADFORD J. SMITH,
CHARTERED, and GARY R. SILVERMAN, ESQ., of the law offices of SILVERMAN, DECARIA, &

FILE COPY
NOV 28 2011

1 KATTLEMAN, and sets forth her Answer to the Complaint for Divorce of Plaintiff, and her
2 Counterclaim for Divorce as follows:

3 **ANSWER TO COMPLAINT FOR DIVORCE**
4

5 1. Defendant denies all material allegations not specifically admitted herein.

6 2. Defendant admits all material allegations contained in Paragraphs I, II, III, IV, VI, VII,
7 VIII, XIV and XVI of the Complaint for Divorce.

8 3. Defendant denies the allegations contained in Paragraphs V, IX, XI, XIII and XV of the
9 Complaint.
10

11 4. Answering Paragraph X, Defendant admits that there is community property of the
12 parties herein to be adjudicated by the Court, but denies all remaining allegations contained in said
13 paragraph.

14 5. Answering Paragraph XII, Defendant is without sufficient information and knowledge to
15 form a belief as to those allegations and on this basis, denies the same.
16

17 **COUNTERCLAIM FOR DIVORCE**

18 1. For more than six weeks immediately preceding the commencement of this action,
19 Defendant/Counterclaimant has been, and now is, a resident of the County of Clark, State of Nevada.

20 2. That Defendant/Counterclaimant and Plaintiff/Counterdefendant were married in the City
21 of Las Vegas, State of Nevada, on or about November 5, 1982, and have ever since been husband and
22 wife.
23

24 3. The parties have two minor children born the issue of this marriage, namely, EMMA
25 BROOKE HARRISON, born June 26, 1999; and RYLEE MARIE HARRISON, born January 24, 2003.
26 The parties also have three adult children. The parties have not adopted any children, and VIVIAN is not
27 pregnant.
28

1 4. That the parties should be awarded joint legal custody of the minor children.

2 5. That Defendant/Counterclaimant should be awarded primary physical custody of the
3 minor children, subject to the rights of specific visitation of Plaintiff/Counterdefendant.

4 6. That Plaintiff/Counterdefendant should be ordered to pay child support for the minor
5 children, pursuant to NRS 125B.070 *et. seq.*, until such time as each child, respectively, reaches the age
6 of eighteen (18) years, graduates from high school, or otherwise emancipates, whichever occurs later,
7 but in any event no later than the age of nineteen (19) years.

8 7. That Plaintiff/Counterdefendant should be ordered to provide medical and dental
9 insurance for the minor children, with the parties equally dividing all deductibles and other expenses not
10 reimbursed by insurance, until such time as each child, respectively, reaches the age of eighteen (18)
11 years, graduates from high school, or otherwise emancipates, whichever occurs later, but in any event no
12 later than the age of nineteen (19) years.

13 8. That there is community property of the parties to be equitably divided by this court, the
14 full value and extent of which has not been determined at this time.

15 9. That there are community debts and/or obligations of the parties to be equitably divided
16 by this Court, the full extent of which has not been determined at this time.

17 10. That there is separate property belonging to the Defendant/Counterclaimant, which
18 property should be confirmed to Defendant/Counterclaimant as her separate property.

19 11. That there are separate debts and/or obligations of the Plaintiff/Counterdefendant, which
20 debts and/or obligations should be confirmed to Plaintiff/Counterdefendant as his separate debt.

21 12. That Defendant/Counterclaimant is entitled to receive, and Plaintiff/Counterdefendant is
22 capable of paying, alimony and/or spousal support in a reasonable amount and for a reasonable period.

1 13. That Defendant/Counterclaimant has been required to retain the services of counsel in
2 this matter, and is therefore entitled to an award of attorney's fees and costs incurred as a result.

3 14. That the parties are now incompatible in marriage, such that their likes, dislikes, and
4 tastes have become so widely divergent that they can no longer live together as husband and wife.
5

6 WHEREFORE, Defendant/Counterclaimant prays judgment as follows:

7 1. That Plaintiff/Counterdefendant take nothing by way of his Complaint for Divorce;

8 2. That the bonds of matrimony now and previously existing between Plaintiff/Counter-
9 defendant and Defendant/Counterclaimant be forever and completely dissolved, and that each party be
10 restored to the status of an unmarried person;
11

12 3. That the parties be awarded joint legal custody of the minor children, EMMA BROOKE
13 HARRISON, born June 26, 1999; and RYLEE MARIE HARRISON, born January 24, 2003;

14 4. That Defendant/Counterclaimant be awarded primary physical custody of the minor
15 children, subject to the rights of specific visitation of Plaintiff/Counterdefendant;
16

17 5. That Plaintiff/Counterdefendant be ordered to pay child support for the minor children,
18 pursuant to NRS 125B.070 *et. seq.*, until such time as each child, respectively, reaches the age of
19 eighteen (18) years, graduates from high school, or otherwise emancipates, whichever occurs later, but
20 in any event no later than the age of nineteen (19) years;
21

22 6. That Plaintiff/Counterdefendant should be ordered to provide medical and dental
23 insurance for the minor children, with the parties equally dividing all deductibles and other expenses not
24 reimbursed by insurance, until such time as each child, respectively, reaches the age of eighteen (18)
25 years, graduates from high school, or otherwise emancipates, whichever occurs later, but in any event no
26 later than the age of nineteen (19) years.
27

28 7. For an equitable division of community property of the parties;

1 8. For an equitable division of the community debts and/or obligations of the parties;

2 9. That Defendant/Counterclaimant's separate property be confirmed to her, free of all
3 claims by Plaintiff/Counterdefendant;

4 10. That Plaintiff/Counterdefendant's separate debt be confirmed to him and that Plaintiff/
5 Counterdefendant be required to indemnify and hold Defendant/Counterclaimant harmless from those
6 obligations;
7

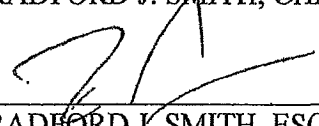
8 11. For an award of alimony and/or spousal support in a reasonable amount and for a
9 reasonable duration;
10

11 12. For an award of Defendant/Counterclaimant's attorney's fees and costs incurred herein;

12 13. For such other and further relief as the court finds just in the premises.

13 Dated this 22 day of November, 2011.

14 RADFORD J. SMITH, CHARTERED

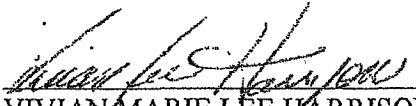
15 
16 _____
17 RADFORD J. SMITH, ESQ.
18 Nevada State Bar No. 002791
19 64 N. Pecos Road, Suite 700
20 Henderson, Nevada 89074
21 *Attorney for Defendant/
22 Counterclaimant*
23
24
25
26
27
28

VERIFICATION


STATE OF NEVADA }
COUNTY OF CLARK } ss:

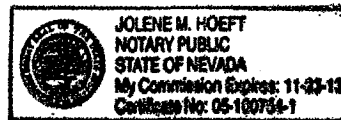
VIVIAN MARIE LEE HARRISON, having been duly sworn, deposes and says;

That I am the Defendant/Counterclaimant in the above referenced matter; that I have read the foregoing Answer to Complaint for Divorce and Counterclaim for Divorce, and that the same is true and correct to the best of my own knowledge, except for those matters stated upon information and belief, and for those matters, I believe them to be true.


VIVIAN MARIE LEE HARRISON

Subscribed and Sworn before me
this 21 day of November, 2011.


NOTARY PUBLIC in and for
the State of Nevada



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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 the 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 "ANSWER TO COMPLAINT FOR DIVORCE AND COUNTERCLAIM FOR DIVORCE" on this 23 day of November, 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;

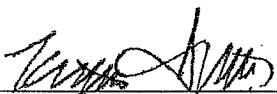
☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ 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:

Thomas J. Standish, Esq.
Jolley, Urga, Wirth, Woodbury & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
tjs@juww.com

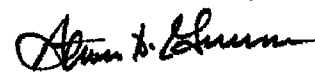
Edward L. Kainen, Esq.
Kainen Law Group, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, NV 89145
ed@kainenlawgroup.com



An employee of Radford J. Smith, Chartered

Docketing Statement Attachment No. 3

1 DECD
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3


CLERK OF THE COURT

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 KIRK ROSS HARRISON,)
7)
8 Plaintiff,)
9)

v.)

CASE NO. D-11-443611-D
DEPT NO. Q

10 VIVIAN MARIE LEE HARRISON,)
11)
12 Defendant.)

13 DECREE OF DIVORCE

14 The above-entitled cause having come on regularly for hearing on the 3rd day of
15 December, 2012, before the above-entitled Court, Plaintiff, KIRK ROSS HARRISON
16 ("Kirk") appearing in person and through his attorneys, THOMAS J. STANDISH, ESQ.,
17 of the law firm of JOLLEY, URGAS, WIRTH, WOODBURY & STANDISH, and
18 EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant,
19 VIVIAN MARIE LEE HARRISON ("Vivian") appearing in person and through her
20 attorney, RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED;
21 Vivian's Answer having been entered, and the parties having waived the making, filing
22 and service of Findings of Fact and Conclusions of Law, and the giving of any and all
23 notices required by law or rules of the District Court; the Court having heard the
24 testimony of witnesses sworn and examined in open Court, the cause having been
25 submitted for decision and judgment, and the Court being fully advised, finds:
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☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Sanction) Dismissal
☐ Default Judgment
☐ Transferred
☐ Trial Dispositions:
☐ Judgment Reached by Trial
☐ Disposed After Trial Start
☐ Settled/Withdrawn
☒ With Judicial Conf/Htg
☐ By ADR

ICE C. DUCKWORTH
DISTRICT JUDGE

WILY DIVISION, DEPT. Q
1 VEGAS, NEVADA 89101

1 That the Court has jurisdiction in the premises, both as to the subject matter
2 thereof as well as the parties thereto; that Kirk has been domiciled in this State for more
3 than six weeks preceding the commencement of this action, and that Kirk is now
4 domiciled in and is an actual, bona fide resident of the State of Nevada; that the Kirk
5 is entitled to an absolute Decree of Divorce on the grounds set forth in Kirk's Complaint.
6

7 The Court further finds that there are two minor children the issue of this
8 marriage, to-wit: EMMA BROOKE HARRISON ("Brooke"), born June 26, 1999, and
9 RYLEE MARIE HARRISON ("Rylee"), born January 24, 2003. There are no adopted
10 children of the parties and to the best of her knowledge, Vivian is not currently
11 pregnant.
12

13 The Court further finds that the child custody, support and related issues
14 regarding the parties' two minor children previously were resolved by way of the
15 Stipulation and Order Resolving Parent/Child Issues entered into between the parties,
16 and filed on July 11, 2012.
17

18 The Court further finds that each party has warranted that the property
19 adjudicated in this Decree of Divorce constitutes all property belonging to the parties,
20 and there is no other property (inclusive of any ventures and/or enterprises that might
21 come to fruition at a later time), income, claims, or intangible rights owed or belonging
22 to either party not set forth herein. The Court further finds that the adjudication of
23 property herein is based on the agreement of the parties as reflected in the record made
24 by the parties at the hearing on December 3, 2012, as well as the common terms set
25 forth in their proposed Decrees submitted to the Court. The Court further finds that,
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1 based on representations made to the Court (and excluding the equalizing division of
2 retirement accounts to be effectuated by entry of a QDRO), the parties have effectuated
3 the equal division of the financial accounts adjudicated in this Decree. Further, an
4 equalizing payment previously was made to equalize the division of assets pursuant to
5 NRS 125.150, including the division of real and personal property. This Court further
6 finds that, except for those child-related accounts specifically referenced herein, no other
7 account for which a child of the parties is an intended beneficiary is adjudicated herein.
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10 This Court further finds that each party hereto has represented and warranted to
11 the other party that he or she has made full and fair disclosure of the property and
12 interests in property owned or believed to be owned by him and/or her, either directly
13 or indirectly. The parties have acknowledged that they are aware that each has methods
14 of discovery available to him or her in the prosecution of their divorce action to
15 investigate the community and separate assets of the other. Both have acknowledged
16 that they are entering this settlement without performing any additional discovery, and
17 that they have instructed their counsel to forego such additional discovery.
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20 This Court further finds that each party has admitted and agreed that they each
21 have had the opportunity to discuss and consult with independent tax counselors, other
22 than the attorneys of record in the divorce action between the parties, concerning the
23 income tax and estate tax implications and consequences with respect to the agreed upon
24 division of the properties and indebtedness herein, and that Jolley, Urga, Wirth,
25 Woodbury & Standish, Kainen Law Group, PLLC, Radford J. Smith, Chartered, and
26
27

28 ...

1 Silverman, Decaria & Kattelman were not expected to provide and, in fact, did not
2 provide tax advice concerning this Decree of Divorce.

3
4 Based on the foregoing findings, and good cause appearing therefore,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of
6 matrimony heretofore and now existing between Kirk and Vivian be, and the same are
7 hereby wholly dissolved, and an absolute Decree of Divorce is hereby granted to the
8 parties, and each of the parties hereto is hereby restored to the status of a single,
9 unmarried person.
10

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the terms and
12 provisions of the Stipulation and Order Resolving Parent/Child Issues entered into
13 between the parties, and filed on July 11, 2012, are hereby incorporated by reference as
14 if fully stated herein.
15

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties
17 complete the seminar for separating parents as required by EDCR 5.07 within 30 days
18 from the date of entry of this Decree.
19

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, should either
21 party intend to move his or her residence to a place outside the State of Nevada, and
22 take the minor children with him or her, said party must, as soon as possible, and before
23 the planned move, attempt to obtain the written consent of the other party to move the
24 minor children from the State. If the other party refuses to give that consent, the party
25 planning the move shall, before he or she leaves the State with the minor children,
26 petition the Eighth Judicial District Court of the State of Nevada, in and for the County
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1 of Clark, for permission to move the children. The failure of the party planning the
2 move to comply with this provision may be considered as a factor if a change of custody
3 is requested by the other party. This provision does not apply to vacations planned by
4 either party outside the State of Nevada.
5

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are
7 subject to the provision of NRS 125.510(6) for violation of the Court's Order:
8

9 PENALTY FOR VIOLATION OF ORDER:

10 The abduction, concealment or detention of a child in violation of
11 this Order is punishable as a category D felony as provided in NRS
12 193.130. NRS 200.359 provides that every person having a limited right
13 of custody to a child or any parent having no right to the child who
14 willfully detains, conceals or removes the child from a parent, guardian or
15 other person having lawful custody or a right of visitation of the child in
16 violation of an order of this court, or removes the child from the
17 jurisdiction of the court without the consent of either the court or all
18 persons who have the right to custody or visitation is subject to being
19 punished for a category D felony as provided in NRS 193.130.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to
17 NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980,
18 adopted by the 14th Session of the Hague Conference on Private International Law are
19 applicable to the parties:
20

21 "Section 8. If a parent of the child lives in a foreign country or has
22 significant commitments in a foreign country:

23 (a) The parties may agree, and the Court shall include in
24 the Order for custody of the child, that the United States is the country of
25 habitual residence of the child for the purposes of applying the terms of the
26 Hague Convention as set forth in Subsection 7.

26 (b) Upon motion of the parties, the Court may order the
27 parent to post a bond if the Court determines that the parent poses an
28 imminent risk of wrongfully removing or concealing the child outside the
country of habitual residence. The bond must be in an amount
determined by the Court and may be used only to pay for the cost of

1 locating the child and returning him to his habitual residence if the child
2 is wrongfully removed from or concealed outside the country of habitual
3 residence. The fact that a parent has significant commitments in a foreign
4 country does not create a presumption that the parent poses an imminent
risk of wrongfully removing or concealing the child."

5 The State of Nevada is the habitual residence of the minor children herein.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon
7 the current financial condition of the parties, and the fact that neither party currently
8 engages in full-time employment, neither party shall be required to pay child support to
9 the other.
10

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a parent
12 responsible for paying child support is subject to wage assignment with their employer
13 pursuant to NRS 31A.025 to 31A.190, inclusive, should they become thirty (30) days
14 delinquent in their child support payments.
15

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of
17 child support in this matter shall be reviewed every three (3) years pursuant to NRS
18 125B.145.
19

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions
21 regarding child support in this matter conform to the statutory guidelines as set forth in
22 NRS 125B, as applied in *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998) and
23 *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).
24

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall
26 submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on
27 a separate form to the Court and the Welfare Division of the Department of Human
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1 Resources within ten days from the date this Decree is filed. Such information shall be
2 maintained by the Clerk in a confidential manner and not part of the public record.
3
4 Each party shall update the information filed with the Court and the Welfare Division
5 of the Department of Human Resources within ten days should any of that information
6 become inaccurate.

7
8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to
9 the agreement placed on the record before this Court, each party hereby irrevocably
10 waives, releases and relinquishes any rights which either party may have acquired by
11 virtue of their marriage, to any alimony or spousal support of any kind, including lump
12 sum alimony or periodic payments, or to any other Court-ordered compensation or
13 support intended to act as or supplant alimony or spousal support. Each party herein
14 irrevocably waives and releases to the other party all claims, rights and demands of every
15 character or description with respect to alimony or spousal support of any type, now or
16 hereafter, based on any and all circumstances in the present or future, whether
17 foreseeable or unforeseeable.

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19
20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall
21 have confirmed to her as her sole and separate property, free of any claims by Kirk, the
22 sole ownership in and to the following:

- 23
24 1. A one-half interest in the income and distributions of Kirk's business
25 interest in the Tobacco Contract, which Kirk has warranted and
26 represented is the only asset of the business known as Harrison, Kemp &
27 Jones Chartered. Kirk shall pay to Vivian one-half of all net income and
28

1 distributions therefrom, net of the maximum tax rate. To the extent the
2 actual taxes attributable to the income and distributions are less than the
3 maximum tax rate, Kirk shall refund to Vivian the corresponding amount
4 associated with her one-half interest. There shall be an annual accounting
5 of said income and distributions to determine the extent of any refund.
6

7
8 2. The prior balance in the business account associated with Harrison
9 Dispute Resolution at Bank of America ending in 4668 was previously
10 equally divided between the parties whereby each party received
11 \$115,836.47 on or about December 24, 2012.
12

13 3. A twelve and one-half percent (12.5%) interest in The Measo Associates,
14 a Nevada General Partnership, currently held in Kirk's sole name. The
15 parties currently have a 25% interest in The Measo Associates. Following
16 the entry of the Decree of Divorce, the interest shall be equally divided,
17 allocating 12.5% to each party as his or her respective sole and separate
18 property.
19

20 4. The approximate nine percent (9%) interest in Geothermic Solution, LLC,
21 currently held in Kirk's sole name, shall be placed in a trust whereby Kirk
22 and Vivian shall each receive any and all rights or benefits to one-half of
23 said interest. If, for any reason, it is illegal, will jeopardize the legal status
24 of the LLC, or is otherwise impermissible under the organizational
25 documents of Geothermic Solution, LLC, to transfer the interest into a
26 trust, then the parties agree to work with one another so that Vivian is
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1 equitably entitled to one-half of the approximate 9% interest in
2 Geothermic Solution, LLC, either directly or by control of any and all
3 rights or benefits arising from that interest.
4

5 5. One-half of the balance in the Boulder Dam Credit Union savings account
6 ending in 9005, as of September 11, 2012. Said account is currently in
7 Vivian's name. Following the equal division of the balance contained in
8 the account, Vivian shall retain this account.
9

10 6. One-half of the balance in the Boulder Dam Credit Union DDA account
11 ending in 9005, as of September 11, 2012. Said account is currently in
12 Vivian's name. Following the equal division of the balance contained in
13 the account, Vivian shall retain this account.
14

15 7. One-half of the balance in the Bank of America DDA account ending in
16 1400, as of September 11, 2012. Said account is currently in Vivian's
17 name. Following the equal division of the balance contained in the
18 account, Vivian shall retain this account.
19

20 8. The prior balance in the Bank of America money market account ending
21 in 5111 was previously equally divided between the parties, whereby each
22 party received \$124,809.55 on or about December 24, 2012.
23

24 9. One-half of the balance in the Bank of America checking account ending
25 in 4040, with a balance of \$36,346.02 as of February 5, 2013.
26

27 10. One-half of the balance in the Bank of America account ending in 8682,
28 with a balance of \$6,638.54 as of January 7, 2013.

11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of \$740.42 as of February 4, 2013.
12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of \$16,360.45 as of February 5, 2013.
13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of \$28,809.58 as of February 5, 2013.
14. One-half of the balance of the Bank of America account ending in 8278, with a balance of \$46,622.74 as of February 14, 2013.
15. The prior balance in the UBS RMA account ending in 7066 was previously equally divided between the parties, whereby each party received \$455,727.35 on or about September 14, 2012.
16. The prior balance in the UBS RMA account ending in 3201 was previously equally divided between the parties, whereby each party received \$51,458.17 on or about September 11, 2012.
17. The prior balance in the Vanguard account ending in 4530/3952 was previously equally divided between the parties, whereby each party received, on or about September 27, 2012, the following: \$365,071.73, one thousand shares of GLD, \$37,500.00 par value Missouri State Water Pollution Control municipal bonds, and \$37,500.00 par value Elgin, Texas School District municipal bonds.

- 1 18. The prior balance in the Charles Schwab account ending in 4245 was
2 previously equally divided between the parties, whereby each party
3 received \$386,293.42 on or about September 11, 2012.
4
- 5 19. With respect to the Legacy Treasury Direct account ending in 6330, this
6 account previously had a balance of \$4,200,000.00. Of this amount,
7 \$3,200,00.00 was equally divided by the parties whereby each party
8 received \$1,600,000.00 on or about September 17, 2012. Following the
9 settlement between the parties and after the division of assets was
10 memorialized on the record during the hearing before the Court on
11 December 3, 2012, the then remaining balance of the Legacy Treasury
12 Direct account ending in 6330, which was "reserved to equalize the
13 division of assets," was utilized to equalize the division of assets between
14 the parties with Vivian receiving \$470,800.00 and Kirk receiving
15 \$529,200.00 on or about December 20, 2012. Said distributions fully
16 liquidated the Legacy Treasury Direct account ending in 6330 and it no
17 longer exists.
18
- 19 20. The entire balance in Vivian's Charles Schwab IRA account ending in
20 2759. Said account is in Vivian's name and Vivian shall retain the
21 account.
22
- 23 21. A portion of Kirk's UBS Profit Sharing Plan account ending in 3354, with
24 a balance of \$797,335.53 as of December 31, 2012, which shall be utilized
25 to equalize the difference between the combined total of Kirk's UBS IRA
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account ending 3211 and UBS KJ&C Pooled account ending 722-140 with Vivian's Charles Schwab IRA account ending 2759. Following entry of the Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall be utilized for the division of this account. A QDRO has been prepared, circulated, and is in the process of being finalized. This Court shall retain jurisdiction to enter said qualified order.

- 22. One-half of the gold and silver coins acquired by the parties during marriage. Vivian has received the following gold coins: 55 American Eagle gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African Krugerrand gold coins. Vivian has received 2,500 Silver Eagle silver coins.
- 23. The 2011 Toyota Avalon.
- 24. The Colt Government Model 380 semi-automatic pistol and the Smith & Wesson Model 37 - 38 caliber Chief's Special Airweight revolver.
- 25. All personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume I of II" with an effective date of November 20, 2012, except for the following enumerated items: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on

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paper; 116 Chest Table; 117 Side Table; 121 Side Table; 126 Rug; 127
Rug; 129 Side Table; 130 Bedroom Suite; 131 Iron bed; 132 Armchair.

26. Except as provided otherwise herein, any and all Vivian's clothing, jewelry, articles of personal adornment, miscellaneous personal possessions, and personal affects, including family heirlooms and personal property received by gift or inheritance.
27. The residence located at 1514 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-501-004), with a stipulated value of \$760,000.00, together with all improvements thereon and all appurtenances thereto. Kirk shall execute a quitclaim deed waiving and releasing any interest whatsoever in the residence located at 1514 Sunrise Circle, Boulder City, Nevada.
28. The residence located at 213 Jasmine Way, Boulder City, Nevada (Parcel #186-04-516-097), together with all improvements thereon and all appurtenances thereto.
29. The residence located at 1521 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-510-011), together with all improvements thereon and all appurtenances thereto.
30. The money and/or property each party receives pursuant to this Decree shall be included for all purposes in the amount each party receives as part of the ultimate resolution in the divorce between the parties, including any and all entities or properties formed or purchased with their respective portions of the distribution identified herein.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall have
2 confirmed to him as his sole and separate property, free of any claims by Vivian, the sole
3 ownership in and to the following:
4

- 5 1. A one-half interest in the income and distributions of Kirk's business
6 interest in the Tobacco Contract, which Kirk has warranted and
7 represented is the only asset of the business known as Harrison, Kemp &
8 Jones Chartered. Kirk shall pay to Vivian one-half of all net income and
9 distributions therefrom, net of the maximum tax rate. To the extent the
10 actual taxes attributable to the income and distributions are less than the
11 maximum tax rate, Kirk shall refund to Vivian the corresponding amount
12 associated with her one-half interest. There shall be an annual accounting
13 of said income and distributions to determine the extent of any refund.
14
15 2. The entire interest in Harrison Dispute Resolution, LLC. The prior
16 balance in the business account associated with Harrison Dispute
17 Resolution at Bank of America ending in 4668 was previously equally
18 divided between the parties whereby each party received \$115,836.47 on
19 or about December 24, 2012. Kirk shall retain this account.
20
21 3. A twelve and one-half percent (12.5%) interest in The Measo Associates,
22 a Nevada General Partnership, currently held in Kirk's sole name. The
23 parties currently have a 25% interest in The Measo Associates. Following
24 the entry of the Decree of Divorce, the interest shall be equally divided,
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...

1 allocating 12.5% to each party as his or her respective sole and separate
2 property.
3

4 4. The approximate nine percent (9%) interest in Geothermic Solution, LLC,
5 currently held in Kirk's sole name, shall be placed in a trust whereby Kirk
6 and Vivian shall each receive any and all rights or benefits to one-half of
7 said interest. If, for any reason, it is illegal, will jeopardize the legal status
8 of the LLC, or is otherwise impermissible under the organizational
9 documents of Geothermic Solution, LLC, to transfer the interest into a
10 trust, then the parties agree to work with one another so that Vivian is
11 equitably entitled to one-half of the approximate 9% interest in
12 Geothermic Solution, LLC, either directly or by control of any and all
13 rights or benefits arising from that interest.
14

15 5. One-half of the balance in the Boulder Dam Credit Union savings account
16 ending in 9005, as of September 11, 2012.
17

18 6. One-half of the balance in the Boulder Dam Credit Union DDA account
19 ending in 9005, as of September 11, 2012.
20

21 7. One-half of the balance in the Bank of America DDA account ending in
22 1400, as of September 11, 2012.
23

24 8. The entire balance in the Bank of America money market account ending
25 in 5111. The prior balance in the Bank of America money market account
26 ending in 5111 was previously equally divided between the parties.
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- whereby each party received \$124,809.55 on or about December 24, 2012.
- Said account is in Kirk's name and Kirk shall retain this account.
9. One-half of the balance in the Bank of America checking account ending in 4040, with a balance of \$36,346.02 as of February 5, 2013. Following the equal division of the balance contained in the account, Kirk shall retain this account.
10. One-half of the balance in the Bank of America account ending in 8682, with a balance of \$6,638.54 as of January 7, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.
11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of \$740.42 as of February 4, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.
12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of \$16,360.45 as of February 5, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.
13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of \$28,809.58 as of February 5,

1 2013. Said account is currently in Kirk's name. Following the division of
2 the balance contained in the account, Kirk shall retain this account.

3
4 14. The prior balance in the UBS RMA account ending in 7066 was previously
5 equally divided between the parties, whereby each party received
6 \$455,727.35 on or about September 14, 2012. Said account is in Kirk's
7 name and Kirk shall retain this account.

8
9 15. The entire balance in Kirk's separate property Bank of America account
10 ending in 2521, with a balance of \$112,024.01 as of February 14, 2013.
11 Said account is currently in Kirk's name and Kirk shall retain this account.

12
13 16. One-half of the balance of the Bank of America account ending in 8278,
14 with a balance of \$46,622.74 as of February 14, 2013. Said account is
15 currently in Kirk's name. Following the division of the balance contained
16 in the account, Kirk shall retain this account.

17
18 17. The entire balance in Kirk's separate property UBS RMA account ending
19 in 8538, with a balance of \$382,166.83 as of January 31, 2013. Said
20 account is in Kirk's name and Kirk shall retain this account.

21
22 18. The prior balance in the UBS RMA account ending in 3201 was previously
23 equally divided between the parties, whereby each party received
24 \$51,458.17 on or about September 11, 2012. Said account is in Kirk's
25 name and Kirk shall retain this account.

26
27 19. The entire balance in the Vanguard account ending in 4530/3952. The
28 prior balance in the Vanguard account ending in 4530/3952 was previously

1 equally divided between the parties, whereby each party received, on or
2 about September 27, 2012, the following: \$365,071.73, one thousand
3 shares of GLD, \$37,500.00 par value Missouri State Water Pollution
4 Control municipal bonds, and \$37,500.00 par value Elgin, Texas School
5 District municipal bonds. Said account is in Kirk's name and Kirk shall
6 retain the account.
7

8
9 20. The entire balance in the Charles Schwab account ending in 4245. The
10 prior balance in the Charles Schwab account ending in 4245 was
11 previously equally divided between the parties, whereby each party
12 received \$386,293.42 on or about September 11, 2012. Said account is
13 in Kirk's name and Kirk shall retain the account.
14

15 21. With respect to the Legacy Treasury Direct account ending in 6330, this
16 account previously had a balance of \$4,200,000.00. Of this amount,
17 \$3,200,00.00 of that amount was equally divided by the parties whereby
18 each party received \$1,600,000.00 on or about September 17, 2012.
19 Following the settlement between the parties and after the division of
20 assets was memorialized on the record during the hearing before the Court
21 on December 3, 2012, the then remaining balance of the Legacy Treasury
22 Direct account ending in 6330, which was "reserved to equalize the
23 division of assets," was utilized to equalize the division of assets between
24 the parties with Vivian receiving \$470,800.00 and Kirk receiving
25 \$529,200.00 on or about December 20, 2012. Said distributions fully
26
27
28

1 liquidated the Legacy Treasury Direct account ending in 6330 and it no
2 longer exists.

3
4 22. The entire balance in Kirk's UBS IRA account ending in 3211, with a
5 balance of \$142,404.91 as of January 31, 2013. Said account is in Kirk's
6 name and Kirk shall retain the account.

7
8 23. The entire balance in Kirk's UBS KJ&C Pooled account ending in 722-
9 140, with a balance of \$14,011.95 as of September 30, 2012. Said
10 account is in Kirk's name and Kirk shall retain the account.

11 24. Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of
12 \$797,335.53 as of December 31, 2012, subject to Vivian's right to that
13 portion of said account necessary to equalize the difference between the
14 combined total of Kirk's UBS IRA account ending 3211 and UBS KJ&C
15 Pooled account ending 722-140 with Vivian's Charles Schwab IRA account
16 ending 2759. Following entry of the Decree of Divorce a Qualified
17 Domestic Relations Order ("QDRO") shall be utilized for the division of
18 this account. A QDRO has been prepared, circulated, and is in the process
19 of being finalized. This Court shall retain jurisdiction to enter said
20 qualified order.
21
22

23
24 25. One-half of the gold and silver coins acquired by the parties during
25 marriage. Kirk has received the following gold coins: 55 American Eagle
26 gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African
27 Krugerrand gold coins. Kirk has received 2,500 Silver Eagle silver coins.
28

- 1 26. The 2009 Chevrolet Z71 Crew Cab pickup truck.
- 2 27. The 2008 Acura MDX.
- 3
- 4 28. The 2000 Chevrolet Z71 Extended Cab pickup truck.
- 5 29. All personal property items identified and appraised by Joyce Newman as
- 6 set forth in the "Summary Appraisal Report Volume II of II" with an
- 7 effective date of November 20, 2012.
- 8
- 9 30. All of the guns (except for the Colt Government Model 380 and the Smith
- 10 & Wesson Model 37 - 38 caliber Airweight which have been previously
- 11 provided to Vivian), together with all accessories, including, but not
- 12 limited to all ammunition, gun cleaning supplies, scopes, cases, etc.
- 13
- 14 31. All of the furniture Kirk received from his parents including: his parent's
- 15 bedroom set (which was in the guest bedroom); his mother's alder china
- 16 cabinet and buffet; his mother's needlepoint bench that was made by her
- 17 brother Ray; his mother's small wooden rocking chair; and his father's high
- 18 back wooden chair with red needlepoint.
- 19
- 20 32. The following personal property items identified and appraised by Joyce
- 21 Newman as set forth in the "Summary Appraisal Report Volume I of II"
- 22 with an effective date of November 20, 2012: 21 Stairmaster; 24 Elliptical;
- 23 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31
- 24 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42
- 25 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77
- 26 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on
- 27
- 28

1 paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86
2 work on paper; 87 work on paper; 88 work on paper; 116 Chest Table; 117
3 Side Table; 121 Side Table; 126 Rug; 127 Rug; 129 Side Table; 130
4 Bedroom Suite; 131 Iron bed; 132 Armchair.

5
6 33. Except as provided otherwise herein, any and all of Kirk's clothing, jewelry,
7 articles of personal adornment, miscellaneous personal possessions, and
8 personal affects, including family heirlooms and personal property received
9 by or inheritance.

10
11 34. Parcel #6050-A-1, consisting of approximately 107.26 acres, in
12 Washington County, Utah, together with all improvements thereon and
13 all appurtenances thereto, including Water Right #208 (Harrison Spring)
14 and Water Right #71-4172 (5 acre feet), subject to Vivian's community
15 property interest therein, as well as any and all reimbursement claims to
16 the ranch property, the total amount of which the parties stipulated to
17 being \$285,000.00.

18
19
20 35. Parcel #6052, consisting of approximately 39.91 acres, in Washington
21 County, Utah, together with all improvements thereon and all
22 appurtenances thereto, including Water Right #413 (Unnamed Spring)
23 and Water Rights #71-4450 and #71-4173 (total of 4 acre feet for #71-
24 4450 & #71-4173).

25 ...

26 ...

- 1 36. Parcel #6050-C, consisting of approximately 3.23 acres, in Washington
2 County, Utah, together with all improvements thereon and all
3 appurtenances thereto including Water Right #71-3613.
4
5 37. Parcel #6050-B, consisting of approximately .87 acres, in Washington
6 County, Utah, together with all improvements thereon and all
7 appurtenances thereto.
8
9 38. Parcel #6049, consisting of approximately 50.62 acres, in Washington
10 County, Utah, together with all improvements thereon and all
11 appurtenances thereto, including any and all water rights, including, but
12 not limited to, the following water rights: Water Right #138 (Tullis Spring
13 Area), Water Right #295 (Silent Spring), Water Right #296 (Tullis
14 Spring), Water Right #297 (Tullis Gulch), and Water Right #299
15 (Hideout Spring).
16
17 39. Parcel #6050-D, consisting of approximately 4.36 acres, in Washington
18 County, Utah, together with all improvements thereon and all
19 appurtenances thereto, including any and all water rights.
20
21 40. Parcel #6050-E, consisting of approximately 20.65 acres, in Washington
22 County, Utah, together with all improvements thereon and all
23 appurtenances thereto, including any and all water rights.
24
25 41. Parcel #6050-F, consisting of approximately 41.20 acres, in Washington
26 County, Utah, together with all improvements thereon and all
27 appurtenances thereto, including any and all water rights.
28

1 42. Vivian shall execute a quitclaim deed waiving and releasing any interest
2 whatsoever in the Utah ranch, including any and all water rights (to
3 include all parcels necessary).
4

5 43. The money and/or property each party receives pursuant to this Decree
6 shall be included for all purposes in the amount each party receives as part
7 of the ultimate resolution in the divorce between the parties, including any
8 and all entities or properties formed or purchased with their respective
9 portions of the distribution identified herein.
10

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any personal
12 property not identified and appraised by Joyce Newman in her Summary Appraisal
13 Report and not divided or otherwise confirmed to either party pursuant to the terms set
14 forth above shall be divided by way of an A/B List.
15

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following
17 accounts were established by Kirk for Brooke and Rylee under the Nevada Uniform Act
18 on Transfers to Minors (NUATM), and Kirk and Vivian have previously funded these
19 accounts, through annual gifts:
20

- 21 1. Charles Schwab Custodial Account of Kirk R. Harrison as Custodian for
22 Emma Brooke Harrison UNVUTMA until age 18, ending in 6622, with a
23 balance of \$33,251.70 as of December 31, 2012.
24
- 25 2. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma
26 B. Harrison NV Unif Trans Min Act until age 18, ending in 0709, with a
27 balance of \$75,115.06 as of December 31, 2012.
28

1 3. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma
2 B. Harrison NV Unif Trans Min Act until age 25, ending in 4276, with a
3 balance of \$210,664.16 as of December 31, 2012.
4

5 4. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Rylee
6 M. Harrison NV Unif Tras Min Act until age 25, ending in 4250, with a
7 balance of \$210,094.80 as of December 31, 2012.
8

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as Rylee has
10 \$108,936.12 $[(33,251.70 + 75,115.06 + 210,664.16) - 210,094.80]$ less in her
11 accounts than Brooke has in her accounts (as a consequence of the difference in their
12 ages), Kirk and Vivian shall each make the following annual gifts (deposits) into Rylee's
13 account ending in 4250: (1) for tax year 2012, a deposit of \$10,000.00, which deposit
14 shall be made prior to April 15, 2013; (2) for tax year 2013, a deposit of \$10,000.00,
15 which deposit shall be made prior to April 15, 2014; (3) for tax year 2014, a deposit of
16 \$10,000.00, which deposit shall be made prior to April 15, 2015; (4) for tax year 2015,
17 a deposit of \$10,000.00, which deposit shall be made prior to April 15, 2016; (5) for tax
18 year 2016, a deposit of \$10,000.00, which deposit shall be made prior to April 15, 2017,
19 and (6) for tax year 2017, a deposit of \$5,000.00, which deposit shall be made prior to
20 April 15, 2018.
21
22
23

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a third party
25 custodian shall be appointed for each of the accounts identified above. If possible, the
26 parties shall designate a custodian who does not charge a custodial fee.
27
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that the
2 following 4-year tuition plans were established by Vivian for Brooke and Rylee with the
3 Nevada Prepaid Tuition Program, and and Kirk and Vivian have fully funded said plans:
4

5 1. Contract Number 10002618, Purchaser: Vivian L. Harrison, Beneficiary:
6 Emma B. Harrison; Tuition Plan: 4 Year University Plan; the Contract has
7 been paid in full with total contract payments of \$7,365.00.
8

9 2. Contract Number 10400042, Purchaser: Vivian L. Harrison; Beneficiary:
10 Rylee M. Harrison; Tuition Plan: 4 Year University Plan; the Contract has
11 been paid in full with total contract payments of \$12,750.00.
12

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these accounts
14 shall continue to be overseen by Vivian with copies of the Annual Statements of Account
15 being provided to Kirk within 10 days of receipt.
16

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties
18 shall sell Parcel #4025-A, consisting of approximately 60 acres, in Washington County,
19 Utah, together with Water rights #81-4115 (2 acre feet) and #81-433 (5 acre feet). IT
20 IS FURTHER ORDERED that Parcel #4025-A and Water rights #81-4115 and #81-
21 433 shall be listed for sale for Two Hundred Forty-Nine Thousand Dollars
22 (\$249,000.00).
23

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties
25 shall sell Parcel #181-28-810-002, the residential lot located at 610 Lido Drive, Boulder
26 City, Nevada. Said Parcel #181-28-810-002 shall be listed for sale for Three Hundred
27 Eighty-Nine Thousand Dollars (\$389,000.00).
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Parcel #4025-
2 A and Parcel #181-28-810-002 shall be listed with a mutually selected real estate broker
3 for a period of six months. In the event either or both subject properties has not been
4 sold or is not in escrow to be sold during any six month listing period, then beginning
5 10 days after the expiration of the prior listing, said property or properties shall be listed
6 with the same real estate broker or, at the parties' mutual election, another real estate
7 broker, and the listed price of the subject property or properties shall be 5% less than the
8 list price during the prior six month period. IT IS FURTHER ORDERED that each
9 party shall equally share the net proceeds from the sale of each subject property. IT IS
10 FURTHER ORDERED that, upon the expiration of each six month listing period, in the
11 event the subject property has not been sold or is not in escrow to be sold, either party
12 hereto shall have the right to purchase the subject property for the listed price, without
13 the payment of or obligation to pay any real estate commission, upon written notice to
14 the other party within 5 days of the expiration of the listing.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the furniture
16 and furnishings in each of the children's bedrooms are the personal property of that
17 respective child.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect
19 to the family photographs and videos of the older children when they were younger,
20 which are in Kirk's possession, and the family photographs, all of the negatives of the
21 family photographs, and all of the videos of Brooke and Rylee, which are in Vivian's
22 possession, each party hereto shall pay one-half of the cost to transfer all of the
23
24
25
26
27
28

1 photographs (utilizing the negative whenever it is in existence) and all videos containing
2 one or more of the children to electronic storage and/or data base and to produce a total
3 of seven copies of that entire data base so that each party hereto and each of the children
4 have a copy. Each party shall fully cooperate with the other to facilitate the transfer and
5 copying of all photographs (negatives whenever possible) and videos which are the
6 subject of this Order.
7
8

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party
10 hereto is solely personally responsible for any debt (including any and all credit card
11 debt) he or she has at the time this Decree of Divorce is entered. The parties agree and
12 acknowledge that the joint credit card account with Nordstrom Bank has been
13 previously closed.
14

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall
16 remove her name from Kirk's Costco membership on or before November 1, 2013.
17

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall be
19 responsible for maintaining his own medical insurance following the entry of this Decree
20 of Divorce, and Vivian shall be responsible for maintaining her own medical insurance
21 following the entry of this Decree of Divorce.
22

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall
24 file separate tax returns for the tax year 2012 and each year thereafter. Until such time
25 as Brooke is no longer eligible as a tax dependent, Vivian shall be entitled to claim Rylee
26 as a dependent each year on her tax return, and Kirk shall be entitled to claim Brooke
27 each year as a dependent on his tax return. In the year following the last year that
28

1 Trooke is eligible to be claimed as a tax dependent, the parties shall begin alternating
2 Rylee as a dependent with Vivian claiming Rylee in the first year.
3

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Joint
5 Preliminary Injunction that was previously issued in this matter on September 9, 2011,
6 is dissolved.
7

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall
9 retain jurisdiction to adjudicate any reimbursement owed to Vivian for community
10 expenses paid from separate property monies prior to November 30, 2012. The parties
11 have designated Cliff Beadle, CPA (for Kirk), and Melissa Attanasio, CFP, (for Vivian),
12 to meet and confer to prepare an accounting of said community expenses paid from
13 separate property.
14

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall
16 retain jurisdiction to divide any property (or debt) later discovered that has not been
17 specifically addressed in this Decree. If the Court finds that either party has willfully
18 withheld disclosure of any property or property interests, the Court may, in its
19 discretion, award all of that property to the other party. Further, in the event of such
20 willful non-disclosure, the Court may require the non-disclosing party to pay all
21 reasonable fees and costs incurred by the other party in pursuing his or her right to a
22 division or distribution of such property.
23
24

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties
26 have reserved the issue of attorney's fees incurred in the divorce action. IT IS
27 FURTHER ORDERED that, pursuant to the terms of the agreement placed on the
28

1 record, either party (or both parties) may file a motion with the Court seeking an award
2 of fees. This Court shall enter a separate order addressing the issue of attorney's fees and
3 costs. Independent of either party's pursuit of said fees and costs, IT IS FURTHER
4 ORDERED that, should either party be required to commence an action to enforce or
5 interpret the terms of this Decree, the Court shall order the non-prevailing party in that
6 action to pay the reasonable attorney's fees and costs incurred by the prevailing party,
7 including those fees and costs expended during notification or negotiation of the issue
8 presented to the Court in the aciton.
9

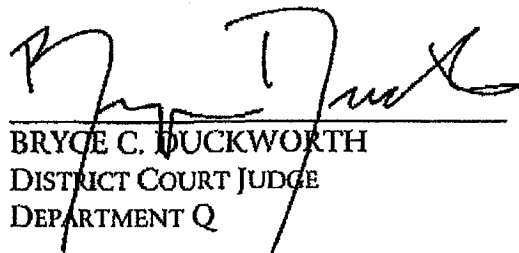
11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties
12 hereto shall each execute quitclaim deeds, stock transfers, and any and all other
13 instruments that may be required in order to effectuate transfer of any and all interest
14 either may have in and to the said property hereby conveyed to the other as hereinabove
15 specified. Should either party fail to execute any of said documents to transfer interest
16 to the other, this Decree of Divorce shall constitute a full and complete transfer of the
17 interest of one to the other as hereinabove provided. Upon failure of either party to
18 execute and deliver any such deed, conveyance, title, certificate or other document or
19 instrument to the other party, this Decree of Divorce shall constitute and operate as
20 such properly executed document and the County Assessor and County Recorder and
21 any and all other public and private officials are hereby authorized and directed to
22 accept this Decree of Divorce, or a properly certified copy thereof, in lieu of the
23 document regularly required for such conveyance or transfer.
24
25
26
27
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except as
2 otherwise specified herein, any and all property acquired, income received or liabilities
3 incurred by either of the parties hereto from and after the date of the entry of this
4 Decree of Divorce, will be the sole and separate property of the one so acquiring the
5 same, and each of the parties hereto respectively grants to the other all such future
6 acquisitions of property as the sole and separate property of the one so acquiring the
7 same and holds harmless and agrees to indemnify the other party from any and all
8 liabilities incurred.
9

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any claim,
12 action or proceeding is brought seeking to hold one of the parties hereto liable on
13 account of any debt, obligation, liability, act or omission assumed by the other party, the
14 responsible party will, at his or her sole expense, defend the innocent party against any
15 such claim or demand and he or she will indemnify, defend and hold harmless the
16 innocent party.
17

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
20 shall retain her married name of Vivian Marie Lee Harrison.

21 DATED this 31st day of October, 2013.
22

23
24 
25 BRYCE C. DUCKWORTH
26 DISTRICT COURT JUDGE
27 DEPARTMENT Q
28

BRYCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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Alvin L. Harrison

CLERK OF THE COURT

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DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

KIRK ROSS HARRISON,

7

Plaintiff,

8

9

v.

CASE NO. D-11-443611-D

DEPT NO. Q

10

VIVIAN MARIE LEE HARRISON,

11

Defendant.

12

13

NOTICE OF ENTRY OF
DECREE OF DIVORCE

14

15

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

16

17

18

19

Please take notice that an Order From Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the Decree of Divorce and this Notice of Entry of Decree of Divorce to be:

20

☒ Placed in the folder(s) located in the Clerk's Office of the following attorneys:

21

Edward Kainen, Esq.

22

Thomas Standish, Esq.

23

Radford J. Smith, Esq.

24

25

26

27

28

YCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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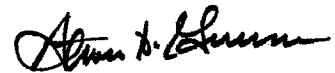
☒ Mailed postage prepaid, addressed to the following attorney:

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, NV 89519

Kimberly Weiss

Kimberly Weiss
Judicial Executive Assistant
Department Q

Docketing Statement Attachment No. 4



CLERK OF THE COURT

1 **MOTN**
EDWARD L. KAINEN, ESQ.
2 Nevada Bar No. 5029
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tjs@jurwww.com

10 Co-counsel for Plaintiff

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 KIRK ROSS HARRISON,

15 Plaintiff,

16 vs.

17 VIVIAN MARIE LEE HARRISON,

18 Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: 12 / 18 / 2013
Time of Hearing: 11 : 00 AM

ORAL ARGUMENT REQUESTED:
YES XX NO

19 **NOTICE: PURSUANT TO EDCR 5.25(b) YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO**
20 **THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY**
21 **OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE**
22 **A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT**
23 **OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT**
24 **WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

25 **PLAINTIFF'S MOTION TO ALTER, AMEND, CORRECT AND CLARIFY JUDGMENT**

26 COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys,
27 THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URG A, WIRTH, WOODBURY &
28 STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby
moves this Court, pursuant to NRCP 52(b) and NRCP 59(e), to alter, amend, correct and clarify the
Decree of Divorce entered by this Court on October 31, 2013.

KAINEN LAW GROUP, PLLC
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1 This Motion is made and based upon the Points and Authorities submitted herewith, the
2 Affidavits attached hereto, the Exhibits attached hereto, and upon the oral argument of counsel at the
3 time of hearing.

4 DATED this 14 day of November, 2013.

5 KAINEN LAW GROUP, PLC

6
7 By: 

8 EDWARD L. KAINEN, ESQ.
9 Nevada Bar No. 5029
10 10091 Park Run Drive, Suite 110
11 Las Vegas, NV 89145
12 *Attorneys for Plaintiff*

13 **NOTICE OF MOTION**

14 TO: VIVIAN MARIE HARRISON, Defendant; and

15 TO: RADFORD SMITH, ESQ. and GARY SILVERMAN, ESQ., counsel for Defendant:

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
17 hearing before the above-entitled Court on the 12/18/2013 day of _____, 2013, at the hour of
18 11:00 AM .m., or as soon thereafter as counsel may be heard.

19 DATED this 14 day of November, 2013.

20 KAINEN LAW GROUP, PLLC

21 By: 

22 EDWARD L. KAINEN, ESQ.
23 Nevada Bar No. 5029
24 10091 Park Run Drive, Suite 110
25 Las Vegas, Nevada 89145
26 *Attorney for Plaintiff*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After the terms of the settlement between the parties were memorialized on the record before the Court during the hearing on December 3, 2012, this Court granted an absolute Decree of Divorce. Kirk's counsel thereafter prepared and provided a Marital Settlement Agreement to Vivian's attorneys on February 19, 2013. Vivian's attorneys made written assurances they would provide a response. (See Kirk's Motion for Scheduling Order, filed 9.14.13, p. 11, l. 13-20.) However, four and one-half months elapsed without a response. Left with no alternative, Kirk's counsel filed a Motion to Enter Decree on May 13, 2013, attaching a proposed Decree of Divorce at that time.

As of September 4, 2013, Vivian's attorneys had still failed to respond to the Marital Settlement Agreement, which had been provided to them on February 19, 2013 – *over six and one-half months earlier*. Pursuant to EDCR 5.25(b), Vivian's attorneys were required to file an opposition to Kirk's Motion to Enter Decree, filed May 13, 2013, within ten (10) days. As of September 4, 2013, Vivian's attorneys had failed to file an opposition to Kirk's Motion to Enter Decree for *one hundred fourteen (114) days*. Again, left with no alternative, Kirk's counsel filed a Motion for Scheduling Order on September 4, 2013.

On September 19, 2013, this Court entered its Order Incident to the Order Resolving Parent/Child Custody Issues and December 3, 2013 Hearing, wherein this Court ordered the submission of a proposed Decree of Divorce from both parties. Since Vivian's attorneys had Kirk's proposed Decree of Divorce since May 13, 2013, they had ample opportunity and did, in fact, respond Kirk's proposed Decree of Divorce by way of Vivian's submission of a proposed Decree of Divorce. In contrast however, although Kirk's counsel responded to Vivian's attorneys' "Notes" and "Explanation," Kirk was not afforded an opportunity to respond to the provisions contained in Vivian's proposed Decree of Divorce and, more particularly, the provisions thereof which are wholly inconsistent with the agreement between the parties and the record memorialized before the Court on December 3, 2012.

26 ...
27 ...
28 ...

1 **II. ARGUMENT**

2
3 **A. A Motion To Alter or Amend Is Proper As There Has Been Judicial Error Caused
By the Submission Of Vivian's Proposed Decree of Divorce**

4 A motion to amend is proper when there has been judicial error in the judgement. NRCp 52(b)
5 provides:

6 Upon a party's motion filed not later than 10 days after service of written notice of entry
7 of judgment, the court may amend its findings or make additional findings and may
8 amend the judgment accordingly. The motion may accompany a motion for a new trial
9 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.

10 A motion to amend must be filed within ten days after service of the notice of entry of the
11 judgment. NRCp 59(e) provides:

12 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment
13 shall be filed no later than 10 days after service of written notice of entry of the
judgment.

14 A motion to alter or amend the judgment is proper where there has been judicial error, as
15 opposed to clerical error, in a judgment of the Court. *See, e.g., Koester v. Administrator of Estate of*
16 *Koester*, 101 Nev. 68, 73, 693 P.2d 569, 573 (describing the court's general power to correct clerical
17 errors); 4 LITIGATING TORT CASES § 46:14 (2011) ("The motion must seek to "alter or amend" the
18 judgment, i.e., requesting to correct judicial error as opposed to clerical error."). A "judicial error" is
19 one in which the Court made an error in the consideration of the matters before it, as opposed to an error
20 in the judgment itself that did not reflect the true intention of the Court. *See, e.g., Presidential Estates*
21 *Apartment Associates v. Barrett*, 917 P.2d 100, 103-04 (Wash. 1996).

22 As a consequence of the errors contained in Vivian's proposed decree of divorce, there are errors
23 contained in the Decree of Divorce, entered by the Court on October 31, 2013.

24
25 **B. Both Parties Have Consistently Acknowledged That Kirk's Separate Property
Accounts Are Kirk's Separate Property and Were, Therefore, Never To Be Divided**

26 **1. The Difference in the Proposed Decrees of Divorce**

27 The proposed Decree of Divorce provided by Kirk, provided that Kirk would keep the entire
28 balance in each of his separate property accounts ending in 8682, 2713, 1275, 8032, and 2521. *See,*

1 Kirk's proposed Decree, p. 11, ¶10 & 11; p. 12, ¶12, 13 & 15. Accounts 8682, 2713, 1275, and 8032
2 are separate property accounts which existed prior to marriage and Kirk has maintained separately or
3 are an account Kirk established when his father passed away to deposit money he received from his
4 parents' estates and which also have been maintained separately. The account ending in 2521 is the
5 separate property account Kirk established during the pendency of the divorce to deposit separate
6 property funds, which have been utilized to pay Kirk's normal ongoing bills.

7 In the proposed Decree of Divorce provided by Vivian, Vivian proposed that the money in each
8 of Kirk's separate property accounts ending in 8032, 8682, 2713 and 1275 be equally divided. *See*,
9 Vivian's submission, filed 9.27.13, Exh. D, p. 8, ¶6.16; p. 6, ¶6.18, 6.19; p. 9, ¶6.21. Vivian's proposed
10 Decree also proposed that the money in the account ending in 8278 be equally divided. *See*, p. 8, ¶6.17
11 The account ending in 8278 is the separate property account Kirk established when the Court ordered
12 that \$700,000.00 in community funds be equally divided to provide each party with \$350,000.00 for the
13 payment of attorneys' fees and costs. This account was opened on March 2, 2012 and is entitled, "Fee
14 Account" and has been used solely by Kirk to pay attorneys' fees and costs. After the initial
15 \$350,000.00 was exhausted, Kirk deposited additional separate property funds into this account to pay
16 for attorneys' fees and costs.

17 Unfortunately, the Court adopted Vivian's erroneous provisions as set forth in the Decree of
18 Divorce, entered October 31, 2013, p. 9, ¶10; p. 10, ¶11, 12, 13 & 14. As a consequence, the following
19 provisions are also in error, p. 16, ¶10, 11, 12, 13; p. 17, ¶16.

20
21 **2. The Record Before the Court Is Clear That Kirk's Separate Property
Accounts Were Never To Be Divided**

22 During the hearing on December 3, 2012, a record was made regarding the accounts which were
23 remaining to be divided. The record before the Court is clear that at the time of the hearing on December
24 3, 2012, there were only five remaining accounts to be divided. First, there was a million dollar account
25 which was set aside to equalize the division of assets between the parties. (Hearing Transcript, 12/3/12,
26 p. 9, l. 15-18). Second, there was a retirement account remaining to be divided based upon the terms
27 of a qualified domestic relations order. (Hearing Transcript, 12.3.12, p. 9, l. 12-15) Third, there were
28 three remaining identified accounts to also be divided:

1 There are three accounts that have not been divided, not counting the retirement account
2 that is in the process. We have a draft of a qualified order that's been circulated. Those
3 three accounts are Kirk's checking account that ends in 4040, the number, and a money
market account also in Kirk's name ending in 5111, and then the Harrison Dispute
Resolution, LLC account, which actually ends in, the number 4668.

4 (Hearing Transcript, 12.3.12, p. 9, l. 20-25; p. 10, l. 1)

5 The record is absolutely clear that only those five accounts were remaining to be divided. There
6 was no reference whatsoever to Kirk's separate property accounts, as these are Kirk's separate property
7 and, for that reason, were never going to be divided. Consistently, when Kirk's attorneys identified the
8 accounts to be equally divided, Vivian's attorneys **did not** apprise the Court that additional accounts
9 – these separate property accounts of Kirk – were also to be divided. It was not until the submission of
10 Vivian's proposed Decree *almost ten months later*, on September 27, 2013, did Vivian's attorneys
11 advocate that Kirk's separate property accounts should also be divided.¹

12 There was never an agreement between the parties "regarding the equal division of all cash
13 accounts" as erroneously alleged in the "Explanation" submitted by Vivian. *See*, Vivian's submission,
14 9/27/13, p. 4, l. 16-21. Such an agreement is totally nonsensical as it would require Kirk to divide
15 accounts which were already the result of the parties equally dividing community funds and
16 transforming them into separate property funds. Vivian, in effect, would then get one-half of Kirk's
17 one-half.

18 ...

19 ...

20 ...

21 ...

22
23 ¹ It should be noted when Kirk submitted his proposed Decree as an attachment to his Motion To Enter
24 Decree of Divorce, filed May 13, 2013, Kirk added three accounts which are in Vivian's name, the
community nature of which has never been in dispute. (Kirk's proposed Decree, p. 6, l. ¶5, 6 & 7.)
25 These three accounts were only added for purposes of completeness so that **all community accounts**
26 **were identified**, as Kirk believed the amount of money in these accounts was de minimis. To the extent
the addition of these accounts is inconsistent with the record before the Court on December 3, 2012,
27 Kirk will waive any interest in these accounts, despite the fact both parties have always agreed these
accounts are community property. One of these accounts is the checking account Vivian utilized during
28 the marriage. According to Exhibit E, filed by Vivian on September 27, 2013, the total money in all
three of these accounts is \$477.00 [278 + 7 + 192].

3. **After Vivian's Attorneys Received Extensive Responses in Discovery Confirming the Subject Accounts Only Contained Kirk's Separate Property Funds, the Financial Experts On Behalf of Both Parties, Jointly Determined The Relative Community and Separate Property Interests in the Ranch Parcels that Kirk Had Acquired From His Sisters On the Basis that the Funds in Those Separate Property Accounts Were And Are Kirk's Separate Property**

Kirk filed his Financial Disclosure Form on February 12, 2012. A true and correct copy is attached hereto as Exhibit "1." Exhibit 2 to the FDF identifies the same four separate property accounts ending in 8682, 2713, 1275 and 8032 as being Kirk's separate property.² The following is a brief history of these four accounts:

1. Bank of America account ending in 8682 – Kirk has had this account since he was in high school. The account was originally with the Pioche Office of Nevada National Bank. Nevada National Bank was later acquired by Security Pacific Bank. Security Pacific Bank was subsequently acquired by Bank of America.
2. Nevada Bank & Trust account ending in 2713 – this was a joint account Kirk had with his father, with full right of survivorship, prior to his marriage to Vivian. When Kirk's father passed away on October 30, 1990, he became the sole owner of the account.
3. Nevada Bank & Trust account ending in 1275 – the account ending in 2713 is a non-interest bearing checking account. Therefore, Kirk purchased a certificate of deposit at Nevada Bank & Trust with most of the funds in that account and thus created this account.
4. Wells Fargo account ending in 8032 – Kirk opened an account at First Interstate Bank on November 29, 1990, to deposit all monies he received from his father's estate and all monies he received from the lease and sale of Kirk's parents' family home, which Kirk and his sisters inherited from their mother when she passed away in 1983. Kirk's father lived in the family home until the time of his death. The home was subsequently leased and sold. Sometime after all monies were received from his father's estate and the family home was sold, Kirk purchased a certificate of deposit at FIB with all of the funds in that account and thus created this account. Wells Fargo subsequently acquired First Interstate Bank.

² Also identified as separate property is UBS account ending in 8538, which holds the funds Kirk acquired as separate property pursuant to a separate property agreement with Vivian, whereby she acquired the same amount of funds to purchase the house for the Atkinsons. As noted previously, the account ending in 2521 is the separate property account Kirk established subsequently during the pendency of the divorce to deposit separate property funds, which has been utilized to pay Kirk's normal ongoing bills.

Kirk's extensive discovery responses confirm that each of Kirk's separate property accounts only contain Kirk's separate property. On or about March 8, 2012, Kirk produced Plaintiff's First Supplemental Response to Defendant's First Request for Production of Documents. Included in these documents are the following:

REQUEST FOR PRODUCTION NO. 11:

Please produce any and all documents evidencing any inheritance received by Plaintiff or Defendant during the time of the parties' marriage, and any and all property or assets acquired through or attributable to any rents, issues, and profits from such inheritance.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See the following documents submitted herewith:

1. Probate Final Order dated 5/8/02 PLTF000798 - PLTF000800
2. 1/25/88 letter from Associated Food Stores, Inc.
regarding Patron's credit receipts PLTF000801
3. 11/21/90 letter from Kirk Harrison to Associate Food Stores, Inc.
regarding Patron's credit receipts PLTF000802 - PLTF000806
4. Check 1041 payable to Kirk Harrison in the amount
of \$45,543.68 and supporting deposit documents PLTF000807 - PLTF000809
5. Letter from Kirk Harrison to Nevada Bank & Trust
requesting cashier's check for \$48,900 PLTF000810 - PLTF000811
6. Check register and backup documents for First Interstate
Bank account ending 5565 PLTF000812 - PLTF000828

As part of this production, Kirk also produced, in response to request #15, *inter alia*, the following:

5. Bank of America, Ending 8682
Kirk Harrison
Period ending: 7/8/09 - 2/3/12 PLTF002656 - PLTF002782
11. Nevada Bank & Trust, Ending 2713
Kirk Harrison
Period ending: 6/9/09 - 1/9/12 PLTF003679 - PLTF003759

On or about October 1, 2012, Kirk provided Plaintiff's Response to Defendant's Second Set of Interrogatories. In response to Interrogatory #28, Kirk explained the source of funds utilized to purchase his sisters' interests in the family ranch as follows:

I purchased my sister Janie's undivided one-fourth interest in Parcel #6050-A-1 and her undivided one-third interest in Parcel #6052 on or about December 29, 1994 for the total purchase price of \$60,000.00. \$11,100 of the \$60,000 purchase price came from

1 a separate property account at FIB (#0380145565). My Dad passed away on October 30,
2 1990. I opened this separate property account with FIB on November 29, 1990 to deposit
3 all monies I received from my Dad and all monies I received from the lease and sale of
4 our family home in Caliente, Nevada. \$48,900 of the \$60,000 purchase price came from
5 what I then believed to be a totally separate property account at Nevada Bank & Trust
6 (#1802792). I had purchased my home, located at 5100 Bromley Avenue in Las Vegas,
7 on October 4, 1979 – over three (3) years before my marriage to Vivian. I had purchased
8 the home for \$72,400 with a \$12,400 down payment and a note for \$60,000.00. When
9 I sold this house, I calculated what I believed at the time to be a very conservative
10 estimate of the separate property portion of the proceeds from the sale of that home, and
11 had the escrow company cut two checks based upon that calculation – one for
12 \$45,543.68 and one for \$67,000.00. I opened the account at Nevada Bank & Trust in
13 July of 1992 and deposited \$45,543.68, which I believed to be 100% my separate
14 property. I deposited the \$67,000.00 into a community property account.

15 I purchased my sister Jo Lyn's undivided one-fourth interest in Parcel #6050-A-1
16 and her undivided one-third interest in Parcel #6052 in May of 1998 for a total of
17 \$70,000.00. \$19,000.00 of the \$70,000 purchase price was from the separate property
18 account at FIB, however, by then it was Wells Fargo Bank.

19 I purchased my sister Kaye's undivided one-fourth interest in Parcel #6050-A-1
20 and her undivided one-third interest in Parcel #6052 in December of 1998 for a total of
21 \$110,000.00 utilizing community funds.

22 On or about October 1, 2012, Kirk provided Plaintiff's Response to Defendant's Third Request
23 for Production of Documents. In response to Request #38, Kirk provided, *inter alia*, the following
24 documents:

25 Documents evidencing source of funds have been previously provided in
26 response to a prior request for production. See, Bates-stamped nos. PLTF000798 -
27 PLTF000809 and PLTF000812 - PLTF000828. The following additional documents
28 are being produced herewith:

1. Letter dated June 29, 1992 from Minnesota Title Ins. to Kirk R. Harrison
Re: Escrow No. 23-86407-KO PLTF010061 - PLTF010064
2. Monthly statements for Nevada Bank & Trust account # 1802792
(July 31, 1992 through January 31, 1995) PLTF010065 - PLTF010101
3. Copy of the cashier's check, in the amount of \$11,100.00
made payable to Northern Nevada Title, from First Interstate
Bank, dated December 29, 1994 PLTF010102
4. Copy of personal check, in the amount of \$51,000.00, made
payable to Walther Key Trust Account, drawn on account number
ending 4040, and copy of Cashier's Check, in the amount of
\$19,000.00, dated March 18, 1998, made payable to Walther
Key Trust Account, drawn on Wells Fargo Bank PLTF010103

29 After the production of all of the documentation relative to Kirk's separate property accounts
30 and Kirk's answers to interrogatories referenced above, the parties participated in a settlement meeting

1 on or about November 29, 2012. During that settlement meeting, the financial experts on behalf of both
2 parties – Cliff Beadle, on behalf of Kirk and Melissa Attanasio and Brian Boone (via telephone), on
3 behalf of Vivian – jointly determined the relative community and separate property interests in the ranch
4 parcels that Kirk had acquired from his sisters **on the basis that the funds in the separate property**
5 **accounts were and are Kirk's separate property.** At no time during the negotiations beginning on
6 November 29, 2012, and culminating in the settlement which was memorialized on the record before
7 this Court on December 3, 2012, did Vivian's attorneys or financial experts take the position that Kirk's
8 separate property accounts were not Kirk's separate property. *See*, Affidavit of Clifford R. Beadle,
9 dated November 8, 2013, which is attached hereto as **Exhibit "2."**

10 In summary, Kirk's separate property accounts were identified in Kirk's Financial Disclosure
11 Form as being Kirk's separate property. After receiving multiple responses to discovery concerning
12 these accounts, the financial experts, on behalf of both parties, jointly determined relative separate and
13 community property interests in certain ranch parcels on the basis these were and are Kirk's separate
14 property accounts. The record before the Court on December 3, 2013, is indisputably clear there were
15 only five accounts yet to be divided – none of which were Kirk's separate property accounts. Neither
16 party indicated to the Court that any of these separate property accounts were to be divided. Inconsistent
17 with all of the foregoing, Vivian's attorneys submitted their much belated proposed Decree of Divorce
18 some 10 months later proposing the division of Kirk's separate property accounts.

19
20 **C. Kirk Respectfully Submits The Further Division Of Personal Property By**
Way Of An A/B List Is Unnecessary

21 The Court's Decree of Divorce provides, "that any personal property not identified and appraised
22 by Joyce Newman in her Summary Appraisal Report and not divided or otherwise confirmed to either
23 party pursuant to the terms set forth above shall be divided by way of an A/B List." *See*, Decree of
24 Divorce, p. 23, l. 11-15. It is clear from the record on December 3, 2012, and the proposed Decrees of
25 Divorce submitted by the parties, that all of the personal property at the Utah Ranch belongs to Kirk.
26 (December 3, 2012, Hearing Transcript, p. 7, l. 7 - 8.) Therefore the only items of personal property
27 which would be subject to division by way of an A/B List are the items of personal property which were
28 in the marital residence which were not on Joyce Newman's Summary Appraisal. As Kirk has

1 previously represented to the Court, he believes that 95% of these personal items are in Vivian's
2 possession. Despite this knowledge, Kirk is willing to forego the expense of an A/B List division of
3 these items and the personal property that Kirk removed from the marital residence when he vacated
4 the marital residence.

5
6 **1. Both Parties Agree that All of the Personal Property Presently
Located at the Ranch Belongs to Kirk**

7 The record of the hearing on December 3, 2012, is unequivocal that all of the personal property
8 at the Utah Ranch belongs to Kirk. Vivian's proposed Decree is unequivocal that all of the personal
9 property at the Utah Ranch belongs to Kirk. (Vivian's proposed Decree, p. 15, ¶7.30 & 7.31.) It should
10 be noted that this submission was made on September 27, 2013 – ten months after Vivian complained
11 that Kirk improperly took personal property from the marital residence, which is addressed in detail
12 infra. Kirk's proposed Decree is also unequivocal that all of the personal property at the Utah Ranch
13 belongs to Kirk. (Kirk's proposed Decree, p. 14, ¶29, 30 & 31.)

14
15 **2. The Personal Property Which Was Located at the Marital
Residence But Not Identified by Joyce Newman**

16 As the Court has readily seen from Kirk's response to the "Notes" and "Explanation"
17 accompanying Vivian's proposed Decree of Divorce, Kirk responded in detail as to those items Vivian
18 alleged were improperly taken, setting forth the basis upon which it was taken, and the de minimis value
19 of what was taken. See, Kirk's submission of proposals, filed 9/30/13, p. 5-14.

20 It should be noted that Vivian had previously taken the same position as Kirk that the furniture
21 and furnishings in the children's bedrooms belonged to the children. However, despite the fact that
22 Tahnee and Whitney boxed their own belongings from their bedrooms and asked Kirk to remove their
23 furniture and furnishings from the marital residence, Vivian complained this was somehow improper.

24 ...

25 ...

26 ...

27 ...

28 ...

1 As noted in Kirk's submission of proposals, filed 9/30/13, p. 9, these were the first two items on
2 Vivian's fifteen item list. Confirming this was the primary objection to the personal items Kirk
3 removed, Vivian again accused Kirk of improper behavior in removing Tahnee's and Whitney's
4 furniture and furnishings, which was at their request and on their behalf, in Vivian's opposition to Kirk's
5 Motion to Modify Order Resolving Parent-Child Issues, filed October 16, 2013, arguing as follows:

6 d. Nothing in the agreement regarding property allowed Kirk to clean out the bedroom
7 furniture in the children's rooms. The agreement was the (sic) Kirk would leave all
8 property other than designated. It is questionable this property belongs to the daughters,
and the Court lacks jurisdiction to address any dispute regarding the property of the adult
children (like UGMA accounts);³

9 (Vivian's Opposition to Modifying Order Resolving Parent-Child Issues, filed 10/16/13, p.28, l. 23-27.)

10 However, in Vivian's proposed Decree, she proposed, as Kirk has consistently proposed, the
11 following: "The parties agree that the furniture and furnishings in each of the children's bedrooms is
12 the personal property of that respective child." (Vivian's proposed Decree, p.. 19, ¶11.1.)

13 Vivian has refused and continues to refuse to allow Kirk to obtain the Stairmaster identified as
14 item 21 on page 20, ¶32 of the Court's Decree of Divorce. This item needs to be provided in accordance
15 with this Court's Order.

16 This Court's Decree of Divorce contains a number of provisions which address the personal
17 property which belongs to Kirk, including ¶29, 30, 31, 32, and 33. Paragraph 33 specifically includes
18 Kirk's "miscellaneous personal possessions." In addition, the Court made clear the furniture and
19 furnishings in the children's bedrooms belongs to them. *See*, Court's Decree of Divorce, p.26, l. 19-22.
20 In light of these provisions, it is difficult to see from the fifteen identified items what remains to which
21 Vivian has any viable complaint about:

- 22 1. *All furniture and furnishings from Tahnee's room.* Both Kirk and Vivian agreed that
23 all of the furniture and furnishings in each of the children's bedrooms was their property.
- 24 2. *All of the furniture and furnishings from Whitney's room, except for the glass chandelier.*
25 Again, both Kirk and Vivian agreed that all of the furniture and furnishings in each of
26 the children's bedrooms was their property.

27 ³ The Court should note that as of October 16, 2013, Vivian was still taking the absurd position that Kirk
28 had agreed to vacate the marital residence without, literally, the clothes on his back, since his clothes
were not designated by Joyce Newman.

3. *Almost all of the DVDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." Kirk only took the dvds he purchased.
4. *Rug from the library.* Kirk's proposal provided, "Kirk will receive the furniture, rugs, and accessories in the following rooms: library loft, pool table room, and master bedroom."
5. *Linens (only linens Kirk left are a few towels which had Vivian's initials monogrammed on the left).* This assertion is not accurate, as many linens were left behind, including towels without Vivian's initials monogrammed on them.
6. *Almost all sheets, comforters, cashmere blankets.* This assertion is not accurate, as many of these items were left behind. Kirk, generally took those sheets, comforters, and cashmere (75% wool) blankets which he had purchased. He also took a comforter his mother made for him. There was only one California King bed in the home, which was in the master bedroom. There was a small blue comforter and a small grey comforter — Kirk bought these at Costco probably fifteen years ago to keep in the vehicles. There was bedding for five queen beds in the house. Kirk rightfully took three of those queen beds — his parents', Tahnee's (which was already in California with Tahnee) and Whitney's. He took about 3/5s or 60% of the queen bedding. The two queen beds remaining are Joseph's and Brooke's. Joseph still has all of his bedding and Brooke has all of her bedding. The single bed remaining is Rylee's. Rylee still has all of her bedding.
7. *Almost all CDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." It also provided, "Vivian shall receive all of the artwork, collectibles, books, cds, and dvds that Vivian personally purchased." Kirk only took the cds which he had purchased.
8. *All Photo albums, loose photographs, photo screens.* [Already addressed by the Court in the Decree, p. 26, l. 23-28; p. 27, l. 1-8]
9. *Spode Christmas China and Glassware.* Kirk's proposal provided, "Kirk shall receive the brown wood handled steak knives in the marital residence and all of the Spode Christmas dinnerware, glasses and related accessories." None of the Spode Christmas China and Glassware was itemized on any proposal from Vivian. Kirk and Vivian bought the initial Spode Christmas China and Glassware together. Kirk has bought most of the accessories during after Christmas sales. Kirk generally sets these items out each year. Every year, Kirk washes, dries, and puts these items away.
10. *Christmas ornaments.* It is noteworthy that on Vivian's A/B list, she proposed that she and Kirk equally share all of the 'Holiday Decorations.' Kirk's proposal provided, "Vivian shall receive all of the Christmas ornaments gifted to her by her mother and grandfather and grandmother, all of the Christmas outside lighting, and the lighted Christmas tree. Vivian shall receive all of the Christmas ornaments she personally purchased." Most of the Christmas ornaments were left behind, including those Vivian received from her family. Kirk took only those ornaments he had received as gifts and those he had purchased. Tahnee and Whitney took their personal ornaments. Kirk left the Christmas tree, all of the Christmas decorations, and all of the Christmas lighting.
11. *Kitchen bake ware.* The vast majority of the kitchen bake ware was left behind. There are cupboards full of kitchen bake ware. Kirk only took a few items. There were four large green casserole pans, three large red casserole pans, and two small yellow casserole pans. Kirk took the three large red casserole pans and one small yellow casserole pan.

Kirk took one of several cookie sheets.

12. *Dyson vacuum cleaner.* On Vivian's A/B list, she referenced the "cleaning supplies, vacuum, etc." as being non-applicable to the A/B list, without identifying it being either belonging to the husband or wife. There is a built-in vacuum cleaner in the marital residence. In addition, there was a Dyson vacuum cleaner and a Dirt Devil full size vacuum cleaner. Vivian hires people to do the vacuuming in the marital residence and rarely vacuums herself. Kirk does his own vacuuming.
13. *Dumb bells from the workout room.* Kirk's proposal provided Vivian receive "dumbbells(silver)" and Kirk receive "Dumbbells(rubber)." Vivian proposed in her A/B list that Kirk - who she intended to get the B list - would get the "Rubber Head Dumbbells." She proposed she would get the "Chrome Dumbbells" - which she had already removed from the marital residence. This is precisely what occurred. Kirk took the Rubber Head Dumbbells and Vivian took the Chrome Dumbbells.
14. *Almost all the sporting goods from the garage cabinets such as golf clubs, baseball gloves, etc.* Kirk's proposal provided, "Kirk shall receive all of his hunting gear, fishing gear, camping gear, boating gear, golf clubs and gear, bows & arrows, tennis rackets, and similar sporting type items." Kirk took all of his golf clubs, baseball glove, and tennis rackets. Kirk also took the golf clubs he purchased for Brooke and Rylee. Kirk also took all of the tennis rackets and balls he had purchased for his children. Vivian does not play any sports including, golf, tennis, baseball, or softball. Vivian does not play any sports with the children.
15. *Bikes for Brooke, Rylee and Vivian.* When the Harrisons moved to Boulder City in 1993, Kirk bought new bikes for Vivian, Tahnee and Whitney. Kirk taught Tahnee, Whitney, and Joseph how to ride a bike. Vivian rarely rode her bike and, probably, has not ridden a bike since 1994 - over 18 years ago! As the children grew older, the bikes were passed down. Vivian's bike became Tahnee's bike, Tahnee's bike became Whitney's bike, and Whitney's bike became Joseph's bike. When Tahnee, Whitney and Joseph outgrew the bikes and stopped riding them all together, Kirk took all three bikes to the ranch and put them in storage. Kirk retrieved these three bikes from the ranch when he started teaching Brooke and Rylee to ride a bike. Vivian doesn't ride a bike and has not participated in Kirk's efforts to teach Brooke and Rylee to ride a bike. Kirk took all of these bikes to the ranch for the winter. Kirk was later told that Vivian wanted "her" bike returned. The first opportunity Kirk had to go to the ranch he retrieved "Vivian's bike" as well as the road bike Kirk had given Vivian many years ago and delivered them to the marital residence. Kirk also retrieved Vivian's mother's bed, which Vivian had identified she wanted in her A/B list proposal, and delivered it to the marital residence as well.

See, Kirk's submission of proposals, filed 9/30/13, p. 5-14.

It should be noted that Kirk was highly deferential to Vivian regarding the personal items he took from the marital residence. Kirk took nothing that Vivian previously identified she wanted. Most of what Kirk took were his personal items that he previously identified to Vivian in writing that he intended to take - items #3, 4, 7, 9, 10, 13, and 14. At least at this point, there is no dispute that Kirk was entitled to take his bed, his parent's bed, Tahnee's bed, and Whitney's bed. Kirk was reasonably entitled to take the linens and bedding for each of those beds - items #1, 2, and 6. Vivian has never

1 expressed any particular personal affinity with any of the personal items Kirk took. The collective value
2 of everything Kirk took pales in comparison to the value of personal property he did not take. For
3 example, just the guitar autographed by members of the Rolling Stones, is worth many many multiples
4 of the total value of everything Kirk took. The same is true with respect to each of several large hand
5 made rugs that Vivian purchased during one of her trips to Asia. Just one of those rugs is worth many
6 multiples of the total value of the personal items Kirk took. The same is also true with respect to each
7 of the several hand made wall hangings Vivian purchased during one of her trips to Asia. Just one of
8 those wall hangings is worth more than the total value of the personal items Kirk took.

9 Assuming Vivian is no longer objecting to the personal items Kirk rightfully took when he
10 vacated the marital residence, then, **upon that condition**, and the provision of the Stairmaster to Kirk,
11 for which Kirk has already paid, and which is specifically identified in this Court's Order (p. 20, ¶32),
12 Kirk does not object to Vivian obtaining what he estimates to be over 95% of the personal property in
13 the marital residence that was not appraised by Joyce Newman. Some of these items were identified
14 in Kirk's proposed Decree. *See*, Kirk's proposed Decree, p. 7, ¶19; p. 8, ¶20-29 & 32; p. 9, ¶34-37.

15
16 **D. Any Provision Providing For Reimbursement For Separate Property Funds**
17 **Being Utilized For Community Expenses During the Pendency of The**
18 **Divorce Must Be Mutual and Be Within The Parameters Of This Court's**
19 **Temporary Orders of February 24, 2012, and Formalized on June 13, 2012**

20 This Court ordered that it "shall retain jurisdiction to adjudicate any reimbursement owed to
21 Vivian for community expenses paid from separate property monies prior to November 20, 2012."
22 (Court's Decree of Divorce, 10.31.13, p. 28, l. 7-10.) (Emphasis added.)

23 Kirk respectfully notes that Vivian's claim for "reimbursable expenses" was not provided until
24 the middle of the hearing on December 3, 2012. However, none of the documentation for those
25 expenses was provided until January 29, 2013. Most of the documentation does not provide what was
26 acquired or specifically what services were rendered. Soon thereafter, on February 5, 2013, Kirk sent
27 an email to Melissa Attanasio, setting forth questions he had about the claimed expenses. On February
28 5, 2013, Melissa Attanasio sent an email in response wherein she stated, "... *I was not involved I (sic)*
this accounting, thus I have forwarded to the appropriate parties." A copy of Kirk's email to Melissa
Attanasio and her response, both on February 5, 2013, is attached hereto as **Exhibit "3."** *Neither Vivian*

1 nor Vivian's attorneys have ever provided a response. Again, this was ignored for nearly eight months
2 and then was raised with false claims that Kirk has not complied. The submission filing on September
3 27, 2013, is the first mention of this issue since the time of Kirk's inquiry. In Kirk's response to
4 Vivian's "Notes" and "Explanation," filed 9/30/13, Kirk set forth significant community expenses which
5 he paid from separate property funds, for expenses similar to those alleged by Vivian and also include
6 significant separate property funds expended for Vivian's sole benefit as a consequence of Vivian's
7 attorneys' many month delays in responding to the Marital Settlement Agreement on February 19, 2013.
8 Under such circumstances, Kirk respectfully requests the Court to amend and clarify the Decree to
9 include Kirk's claim for "reimbursable expenses," which in all equity, should include monies paid for
10 such items as Vivian's health insurance, Vivian's auto insurance, association fees associated with the
11 Lido lot, real property taxes, etc. These are Vivian's individual expenses which Kirk paid and/or joint
12 expenses which Kirk paid alone.

13
14 **E. The Measo Associates Interest is Presently and Has Always Been in the
Name of Both Kirk and Vivian**

15 The twenty-five percent (25%) ownership interest in The Measo Associates is currently and has
16 always been in both Kirk's and Vivian's names. It is a general partnership and Vivian and Kirk,
17 together, own 25%. (Hearing Transcript, 12/3/12, p. 8, l. 17-19.) Vivian's proposed Decree of Divorce
18 is in error in this regard, as it provided, "A twelve and one-half percent (12.5%) interest in The Measo
19 Associates, a Nevada General Partnership **currently held in Kirk's sole name.**" (Vivian's proposed
20 Decree of Divorce, p. 6, ¶6.3.) (Emphasis added.) This error was adopted by the Court in the Decree
21 of Divorce, entered October 31, 2013, and should be corrected accordingly. *See*, Decree of Divorce,
22 p. 8, ¶3; p. 14, ¶3.

23 **III. CONCLUSION**

24 This Court has ample authority to correct the errors in its Decree of Divorce, which were caused
25 by the errors contained in Vivian's proposed Decree of Divorce, which was filed on September 27,
26 2013.

27 ...

28 ...

1 Unfortunately, as a consequence of the errors contained in Vivian's submission, Vivian would
2 otherwise inequitably receive one-half of five accounts which are indisputably, both legally and
3 equitably, Kirk's separate property, including the "Fee Account" he established to deposit the
4 \$350,000.00 to pay attorneys' fees and costs, which has been exhausted and presently only contains
5 additional separate property funds deposited into the account to pay ongoing attorneys' fees and costs.

6 In view of the status of the division of personal property, Kirk respectfully submits that an A/B
7 List process, certainly at this point, would be problematic as Vivian has had exclusive possession of the
8 marital residence for almost one year, and if Kirk simply is provided the Stairmaster for which he has
9 already paid, he is willing to let Vivian retain what he estimates to be over 95% of the personal property
10 that was in the marital residence, which was not appraised by Joyce Newman.

11 Under the parameters of the Court's Order which itemized the expenses which were to be paid
12 from community funds, Kirk respectfully submits he is also legally and equitably entitled to seek
13 reimbursement to the same extent as Vivian, and the Decree of Divorce, should therefore be amended
14 in that regard. In addition, as a consequence of Vivian's inexcusable delay in not responding to Kirk's
15 proposed Marital Settlement Agreement from February 19, 2013, until this Court compelled Vivian's
16 response on September 27, 2013, Kirk individually incurred substantial separate property expenses for
17 the benefit of Vivian or for them jointly, including such items as Vivian's health insurance, Vivian's
18 auto insurance, real property taxes, etc.

19 Finally, the Decree should also be amended to correct another error caused by Vivian's
20 submission, to accurately reflect that the 25% interest in The Measo Associates is and always has been
21 in both Vivian's and Kirk's names.

22 DATED this 14 day of November, 2013.

23 KAINEN LAW GROUP, PLLC

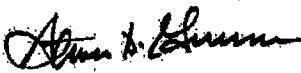
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25 By: 

26 EDWARD L. KAINEN, ESQ.
27 Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
28 Las Vegas, NV 89145
Attorneys for Plaintiff

er
Docketing Statement Attachment No. 5

1
2 ORDER

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

FINDINGS, CONCLUSIONS AND ORDERS

This matter came before this Court on the following papers that were reviewed and considered by this Court:¹

- (1) Defendant's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013) (hereinafter referred to as "Vivian's Motion") (37 pages in length, exclusive of exhibits);
- (2) Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's

¹Defendant also filed a Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorneys' Fees (May 10, 2013). Plaintiff also filed a Motion to Enter Decree of Divorce (May 13, 2013). Additional papers were filed with respect to these two Motions. (There was, however, no opposition filed in response to Plaintiff's Motion to Enter Decree of Divorce (May 13, 2013)). With the exception of each party's request for attorney's fees associated with these motions, the issues raised therein have been resolved by this Court by way of the entry of the Decree of Divorce (Oct. 31, 2013), the Order Re: Appointment of Therapist (Oct. 29, 2013), and the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). As such, these issues are not addressed herein.

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

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2 Counter-motion for Attorneys' Fees and Sanctions; Plaintiff's
3 Counter-motion for Declaratory Relief (May 28, 2013) (hereinafter referred
4 to as "Kirk's Opposition and Counter-motions") (133 pages in length,
5 exclusive of exhibits);

6 (3) Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys'
7 Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and
8 Evidentiary Hearing; Plaintiff's Counter-motion for Equitable Relief;
9 Plaintiff's Counter-motion for Attorneys' Fees and Sanctions; and Plaintiff's
10 Counter-motion for Declaratory Relief (May 28, 2013) (804 pages in
11 length);

12 (4) Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for
13 Attorneys' Fees and Sanctions; and Opposition to Plaintiff's Request for
14 Discovery and Evidentiary Hearing; Plaintiff's Counter-motion for
15 Equitable Relief; Plaintiff's Counter-motion for Attorneys' Fees and
16 Sanctions; Plaintiff's Counter-motion for Declaratory Relief (May 31,
17 2013) (5 pages in length);

18 (5) Plaintiff's Reply to Defendant's Opposition to Plaintiff's Request for
19 Discovery and Evidentiary Hearing; Plaintiff's Counter-motion for
20 Equitable Relief; Plaintiff's Counter-motion for Attorneys' Fees and
21 Sanctions; Plaintiff's Counter-motion for Declaratory Relief (June 3, 2013)
22 (hereinafter referred to as "Kirk's Reply") (10 pages in length, exclusive of
23 exhibits);

24 (6) Plaintiff's Motion for Scheduling Order or, in the Alternative, to Deny
25 Vivian's Motion for Attorneys Fees, Grant Each of Kirk's Counter-motions,
26 and Grant Kirk's Motion for Enter Decree of Divorce (Sep. 4, 2013) (12
27 pages in length, exclusive of exhibits);

28 (7) Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for
Attorney's Fees and Sanctions; Defendant's Opposition to Plaintiff's
Counter-motion Styled Request for Reasonable Discovery and Evidentiary
Hearing; Defendant's Opposition to Plaintiff's Counter-motion for
Equitable Relief; Defendant's Opposition to Plaintiff's Counter-motion for
Attorneys' Fees and Sanctions; and Defendant's Opposition to Plaintiff's
Counter-motion for Declaratory Relief (Sep. 11, 2013) (hereinafter referred
to as "Vivian's Reply") (78 pages in length, exclusive of exhibits);

(8) Exhibits to Defendant's Reply to Plaintiff's Opposition to Defendant's
Motion for Attorney's Fees and Sanctions; Exhibits to Defendant's
Opposition to Plaintiff's Counter-motion Styled Request for Reasonable

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2 Discovery and Evidentiary Hearing; Exhibits to Defendant's Opposition to
3 Plaintiff's Countermotion for Equitable Relief; Exhibits to Defendant's
4 Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions;
5 and Exhibits to Defendant's Opposition to Plaintiff's Countermotion for
6 Declaratory Relief (Sep. 11, 2013) (354 pages in length); and

- 7
8
9 (9) Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for
10 Reasonable Discovery and Evidentiary Hearing, Equitable Relief,
11 Attorneys' Fees and Sanctions, and Declaratory Relief (Oct. 21, 2013) (57
12 pages in length, exclusive of exhibits).

13
14 This Court has entertained extensive briefing² on the issues raised by way of the
15 foregoing papers filed by each party, as well as arguments offered by counsel at the
16 hearing held on October 30, 2013. Based on the papers on file and the arguments of
17 counsel, this Court makes the following findings and conclusions:

18 I. SUMMARY OF LITIGATION: A successful settlement?

19 On March 18, 2011, Plaintiff, KIRK ROSS HARRISON ("Kirk"), filed his
20 Complaint for Divorce against the Defendant, VIVIAN MARIE HARRISON ("Vivian").
21 On November 23, 2011, Vivian filed her Answer to Complaint for Divorce and
22 Counterclaim for Divorce. By way of their respective pleadings, both parties sought
23 primary physical custody of their two minor children, Emma "Brooke" Harrison, born

24
25 ²During this litigation, both parties routinely filed papers in excess of the page limitations
26 specified in EDCR 2.20(a), which provides, in pertinent part, "[u]nless otherwise ordered by the
27 court, papers submitted in support of pretrial and post-trial briefs shall be limited to 30 pages
28 excluding exhibits." During the custody portion of the litigation, the length of papers was
discussed on one occasion before the Court. Specifically, at the hearing on November 1, 2011,
Defendant orally requested permission to submit a paper that exceeded the length allowed
pursuant to EDCR 2.20(a). In consideration of the gravity of the issue (i.e., child custody), this
Court indicated that it did not "have a problem" with the lengthy filings of the parties so long
as courtesy copies were provided to the Court. Although this Court tolerated such lengthy filings
at that time, this Court advised the parties at the October 30, 2013 hearing it would no longer
tolerate the same. Indeed, the excessive and burdensome length of filings that addressed the
remaining issues before this Court is dealt with in the award of attorneys' fees below.

1 June 26, 1999, and Rylee Harrison, born January 24, 2003. Further, both parties raised
2 the issue of attorney's fees in their respective pleadings.
3

4 Kirk and Vivian ultimately resolved nearly every contested issue identified in their
5 respective pleadings. The terms of their agreements were memorialized in their
6 Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012), and the Decree of
7 Divorce (Oct. 31, 2013). As such, the stipulated resolution reached by the parties could
8 be viewed as a "success" of the divorce process. Indeed, as expressed by the Honorable
9 David A. Hardy:
10

11
12 Litigants often respond negatively when their relationships and resources
13 are at risk. A divorce proceeding culminating in trial represents a failure of our
14 legal system. The adversarial process requires parties to emphasize their
15 virtues and their respective spouses' flaws. The divorce proceeding is both
16 expensive and destructive.

17 *Nevada Alimony: An Important Policy in Need of a Coherent Policy Purpose*, 9 NEV. L. J. 325
(2009) (emphasis supplied).

18 Although there were several contested hearings in this divorce action, there was
19 no trial or evidentiary hearing prior to January 22, 2014. Through the date of the
20 October 30, 2013 hearing, not a single witness was called to testify at any proceeding
21 before this Court. Nevertheless, the financial cost (to say nothing of the unquantifiable
22 emotional cost) of this litigation was staggering. To this end, the parties devoted
23 significant time, energy, and resources to the issue of custody of the parties' two minor
24 children. Both parties filed multiple papers of voluminous length with the Court
25 regarding the issue of child custody. These papers included:
26
27
28

- 1
2 ☐ Kirk's Motion for Joint Legal and Primary Physical Custody and Exclusive
3 Possession of Marital Residence (Sep. 14, 2011) (hereinafter referred to as
4 "Custody Motion") (206 pages in length, inclusive of the Affidavits of Kirk
5 R. Harrison, Tahnee Harrison and Whitney Harrison, but exclusive of
6 other exhibits);
7
8 ☐ Vivian's Opposition to Plaintiff's Motion for Joint Legal and Primary
9 Physical Custody and Exclusive Possession of Marital Residence;
10 Countermotions for Exclusive Possession of Marital Residence, for Primary
11 Physical Custody of Minor Children; for Division of Funds for Temporary
12 Support, and for Attorney's Fees (Oct. 27, 2011) (hereinafter referred to
13 as "Custody Countermotion") (188 pages in length, inclusive of the Sworn
14 Declaration of Vivian Harrison and various other declarations/affidavits,
15 but exclusive of other exhibits);
16
17 ☐ Kirk's Reply to Defendant's Opposition to Plaintiff's Motion for Joint
18 Legal and Primary Physical Custody and Exclusive Possession of Marital
19 Residence; Countermotions for Exclusive Possession of Marital Residence,
20 for Primary Physical Custody of Minor Children; for Division of Funds for
21 Temporary Support, and for Attorney's Fees (Jan. 4, 2012) (hereinafter
22 referred to as "Kirk's Custody Reply") (105 pages in length, inclusive of
23 the Affidavit of Kirk R. Harrison and various other declarations/affidavits,
24 but exclusive of other exhibits);
25
26 ☐ Vivian's Reply to Plaintiff's Opposition to Defendant's Countermotions for
27 Exclusive Possession of Marital Residence, for Primary Physical Custody
28 of Minor Children; for Division of Funds for Temporary Support; and for
Attorney's Fees (Jan. 27, 2012) (hereinafter referred to as "Vivian's
Custody Reply") (67 pages in length, inclusive of the Sworn Declaration
of Vivian Harrison and various other declarations/affidavits, but exclusive
of exhibits); and

☐ Vivian's Supplemental Sworn Declarations in Support of Reply to
Countermotion (Jan. 31, 2012) (2 pages in length, 12 pages of declarations).

24 The parties appeared at multiple hearings regarding the issue of custody. As
25 noted above, Kirk and Vivian each requested primary physical custody of their minor
26 children in their respective pleadings (i.e., Kirk's Complaint and Vivian's Counterclaim).
27 Each party relied on various "expert" reports attached to their respective filings.
28

1 Ultimately, this Court appointed Dr. Paglini to provide evaluative services regarding the
2 issue of child custody. Notwithstanding the significant time, energy, and resources
3 devoted to the issue of custody (or perhaps as a result thereof), the parties entered into
4 a Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). Thereafter, the
5 parties resolved the remaining issues of the divorce action, placing the terms on the
6 record at the December 3, 2012 hearing. Their agreement included a specific reservation
7 of jurisdiction to allow this Court to entertain a motion to be filed by either party
8 regarding the issue of attorneys' fees. See Decree of Divorce 28-29 (Oct. 31, 2013).

9 10 11 12 II. ATTORNEYS' FEES

13 14 A. LEGAL BASES

15 On April 3, 2013, Vivian's Motion was filed. "It is well established in Nevada
16 that attorney's fees are not recoverable unless allowed by express or implied agreement
17 or when authorized by statute or rule." *Schouweiler v. Yancey Co.*, 101 Nev. 827, 830,
18 712 P.2d 786, 788 (1985), quoted in *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727
19 (2005). Pursuant to Vivian's Motion (Apr. 3, 2013), Vivian seeks an award of
20 attorney's fees on the following bases:
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1 (1) NRS 125.150;³

2 (2) EDCR 7.60(b);⁴ and

3 (3) *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972).⁵

4 This Court finds and concludes that there is a basis to consider each party's
5 request for an award of attorney's fees pursuant to the foregoing bases.⁶

6
7
8 ³NRS 125.150 provides, in relevant part, as follows:

9
10 3. Except as otherwise provided in NRS 125.141, whether or not
11 application for suit money has been made under the provisions of NRS 125.040,
12 the court may award a reasonable attorney's fee to either party to an action for
13 divorce if those fees are in issue under the pleadings.

14 ⁴EDCR 7.60(b) provides as follows:

15 (b) The court may, after notice and an opportunity to be heard, impose
16 upon an attorney or a party any and all sanctions which may, under the facts of
17 the case, be reasonable, including the imposition of fines, costs or attorney's fees
18 when an attorney or a party without just cause:

19 (1) Presents to the court a motion or an opposition to a motion
20 which is obviously frivolous, unnecessary or unwarranted.

21 (2) Fails to prepare for a presentation.

22 (3) So multiplies the proceedings in a case as to increase costs
23 unreasonably and vexatiously.

24 (4) Fails or refuses to comply with these rules.

25 (5) Fails or refuses to comply with any order of a judge of
26 the court.

27
28 ⁵In *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972), the husband challenged
the lower court's award of attorney's fees. The Nevada Supreme Court held that "[t]he wife
must be afforded her day in court without destroying her financial position. This would imply
that she should be able to meet her adversary in the courtroom on an equal basis." *Id.* at 227,
495 P.2d at 621. Vivian's Motion also cites *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d
1071, 1073 (1998) in support of her request ("[t]he disparity in income is also a factor to be
considered in the award of attorney fees."). Considering the relative income parity of the parties,
however, there has been no showing that a disparity in income exists that justifies an award of
fees. Nevertheless, the issue of whether Vivian was able to "meet [Kirk] in the courtroom on an
equal basis" is a legitimate issue that was debated and discussed throughout the papers filed by
the parties.

⁶NRS 18.010 is generally inapplicable in evaluating each party's requests for fees as a
"prevailing" party. Because the parties successfully negotiated a resolution of nearly all contested

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2 B. POST-RESOLUTION MOTIONS

3 Pursuant to EDCR 7.60, each party is entitled to an award of attorneys' fees
4 associated with Defendant's Motion for an Order Appointing a Parenting Coordinator
5 and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan;
6 Motion for Sanctions and Attorneys' Fees (May 10, 2013), and Plaintiff's Motion to
7 Enter Decree of Divorce (May 13, 2013). In this regard, although there was a good faith
8 dispute regarding the appointment of a parenting coordinator and the language of the
9 Order Appointing Parenting Coordinator, there was no reasonable basis to delay the
10 selection of a counselor for the parties' children, particularly in light of recent papers
11 filed by Kirk in which he requested a modification of the Stipulation and Order
12 Resolving Parent/Child Issues (Jul. 11, 2012). Considering the factual allegations raised
13 in all papers filed regarding the issue of custody, any delay in initiating the counseling
14 process for the children is bewildering. At the same time, Plaintiff's Motion to Enter
15 Decree of Divorce (May 13, 2013) was unopposed by Vivian and the Decree entered by
16 the Court more closely mirrored the language proposed by Kirk. See Plaintiff's
17 Submission of Proposed Decree of Divorce (Sep. 27, 2013).

18 Pursuant to EDCR 7.60 and EDCR 5.11, aspects of both of the foregoing
19 Motions should have been resolved in advance of the October 30, 2013 hearing. This
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26 issues, there is no "prevailing" party. Each party requested primary physical custody of their
27 minor children in their underlying pleadings. Thus, neither party could be construed as the
28 prevailing party regarding the physical custody designation. Nevertheless, it is not lost on the
Court that the allegations that Vivian suffered from psychological infirmities that impacted her
ability to parent the children went unproven from an evidentiary standpoint.

1 Court finds that the attorneys' fees attributable to the foregoing motions should be
2 offsetting, and no fees are awarded to either party.
3

4 C. SUMMARY OF FEES AND COSTS INCURRED AND PAID
5

6 Each party received \$550,343.25 in community funds earmarked for attorneys'
7 fees. See Letter to Court from Edward Kainen, Esq. (Jan. 15, 2014), Letter to Court
8 from Radford Smith, Esq. (Jan. 15, 2014) and Kirk's Opposition and Countermotions
9 125 (May 28, 2013). Based on the billing statements offered to the Court, Kirk paid
10 a total of \$448,738.21 in fees and costs from March 8, 2011 through January 15, 2013.
11 In contrast, Vivian paid a total of \$686,341.33 in fees and costs from May 2, 2011
12 through January 30, 2013. See Exhibits to Kirk's Opposition and Countermotions Ex.
13 15 - 19 (May 28, 2013), and Defendant's and Plaintiff's Attorney Fee Billing
14 Statements (Apr. 5, 2013). Exhibit 1 attached hereto is a spreadsheet summarizing the
15 amounts paid by each party. Exhibit 2 attached hereto is a spreadsheet summarizing the
16 fees and costs incurred. A review of the billing statements and the Court's Exhibit 2
17 reveals the following:
18
19
20

- 21 ○ Vivian incurred \$687,506.28 in fees and costs from May 2, 2011 through
22 January 19, 2013.⁷ Thus, as of January 30, 2013, Vivian paid
23 \$137,163.03 in fees and costs from her separate property portion of the
24 community assets. In contrast, Kirk incurred \$469,864.17 in fees and
25 costs from March 8, 2011 through December 21, 2012.⁸ Thus, as of

26 ⁷These dates (i.e., May 2, 2011 and January 19, 2013), represent the first and last billing
27 entries for fees and costs incurred by Vivian.

28 ⁸These dates (i.e., March 8, 2011 and December 21, 2013), represent the first and last
billing entries for fees and costs incurred by Kirk.

1
2 January 15, 2013, Kirk retained \$80,479.08 in unused community funds
3 allocated for attorneys' fees.

4 ○ The fees and costs incurred by the parties to litigate the financial issues
5 (i.e., post-Stipulation and Order Resolving Parent/Child Issues (Jul. 11,
6 2012)) appear to be relatively equal. Specifically, Vivian incurred
7 \$548,229.38 in fees and costs through the date the Stipulation and Order
8 Resolving Parent/Child Issues (Jul. 11, 2012) was filed. The balance of
9 \$139,276.90 was incurred after the custody issue had been resolved.⁹ Kirk
10 incurred \$349,593.56 through the same period of time. The balance of
11 \$120,270.61 was incurred after the custody issue had been resolved. The
12 difference in the amount incurred for post-custody issues totals
13 \$19,006.29, or less than eight percent (8%). In contrast, the difference
14 in the amount of fees and costs incurred by each party prior to the entry
15 of the Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012)
16 totals \$198,635.83.

17 ○ Kirk incurred a total of \$54,947 in fees and costs from the first reference
18 of time spent on preparation of his Custody Motion (Sep. 14, 2011)
19 (August 6, 2011 billing entry of Jolley Urga Wirth Woodbury & Standish)
20 through the date the Custody Motion was filed (i.e., through September
21 14, 2011). Vivian incurred a total of \$105,957.50 in fees and costs from
22 the first reference of time spent on preparation of her Custody
23 Countermotion (Oct. 27, 2011) (September 14, 2011 billing entry of
24 Radford J. Smith, Chartered) through the date her Opposition to Custody
25 Motion was filed (i.e., through October 27, 2011).¹⁰

26 ○ Kirk's Custody Motion (Sep. 14, 2011) (with accompanying affidavits)
27 consisted of 206 pages. This included the Custody Motion (48 pages),
28 Kirk's Affidavit and Supplemental Affidavit (totaling 132 combined

29 ⁹To be clear, this Court recognizes that the fees and costs incurred prior to July 11, 2012
30 included time spent on issues unrelated to child custody. Nevertheless, the entry of the
31 Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) should represent the end
32 *by and large* of time spent on the child custody issue.

33 ¹⁰Again, this Court recognizes that the fees and costs referenced were not entirely related
34 to the child custody issues during the relevant periods of time defined above. In fact, Vivian
35 offered that, based on her analysis of the billing statements, Kirk was billed the following
36 amounts for the underlying custody papers: \$19,887.50 for the Custody Motion, \$8,450.00
37 for Kirk's Reply to Vivian's Custody Countermotion and \$1,400 for Kirk's Opposition to
38 Defendant's Motion for Temporary Orders. See Exhibits to Vivian's Reply Ex. T (Sep. 11,
39 2013).

1 pages)¹¹, the Affidavit of Tahnee Harrison (16 pages) and the Affidavit of
2 Whitney Harrison (10 pages)¹². Borrowing from Kirk's "value" billing
3 analysis,¹³ the monetary value of Kirk's Custody Motion was \$103,464
4 (206 pages multiplied by the hourly rate of \$500). As noted above, Kirk
5 was billed \$54,947 during that period of time, \$48,517 less than the
6 "value" of the work product created. Relying on Vivian's analysis of the
7 billing statements, Kirk was billed only \$19,887.50 for this initial paper,
8 \$83,576.50 less than the "value" of the work product created. (This
9 analysis does not include any value attributed to the time devoted by Kirk
10 in the drafting of Dr. Roitman's report. The record suggests that Kirk was
11 intimately involved in the preparation of the report. See Exhibits to
12 Vivian's Reply Ex. Z, AA, and DD (Sep. 11, 2013). The report attached
13 to the Custody Motion consisted of 36 pages, or a value of \$18,000.
14 Because such a report typically would be prepared by an expert and not an
15 attorney, the "savings" would be attributed to the costs incurred.)

- 16 ○ Vivian's Custody Countermotion (Oct. 27, 2011) (with accompanying
17 affidavits) consisted of 188 pages. This included Vivian's Sworn
18 Declaration as well as the declarations/affidavits of Michele Walker, Nyla
19 Roberts, Kim Bailey, Annette Mayer, Heather Atkinson, Lizbeth Castelan,
20 and Jeffry Lite. The record reflects, however, that Ms. Roberts and Ms.
21 Walker drafted their own statements (consisting of 15 pages each). See
22 Exhibits to Kirk's Opposition and Countermotions Ex. 11 (May 28, 2013).
23 Using the same "value" billing analysis, but excluding the statements of

24 ¹¹It does not appear to be disputed that Kirk prepared his own affidavits and the initial
25 Custody Motion, although his counsel "did a major re-write of our motion for temporary
26 custody," billing Kirk approximately 37 hours. Exhibits to Kirk's Opposition and
27 Countermotions, Ex. 1 (May 28, 2013).

28 ¹²Although Kirk similarly was involved in the drafting of the Affidavit of Tahnee Harrison
and the Affidavit of Whitney Harrison, Kirk's counsel also spent time in preparation of the
same. Exhibits to Kirk's Opposition and Countermotions Ex. 2 (May 28, 2013).

¹³In his Opposition and Countermotions, Kirk offered the standard he applied with
respect to what he considered a reasonable value associated with the preparation of papers filed
with the Court. 51 (May 28, 2013). Specifically, the "standard was an average of one hour per
page for research and writing combined." *Id.* In his Affidavit, Kirk referenced the preparation
of "points and authorities" as part of his value billing analysis. See Kirk's Opposition and
Countermotions, Ex. 5 (May 28, 2013). In light of the comprehensive and detailed nature of
the affidavits submitted by both parties, this Court applied the same analysis. The approach
promoted by Kirk is analytically instructive in the context of the requests for fees pending before
this Court. Although the billing rates by the attorneys in this matter varied slightly, this Court
used the same billing rate of \$500 per hour for this theoretical exercise.

1 Ms. Roberts and Mr. Walker, the monetary value of Vivian's Custody
2 Countermotion was \$79,000 (158 pages multiplied by the hourly rate of
3 \$500). As noted above, Vivian was billed \$105,957.50, \$26,957.50 more
4 than the "value" of the work product created. Although non-attorneys may
5 have authored some of these papers (and some of the "statements" do
6 appear to have been drafted by the affiant), the resulting difference is not
7 significant when considering the totality of the filings, including Kirk's
8 extensive drafting contributions to Dr. Roitman's report. Indeed, it is not
9 unreasonable to expect significant time to have been spent in reading and
10 analyzing Kirk's exhaustive Custody Motion. The record supports a
11 conclusion that Kirk was actively involved in drafting of most papers
12 (including his drafting of papers in response to the instant Motion (Apr.
13 3, 2013)). See Kirk's Opposition and Countermotions Ex. 15 - 19 (May
14 28, 2013) (billing summaries); Defendant's and Plaintiff's Attorney Fee
15 Billing Statements (Apr. 5, 2013); and Kirk's Opposition and
16 Countermotions Ex. 2 (May 28, 2013) (Affidavit of Edward Kainen, Esq.).
17 To this end, Kirk's value billing analysis provides some assistance to this
18 Court in comparing the paperwork generated and the corresponding fees
19 incurred.

20 ○ A similar "value" analysis could be applied to other papers filed with this
21 Court, particularly those papers associated with the child custody dispute.
22 For example, Kirk's Custody Reply (Jan. 4, 2012) consisted of 105 pages
23 (inclusive of various affidavits), or a value of \$52,500. Further, Vivian's
24 Custody Reply (Jan. 27, 2012) consisted of 67 pages (inclusive of various
25 affidavits/declarations), or a value of \$33,500.

26 ○ Applying the same "value" analysis to the papers associated with Vivian's
27 Motion (Apr. 3, 2013) is instructive.¹⁴ The total length of points and
28 authorities associated with Vivan's filings (which included her Motion and
her Replies) was 120 pages, or \$60,000 in value. The total length of point
and authorities associated with Kirk's filings (which included his
Opposition, Countermotions and Replies) was 212 pages, or \$106,000 in
value. The difference in monetary value of the parties' respective filings is
\$46,000.

¹⁴Vivian filed a Request to File Supplemental Information in Support of Motion for Attorney's Fees; In the Alternative, Supplemental Motion for Attorney's Fees (Jan. 15, 2014). This Court is not inclined to review additional billing records on an existing request for fees. Rather, this Court relies on the value billing analysis in evaluating the issue of fees and "leveling the playing field."

1
2 D. LITIGATION OF FINANCIAL AND CHILD CUSTODY ISSUES

3 The papers submitted by both parties conceptually divide the litigation (including
4 settlement aspects) into two *general* categories considered by the Court: (1) litigation
5 associated with financial issues; and (2) litigation associated with child custody issues.
6

7 (1) Financial Issues

8 With respect to the litigation associated with financial issues, this Court does not
9
10 find there is a basis to award fees to either party beyond this Court affirming the
11 Discovery Commissioner's recommendation made at the March 9, 2012 hearing to
12 award Vivian the sum of \$5,000. (This Court does not find a basis to reject or alter the
13 Discovery Commissioner's recommendations regarding attorney's fees.) Although both
14 parties submitted papers complaining about discovery improprieties and the conduct of
15 the other party with respect to the resolution of financial issues (and the relative
16 "simplicity" of the financial issues), this Court does not find that either party has
17 supplied this Court with an adequate legal or factual basis to award additional fees
18 related to the manner in which either party litigated the financial issues. It is not this
19 Court's prerogative to scrutinize the litigation methods employed by four of the most
20 highly esteemed and credentialed attorneys practicing family law in the State of Nevada
21 based on the record before the Court. This is particularly so after considering the
22 unused statutory mechanisms available to the parties to pursue a more expeditious
23 resolution of the financial issues. Further, this Court's review of the billing statements
24 (to the extent such information was decipherable amid extensive redactions by both
25
26
27
28

1 parties) submitted by the parties does not give rise to this Court finding or concluding
2 that an award of attorneys' fees is appropriate on the bases cited in their respective
3 papers.¹⁵

4
5 In Kirk's Opposition and Countermotions (May 28, 2013), Kirk expressed his
6 dismay about "heated" discussions with his attorneys regarding their wise advice against
7 the filing of a "motion for partial summary judgment to equally divide all of the
8 community financial accounts, the gold and silver coins, and the income stream from the
9 Tobacco case." 6 (May 28, 2013). Kirk expressed frustration about being thwarted in
10 his desire to resolve these financial issues expeditiously, complaining that "parties in
11 Family Court are more hostages, than clients," *Id.*

12
13 On September 19, 2013, this Court entered its Orders Incident to the Stipulation
14 and Order Resolving Parent/Child Issues and the December 3, 2012 Hearing. Therein,
15 this Court directed that "each party may file and serve by the close of business on
16 September 27, 2013, any offer(s) to allow decree concerning property rights of parties
17 made pursuant to NRS 125.141." Orders Incident to the Stipulation and Order
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22 ¹⁵In Kirk's Opposition and Countermotions (May 28, 2013), Kirk identified billing
23 entries for Gary Silverman, Esq., dated November 28, 2011 (totaling 24 hours) and November
24 29, 2011 (totaling 26 hours). This Court concurs that such billing would be considered
25 egregious. In Vivian's Reply to Kirk's Opposition and Countermotions (Sep. 11, 2013), Mr.
26 Silverman explained that his billings "for the mediation were inadvertently double entered and
27 he has removed those charges from his billing and refunded the fees to Ms. Harrison." Although
28 Kirk in his Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and
Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief
(Oct. 21, 2103) found Mr. Silverman's explanation implausible, this Court disagrees. Although
not common or routine, the fact that two time entries were created for the same day (with
slightly different descriptions) is not outside the realm of possibility. Mr. Silverman
acknowledged the error and noted his remedial actions.

1
2 Resolving Parent/Child Issues and the December 3, 2012 Hearing 4 (Sep. 19, 2013).
3 Notwithstanding the alleged simplicity of financial issues, neither party submitted "an
4 offer to allow a decree to be entered concerning the property rights of the parties" as
5 authorized by NRS 125.141.¹⁶ (The settlement letter dated August 27, 2012 (included
6 as Exhibit 2 to Kirk's Opposition and Countermotions (May 28, 2013) and Exhibit
7 DDD to Vivian's Reply (Sep. 11, 2013)) does not qualify as an offer pursuant to NRS
8 125.141.)
9

10 The utilization of the process authorized by NRS 125.141 allows a party to
11 pursue pro-actively the resolution of certain financial issues. Indeed, this process can be
12 effective because it allows a court to penalize financially an unreasonable party (in the
13 form of attorney's fees). This Court believes that, even without final appraisals, each
14 party had sufficient information and knowledge upon which such an offer could have
15 been made well before the actual settlement was reached. Indeed, the May 22, 2013
16 report of Clifford R. Beadle, CPA, outlined in detail the simplicity of the financial issues
17 and the relatively small value of unresolved financial issues. See Kirk's Opposition and
18 Countermotions Ex. 3 (May 28, 2013). Therein, Mr. Beadle summarized that the value
19 of "undisputed assets" to be divided ranged between 89.30 to 90.36 percent of the total
20
21
22
23

24 ¹⁶This Court recognizes that the resolution of all financial issues may have hinged on the
25 completion of additional discovery and/or evaluative services. If so, the so-called "simplicity"
26 may be an overstatement of reality. This Court would not expect the parties to reasonably
27 engage in piecemeal negotiations of such financial issues. To the extent either party reasonably
28 believed that the financial issues could have (and indeed should have) been resolved in short-
order due to their alleged simplicity, this Court would have expected *at least one* offer to allow
entry of decree from one of the parties. Thus, if the unresolved issues were "over really nothing"
(Kirk's Opposition and Countermotions 36 (May 28, 2013)), each party should have made at
least one offer pursuant to NRS 125.141.

1
2 community. Similarly, in his e-mail to James Jimmerson, Esq., Mr. Silverman noted that
3 "[i]t is a custody matter, primarily. The property issues are fairly straightforward [sic]."
4 Exhibits to Vivian's Reply Ex. GG (Sep. 11, 2013). For Kirk to accuse the process in
5 Family Court to be akin to "hostage-taking," yet at the same time fail to avail himself
6 of NRS 125.141 is incongruous.
7

8 In summary, each party's failure to utilize the process authorized by NRS
9 125.141, while at the same time proclaiming the relative simplicity of the financial
10 issues, mitigates against this Court engaging in an evaluation of alleged improper or
11 costly litigation tactics of either party. Further, as noted above, a similar amount of
12 attorney's fees was incurred by each party after the entry of the Stipulation and Order
13 Resolving Parent/Child Issues (Jul. 11, 2013) (i.e., when only financial issues remained
14 in dispute).
15
16

17 (2) Child Custody Issues

18 With respect to the litigation associated with the issue of custody, this Court
19 finds that Vivian is entitled to an award of fees pursuant to NRS 125.150, in
20 conjunction with establishing parity between the parties as discussed in *Sargeant, supra*.
21 Again, such an award of fees is based principally on the time spent and fees incurred
22 litigating the issue of child custody.
23
24

25 In his Complaint for Divorce, Kirk requested joint legal and "primary physical
26 care, custody and control of the minor children herein," 2 (Mar. 18, 2011). In her
27 Answer to Complaint for Divorce and Counterclaim for Divorce, Vivian requested joint
28

1 legal custody and "primary physical custody of the minor children, subject to the rights
2 of specific visitation of Plaintiff/Counterdefendant." 3 (Nov. 23, 2011). There is
3 nothing in the record that suggests that either party would capitulate to the other party
4 being awarded primary physical custody of the minor children, or that mediation would
5 have led to such a result.
6

7
8 The Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) confirms
9 to the parties joint legal custody and joint physical custody of their children.
10 Preliminarily, the issue of custody is expressly excluded as an issue subject to the "offer
11 of judgment" provisions of NRS 125.141(6). Further, inasmuch as the parties have
12 utilized this post-resolution process to regurgitate the very same issues that were argued
13 as part of the underlying custody proceedings, this Court finds little salutary or
14 constructive value to rehashing these same arguments.¹⁷ The parties ultimately
15 stipulated that joint physical custody is in the best interest of their children.¹⁸
16
17

18
19 ¹⁷This Court recognizes that said regurgitation perhaps was not the intent or motivation
20 of the parties in submitting their respective papers on the attorney's fees issue. Nevertheless,
21 the result for the Court is the same.

22 ¹⁸In his Opposition and Countermotions, Kirk argued that, based on Dr. Roitman's
23 advice, he "was willing to agree to custody terms he knew were not in Brooke's and Rylee's best
24 interest just to get this over." 39, FN 24 (May 28, 2013). Later, Kirk stated: "Kirk wanted this
25 matter resolved expeditiously, amicably, and on the merits, and without putting his children and
26 Vivian through an extended court battle and trial." *Id.* at 77. These statements, however, are
27 inconsistent with the record and Kirk's requests during the litigation. Notably, the delay in
28 finalizing custody by way of evidentiary proceedings was caused, in part, by Kirk's plea for this
Court to appoint Dr. Paglini as a "neutral" expert (which Vivian opposed). Kirk vehemently
argued that he would be bound by Dr. Paglini's recommendations. But for Kirk's impassioned
request for Dr. Paglini's appointment, an evidentiary hearing resolving the custody issue would
have been set and held earlier than the entry of the parties' Stipulation and Order Resolving
Parent/Child Issues (Jul. 11, 2012). The return hearing on the referral to Dr. Paglini (by which
time Dr. Paglini would have been expected to complete his report) was scheduled for May 16,
2012. Referral Order for Outsourced Evaluation Services (Feb. 24, 2012). Although this Court

1 Moreover, there is no basis for this Court to now make findings that either parent suffers
2 from any mental deficiency compromising his or her ability to care for the minor
3 children, particularly considering the fact that Kirk requested that the custody
4 evaluation undertaken by Dr. John Paglini not be completed.¹⁹
5

6 The tone of the custody litigation was set by Kirk's filing of his Custody Motion
7 (Sep. 14, 2011). This filing initiated a "battle of experts" that culminated with this
8 Court's appointment of Dr. Paglini. In addition to Kirk's Affidavit, the Custody Motion
9 (Sep. 14, 2011) was comprised of an unsigned letter from Kirk to Vivian, the Affidavit
10 of Tahnee L. Harrison, the Affidavit of Whitney J. Harrison, photographs, the
11 Psychiatric Analysis from Norton A. Roitman, MD, DEAPA (with attached documents
12
13
14

15
16 is unaware of the status of Dr. Paglini's actual completion of his report as of July 11, 2012 (the
17 time the parties entered their stipulated resolution), it was Kirk who adamantly opposed Dr.
18 Paglini completing what Kirk had requested. (At the hearing on July 18, 2012, Vivian argued
19 that Dr. Paglini's report was nearly complete, while Kirk argued that the completion of Dr.
20 Paglini's report would not be possible without additional input from Kirk.) Notably, it appears
21 settlement discussions regarding custody began within weeks of the February 24, 2012 hearing
(when Dr. Paglini was appointed). See letter dated March 5, 2012 included in the Exhibits to
Vivian's Reply Ex. VV (Sep. 11, 2013). Further, Kirk offered that in "late February 2012,
Vivian and I began discussing the terms of a possible custody arrangement through our older
children." Exhibits to Kirk's Opposition and Countermotions Ex. 5 (May 28, 2013).

22 ¹⁹To the extent Kirk believed (or believes) the minor children were exposed to serious risk
23 while in Vivian's care, he would have insisted on the completion of the evaluation (which was
24 well underway at the time the issue of custody was resolved) even with a stipulated resolution
25 of custody. Kirk expressed that "no one would be happier than Kirk if it is determined that
26 Vivian does not have Narcissistic Personality Disorder." Kirk's Opposition and Countermotions
27 23: FN 16 (May 28, 2013). Yet, Kirk argued against having Dr. Paglini complete his evaluation.
28 If the purpose of Kirk's request to appoint Dr. Paglini was to assure him that "Vivian does not
have Narcissistic Personality Disorder" (which Kirk offered as a motivating factor for his request
to delay the resolution of custody by way of Dr. Paglini's appointment, and which arguably
would have been resolved conclusively with the completion of Dr. Paglini's report), it is
inconsistent to vociferously oppose the completion of the report while at the same time continue
to suggest that Vivian suffers from a psychological infirmity that impairs her parenting ability.

1 regarding various medications), and the Supplemental Affidavit of Kirk Harrison. Kirk's
2 Custody Motion relied, in part, on the aforementioned Psychiatric Analysis submitted
3 by Dr. Norton Roitman, in which Dr. Roitman declared "to a reasonable degree of
4 *medical certainty*" that "Vivian Harrison is suffering from a Narcissistic Personality
5 Disorder." 216 (Sep. 14, 2011) (emphasis added). Dr. Roitman acknowledged
6 limitations to this conclusion "in recognition of the lack of direct psychological
7 examination and testing." *Id.* Notwithstanding his acknowledgment of the limitations
8 created by having never met Vivian personally (and having relied on the veracity of the
9 information supplied by Kirk), Dr. Roitman's psychological assessment effectively
10 framed the complexity of the custody issue and established the blueprint for highly
11 contentious litigation.

12
13 In response to Kirk's Custody Motion, Vivian filed her Custody Countermotion
14 (Oct. 27, 2011). In addition to the Sworn Declaration of Vivian Harrison, Vivian's
15 Custody Countermotion was comprised of a disc, a Volunteer Application Form from
16 The Hope Foundation, various credit card summaries, grade reports for the minor
17 children, an unsigned letter from Tahnee to Vivian, a July 19, 2005 Psychiatric
18 Evaluation from Ventana Health Associates, a handwritten Last Will & Testament of
19 Kirk R. Harrison, a handwritten statement entitled "My Mom," an August 13, 2011
20 report from Ole J. Thienhaus, M.D., FACPsych, a September 24, 2011 report from Ole
21 J. Thienhaus, M.D., FACPsych, photographs, various pharmaceutical and LabCorp
22 records, the Sworn Declaration of Michele Walker, the Sworn Declaration of Nyla
23 Roberts, the Sworn Declaration of Kim Bailey, the Affidavit of Annette Mayer, the

1 Sworn Declaration of Heather J. Atkinson, the Affidavit of Lizbeth Castlan, and the
2 Sworn Declaration of Jeffrey Life.
3

4 Vivian supplemented the record with her Custody Reply (Jan. 27, 2012).
5 Attached thereto were reports from Paul S. Appelbaum, MD, and Elsa P. Ronningstam,
6 Ph.D., that challenged the findings of Dr. Roitman's Psychiatric Analysis. Kirk was not
7 involved in the preparation of these reports.
8

9 The volume of resulting paperwork in response to the Custody Motion (Sep. 14,
10 2011) and the Custody Countermotion (Oct. 27, 2011) was previously noted. In
11 summary, both parties submitted reports generated by way of their respective *unilateral*
12 retention of experts. These reports *all* failed to include the participation of the other
13 party. The precipitating salvo, however, was fired by way of Kirk's Custody Motion
14 (Sep. 14, 2011). Between the filing of the Custody Motion (Sep. 14, 2011) and the
15 finalization of the Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012),
16 hundreds of thousands of dollars in community funds were expended by the parties.
17
18

19 In light of the voluminous nature of the papers filed and work generated by the
20 allegations made by both parties, this Court is not inclined to engage in a qualitative
21 analysis of whether the work performed was justified under the circumstances. Based
22 on the sheer volume of papers filed by both parties related to the custody issue, the
23 significance of the custody issue to Kirk and Vivian cannot be overstated. Indeed, it
24 would be impossible to quantify monetarily the value of custody. Considering the
25 gravity of the custody issue before the Court and the framework of litigation established
26 by Kirk's Custody Motion (Sep. 14, 2011), this Court does not find the amount of time
27
28

1 spent by Vivian's counsel to be unreasonable. Indeed, the record established that Kirk
2 benefitted from his experience as an attorney and his ability to prepare detailed and
3 comprehensive papers in the prosecution of his claims. This Court would have expected
4 an extensive amount of time devoted to read and digest the content of the Custody
5 Motion (Sep. 14, 2011). In retrospect, the overall tenor of this initiating motion and
6 Kirk's argument suggests that if Vivian would not succumb to the specific relief sought
7 by way of the Custody Motion and psychological diagnosis, she would at least capitulate
8 to the manner in which Kirk proposed that the issue of custody be litigated.

9
10
11
12 Notwithstanding the voluminous papers filed with the Court, the parties
13 ultimately reached a stipulated resolution of the custody issue. As noted previously, the
14 ability of two parents to reach such a stipulated resolution should be lauded as a success.
15 Thus, the fact that Kirk and Vivian entered into a Stipulation and Order Resolving
16 Parent/Child Issues (Jul. 11, 2012) is a success of the process, and more importantly, a
17 benefit to Brooke and Rylee. An "after-the-fact" analysis of the merits of the parties'
18 respective positions related to the child custody issue is not productive. To do so would
19 inhibit constructive settlement discussions and would be contrary to the sound policy
20 of encouraging the resolution of parenting issues by the individuals who should be most
21 in tune with the needs of their children — i.e., their parents.

22
23
24 Unfortunately, this entire post-resolution process has degenerated into attempts
25 by both parties to litigate the very issues that were the subject of settlement. To this
26 end, this Court was inundated with a seemingly endless diatribe of both finger-pointing
27
28

1 and rationalizations.²⁰ As with prior papers filed in this matter, the length of the papers
2 filed by both parties exceeded the limitations imposed by EDCR 2.20(a), with Kirk's
3 Opposition and Counterterms (May 28, 2013) consisting of an astounding 133 pages
4 in points and authorities alone. Therein, Kirk bemoaned the process in Family Court,
5 once again relying on Dr. Roitman to educate him that "[y]ou just don't get it. You are
6 not going to solve your family's problems in Family Court." Opposition and
7 Counterterms 6 (May 28, 2013). Kirk then opines: "What a sad commentary. The
8 one forum in the Nevada judicial system where it is most important to expeditiously and
9 amicably resolve problems, because children's emotional well being, lives, and futures
10 are at stake, is unquestionably the worst." *Id.* at 6. At the outset of this litigation, Kirk
11 should have been disabused of any notion that a complete stranger (i.e., the Court) is
12 in the best position to solve his family's problems. Indeed, the parties have failed to a
13 degree when it is left up to the Court — a stranger to the parties' children — to resolve
14 these issues.

15
16 In his Opposition and Counterterms, Kirk takes no responsibility whatsoever
17 for the directional path of this litigation, but instead lectures about how the "one forum
18 in the Nevada judicial system where it is important to expeditiously and amicably
19 resolve problems, because children's emotional well being lives, and futures are at stake,
20

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25 ²⁰Amidst the personal attacks strewn throughout the papers, each party did provide this
26 Court with a measure of levity. For example, as part of his critique of the amount of time
27 Vivian's attorneys spent in preparing papers in response to Kirk's Custody Motion, Kirk offered:
28 "A monk with only a quill pen in dim candlelight would be more productive." Kirk's Opposition
and Counterterms 53 (May 28, 2013). Vivian retorted with: "A genie with a magic wand
could not have finished all of that work in 41.8 hours," in light of the comparatively low amount
of fees incurred by Kirk. Vivian's Reply 28 (Sep. 11, 2013).

1 is unquestionably the worst." *Id.* It would indeed be shortsighted to believe that an
2 unprecedented 48-page initiating motion (accompanied by a 118-page, 241-paragraph
3 affidavit and a psychiatric diagnosis "*to a reasonable degree of medical certainty*" that Vivian
4 suffered "from a Narcissistic Personality Disorder") would not somehow engender a
5 massive response of time and effort.²¹ See Custody Motion (Sep. 14, 2011). It similarly
6 would be shortsighted to believe that such a Custody Motion could possibly be
7 perceived or received by Vivian as an effort to "do what was indisputably best for . . .
8 Vivian" (6) or to "get Vivian help."²² 4 (Sep. 14, 2011). Yet, despite such an initial
9 barrage of paperwork, Kirk uses 133 pages of diatribe to attack Vivian, Vivian's
10 attorneys and this Court as being responsible entirely for the manner in which this case
11 was litigated. See Kirk's Opposition and Counter motions (May 28, 2013). On 15
12 occasions in his Opposition and Counter motions (May 28, 2013), Kirk repeated nearly
13 verbatim the following: "The difference in fees billed by Vivian's attorneys in this case
14 versus the fees billed by Kirk's attorneys in this case is a function of how Vivian
15 and/Vivian's attorneys chose to manage this case and how they overbilled this case,
16 rather than any drafting Kirk did on any points and authorities." As if he was an
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24 ²¹Both parties complained about the process (or being "jaded" by the process) in some
25 fashion. Yet, both parties behaved in a manner not seen in most cases. Notably, Kirk argues
26 that "the letter opinions from [Vivian's] two national experts are so qualified to be entirely
27 worthless." Opposition and Counter motions 79 (May 23, 2013). If said reports are considered
"entirely worthless," the "qualifying" factors associated with Dr. Roitman's report (including the
fact that he *never* met with the person he was diagnosing) render his report "entirely worthless"
as well.

28 ²²At the point in time that Dr. Roitman's reports was thrust into the litigation, his report
could hardly be viewed as a therapeutic tool.

1 innocent bystander throughout this entire process, Kirk fails to acknowledge that his
2 unprecedented approach to the initial paper he filed with this Court (i.e., his Custody
3 Motion (Sep. 14, 2011)) had any correlation to Vivian's response thereto and the path
4 of this litigation.
5

6 The sad reality is that the amount of fees awarded herein likely pales in
7 comparison to the emotional and financial toll this post-divorce process has created.
8 This entire process has generated more animosity and conflict that is not healthy for the
9 parties or their children, leading the Court to ask, is it worth it? Yet, amidst
10 complaining about this process, Kirk curiously requested the opportunity to further
11 lengthen these proceedings by pursuing additional discovery and an evidentiary hearing
12 regarding the issue of attorneys' fees — which would equate to even more fees.
13

14 In evaluating the amount of fees that should be awarded, this Court has
15 considered the factors enunciated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345,
16 455 P.2d 31 (1969). Specifically, this Court has considered:
17

18 (1) The quality of the advocates. Both parties are represented by experienced
19 and highly esteemed advocates. Indeed the quality of representation was at an
20 exceptional level. (The high regard in which each party's attorneys are held magnifies
21 the disappointment of this Court in the unnecessary personal attacks strewn throughout
22 the papers filed with this Court.)
23

24 (2) The character of the work to be performed. This Court's analysis of the
25 character of the work performed is detailed above.
26

1
2 (3) The work actually performed. The work actually performed is represented
3 in the billing summaries submitted to the Court. In this regard, each party provided the
4 Court with billing statements encompassing the fees and costs associated with their
5 respective representation. This information included monthly billing statements from
6 Jolley Urga Wirth Woodbury & Standish, Ecker & Kainen/Kainen Law Group,
7 Silverman, Decaria & Kattelman, Radford J. Smith/Smith & Taylor and the Dickerson
8 Law Group. Kirk attached these monthly billing statements to his Opposition and
9 Countermotions (May 28, 2013) as Exhibits 15, 16, 17, 18 and 19. (The billing
10 statements attached as Exhibit 16 associated with Smith & Taylor, however, end with
11 the billing entry dated April 18, 2012.) Vivian filed these monthly billing statements
12 as part of her Defendant's and Plaintiff's Attorney Fee Billing Statements (Apr. 5, 2013).

13
14
15 (4) The result obtained. Although this Court does not view this factor as a
16 "prevailing party" analysis, the Court reiterates that this matter ultimately was resolved
17 by way of stipulation. The resolution was different than each party's relief requested in
18 their underlying pleadings. Nevertheless, it is not lost on the Court that Kirk's allegation
19 that Vivian suffered from a serious psychological disorder that impeded her parenting
20 abilities was not proven by *competent* evidence. In fact, over Vivian's objection, this
21 Court granted Kirk's request to halt Dr. Paglini's completion of his evaluation of Vivian's
22 alleged condition.

23
24
25 Based on the billing statements submitted to the Court, Vivian exhausted the
26 entire amount of funds allocated to her from the marital community for attorneys' fees.
27 In contrast, Kirk retained \$80,479.08 from the same allocation of funds from the marital

1 community. Further, borrowing from Kirk's value analysis of fees billed, Kirk saved at
2 least \$48,517 (\$83,576.50 according to Vivian's analysis) based on the amount that he
3 would have otherwise paid for the Custody Motion (Sep. 14, 2011). Separate and apart
4 from an analysis of the specific billing entries from Kirk's attorneys, this same value
5 based billing analysis suggests that Kirk donated significant time and expertise to the
6 preparation of various papers filed on his behalf. Absent a finding that Vivian's response
7 to Kirk's initial filing was unreasonable (which this Court cannot find), Vivian is entitled
8 to an award of fees to "meet her adversary in the courtroom on an equal basis." *Sargeant*
9 *v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972).
10
11
12

13 The amount of fees awarded to Vivian should include one-half of the amount of
14 community funds Kirk saved as a result of his efforts (\$40,240), as well as the excess
15 amount in value billing associated with the papers filed by both parties relative to
16 Vivian's Motion (Apr. 3, 2013) (\$46,000). In summary, this Court finds that Vivian is
17 entitled to an award of fees from Kirk totaling \$86,240, plus the sum of \$5,000 based
18 on the March 9, 2012 recommendation of the Discovery Commissioner, for a total of
19 \$91,240.
20
21


22 Based on the foregoing findings and conclusions, and good cause appearing
23 therefore,
24

25 IT IS HEREBY ORDERED that Vivian's Motion is GRANTED in part, and
26 Vivian is awarded the sum of \$91,240 in attorneys' fees, which said sum is reduced to
27 judgment in Vivian's favor and against Kirk.
28

1
2 IT IS FURTHER ORDERED that Kirk's Request for Reasonable Discovery and
3 Evidentiary Hearing, his Countermotion for Equitable Relief, his Countermotion for
4 Attorney's Fees, and his Countermotion for Declaratory Relief are DENIED.

5 IT IS FURTHER ORDERED that all other relief sought by the parties by way of
6 their papers filed with the Court not otherwise specifically addressed or granted herein
7 is DENIED.
8

9 DATED this 10th day of February, 2014.

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13 BRYCE C. DUCKWORTH
14 DISTRICT COURT JUDGE
15 DEPARTMENT Q
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BRYCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Docketing Statement Attachment No. 6

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FEB 11 2014

Alvin L. Harrison
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

NOTICE OF ENTRY OF FINDINGS, CONCLUSIONS AND ORDERS

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the Findings, Conclusions and Orders and this Notice of Entry of Findings, Conclusions and Orders to be:

☒ Placed in the folder(s) located in the Clerk's Office of the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE

WILLY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

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☒ Mailed postage prepaid, addressed to the following attorney:

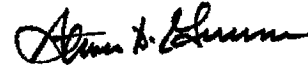
Gary Silverman, Esq.
6140 Plumas St., #200
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Kimberly Weiss

Kimberly Weiss
Judicial Executive Assistant
Department Q

1
2 ORDER

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4 DISTRICT COURT

CLERK OF THE COURT

5 CLARK COUNTY, NEVADA

6
7 KIRK ROSS HARRISON,)

8 Plaintiff,)

9 v.)

CASE NO. D-11-443611-D

DEPT NO. Q

10 VIVIAN MARIE LEE HARRISON,)

11 Defendant.)
12

13
14 FINDINGS, CONCLUSIONS AND ORDERS

15 This matter came before this Court on the following papers that were reviewed
16 and considered by this Court:¹

- 17 (1) Defendant's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013)
18 (hereinafter referred to as "Vivian's Motion") (37 pages in length, exclusive
19 of exhibits);
- 20 (2) Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and
21 Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary
22 Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's

23
24 ¹Defendant also filed a Motion for an Order Appointing a Parenting Coordinator and
25 Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for
26 Sanctions and Attorneys' Fees (May 10, 2013). Plaintiff also filed a Motion to Enter Decree
27 of Divorce (May 13, 2013). Additional papers were filed with respect to these two Motions.
28 (There was, however, no opposition filed in response to Plaintiff's Motion to Enter Decree of
Divorce (May 13, 2013)). With the exception of each party's request for attorney's fees
associated with these motions, the issues raised therein have been resolved by this Court by way
of the entry of the Decree of Divorce (Oct. 31, 2013), the Order Re: Appointment of Therapist
(Oct. 29, 2013), and the Order for Appointmt of Parenting Coordinator (Oct. 29, 2013). As
such, these issues are not addressed herein.

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

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2 Countermotion for Attorneys' Fees and Sanctions; Plaintiff's
3 Countermotion for Declaratory Relief (May 28, 2013) (hereinafter referred
4 to as "Kirk's Opposition and Counter motions") (133 pages in length,
5 exclusive of exhibits);

6 (3) Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys'
7 Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and
8 Evidentiary Hearing; Plaintiff's Counter motion for Equitable Relief;
9 Plaintiff's Counter motion for Attorneys' Fees and Sanctions; and Plaintiff's
10 Counter motion for Declaratory Relief (May 28, 2013) (804 pages in
11 length);

12 (4) Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for
13 Attorneys' Fees and Sanctions; and Opposition to Plaintiff's Request for
14 Discovery and Evidentiary Hearing; Plaintiff's Counter motion for
15 Equitable Relief; Plaintiff's Counter motion for Attorneys' Fees and
16 Sanctions; Plaintiff's Counter motion for Declaratory Relief (May 31,
17 2013) (5 pages in length);

18 (5) Plaintiff's Reply to Defendant's Opposition to Plaintiff's Request for
19 Discovery and Evidentiary Hearing; Plaintiff's Counter motion for
20 Equitable Relief; Plaintiff's Counter motion for Attorneys' Fees and
21 Sanctions; Plaintiff's Counter motion for Declaratory Relief (June 3, 2013)
22 (hereinafter referred to as "Kirk's Reply") (10 pages in length, exclusive of
23 exhibits);

24 (6) Plaintiff's Motion for Scheduling Order or, in the Alternative, to Deny
25 Vivian's Motion for Attorneys Fees, Grant Each of Kirk's Counter motions,
26 and Grant Kirk's Motion for Enter Decree of Divorce (Sep. 4, 2013) (12
27 pages in length, exclusive of exhibits);

28 (7) Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for
Attorney's Fees and Sanctions; Defendant's Opposition to Plaintiff's
Counter motion Styled Request for Reasonable Discovery and Evidentiary
Hearing; Defendant's Opposition to Plaintiff's Counter motion for
Equitable Relief; Defendant's Opposition to Plaintiff's Counter motion for
Attorneys' Fees and Sanctions; and Defendant's Opposition to Plaintiff's
Counter motion for Declaratory Relief (Sep. 11, 2013) (hereinafter referred
to as "Vivian's Reply") (78 pages in length, exclusive of exhibits);

(8) Exhibits to Defendant's Reply to Plaintiff's Opposition to Defendant's
Motion for Attorney's Fees and Sanctions; Exhibits to Defendant's
Opposition to Plaintiff's Counter motion Styled Request for Reasonable

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2 Discovery and Evidentiary Hearing; Exhibits to Defendant's Opposition to
3 Plaintiff's Countermotion for Equitable Relief; Exhibits to Defendant's
4 Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions;
5 and Exhibits to Defendant's Opposition to Plaintiff's Countermotion for
6 Declaratory Relief (Sep. 11, 2013) (354 pages in length); and

- 7 (9) Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for
8 Reasonable Discovery and Evidentiary Hearing, Equitable Relief,
9 Attorneys' Fees and Sanctions, and Declaratory Relief (Oct. 21, 2013) (57
10 pages in length, exclusive of exhibits).

11 This Court has entertained extensive briefing² on the issues raised by way of the
12 foregoing papers filed by each party, as well as arguments offered by counsel at the
13 hearing held on October 30, 2013. Based on the papers on file and the arguments of
14 counsel, this Court makes the following findings and conclusions:

15 I. SUMMARY OF LITIGATION: A successful settlement?

16 On March 18, 2011, Plaintiff, KIRK ROSS HARRISON ("Kirk"), filed his
17 Complaint for Divorce against the Defendant, VIVIAN MARIE HARRISON ("Vivian").
18 On November 23, 2011, Vivian filed her Answer to Complaint for Divorce and
19 Counterclaim for Divorce. By way of their respective pleadings, both parties sought
20 primary physical custody of their two minor children, Emma "Brooke" Harrison, born
21

22 ²During this litigation, both parties routinely filed papers in excess of the page limitations
23 specified in EDCR 2.20(a), which provides, in pertinent part, "[u]nless otherwise ordered by the
24 court, papers submitted in support of pretrial and post-trial briefs shall be limited to 30 pages
25 excluding exhibits." During the custody portion of the litigation, the length of papers was
26 discussed on one occasion before the Court. Specifically, at the hearing on November 1, 2011,
27 Defendant orally requested permission to submit a paper that exceeded the length allowed
28 pursuant to EDCR 2.20(a). In consideration of the gravity of the issue (i.e., child custody), this
Court indicated that it did not "have a problem" with the lengthy filings of the parties so long
as courtesy copies were provided to the Court. Although this Court tolerated such lengthy filings
at that time, this Court advised the parties at the October 30, 2013 hearing it would no longer
tolerate the same. Indeed, the excessive and burdensome length of filings that addressed the
remaining issues before this Court is dealt with in the award of attorneys' fees below.

1 June 26, 1999, and Rylee Harrison, born January 24, 2003. Further, both parties raised
2 the issue of attorney's fees in their respective pleadings.
3

4 Kirk and Vivian ultimately resolved nearly every contested issue identified in their
5 respective pleadings. The terms of their agreements were memorialized in their
6 Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012), and the Decree of
7 Divorce (Oct. 31, 2013). As such, the stipulated resolution reached by the parties could
8 be viewed as a "success" of the divorce process. Indeed, as expressed by the Honorable
9 David A. Hardy:
10

11
12 Litigants often respond negatively when their relationships and resources
13 are at risk. *A divorce proceeding culminating in trial represents a failure of our*
14 *legal system.* The adversarial process requires parties to emphasize their
15 virtues and their respective spouses' flaws. The divorce proceeding is both
16 *expensive and destructive.*

17 *Nevada Alimony: An Important Policy in Need of a Coherent Policy Purpose*, 9 NEV. L. J. 325
(2009) (emphasis supplied).

18 Although there were several contested hearings in this divorce action, there was
19 no trial or evidentiary hearing prior to January 22, 2014. Through the date of the
20 October 30, 2013 hearing, not a single witness was called to testify at any proceeding
21 before this Court. Nevertheless, the financial cost (to say nothing of the unquantifiable
22 emotional cost) of this litigation was staggering. To this end, the parties devoted
23 significant time, energy, and resources to the issue of custody of the parties' two minor
24 children. Both parties filed multiple papers of voluminous length with the Court
25 regarding the issue of child custody. These papers included:
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27
28

- 1
- 2 ☐ Kirk's Motion for Joint Legal and Primary Physical Custody and Exclusive
- 3 Possession of Marital Residence (Sep. 14, 2011) (hereinafter referred to as
- 4 "Custody Motion") (206 pages in length, inclusive of the Affidavits of Kirk
- 5 R. Harrison, Tahnee Harrison and Whitney Harrison, but exclusive of
- 6 other exhibits);
- 7
- 8 ☐ Vivian's Opposition to Plaintiff's Motion for Joint Legal and Primary
- 9 Physical Custody and Exclusive Possession of Marital Residence;
- 10 Countermotions for Exclusive Possession of Marital Residence, for Primary
- 11 Physical Custody of Minor Children; for Division of Funds for Temporary
- 12 Support, and for Attorney's Fees (Oct. 27, 2011) (hereinafter referred to
- 13 as "Custody Countermotion") (188 pages in length, inclusive of the Sworn
- 14 Declaration of Vivian Harrison and various other declarations/affidavits,
- 15 but exclusive of other exhibits);
- 16
- 17 ☐ Kirk's Reply to Defendant's Opposition to Plaintiff's Motion for Joint
- 18 Legal and Primary Physical Custody and Exclusive Possession of Marital
- 19 Residence; Countermotions for Exclusive Possession of Marital Residence,
- 20 for Primary Physical Custody of Minor Children; for Division of Funds for
- 21 Temporary Support, and for Attorney's Fees (Jan. 4, 2012) (hereinafter
- 22 referred to as "Kirk's Custody Reply") (105 pages in length, inclusive of
- 23 the Affidavit of Kirk R. Harrison and various other declarations/affidavits,
- 24 but exclusive of other exhibits);
- 25
- 26 ☐ Vivian's Reply to Plaintiff's Opposition to Defendant's Countermotions for
- 27 Exclusive Possession of Marital Residence, for Primary Physical Custody
- 28 of Minor Children; for Division of Funds for Temporary Support; and for
- Attorney's Fees (Jan. 27, 2012)(hereinafter referred to as "Vivian's
- Custody Reply") (67 pages in length, inclusive of the Sworn Declaration
- of Vivian Harrison and various other declarations/affidavits, but exclusive
- of exhibits); and
- ☐ Vivian's Supplemental Sworn Declarations in Support of Reply to
- Countermtion (Jan. 31, 2012) (2 pages in length, 12 pages of declarations).

24 The parties appeared at multiple hearings regarding the issue of custody. As

25 noted above, Kirk and Vivian each requested primary physical custody of their minor

26 children in their respective pleadings (i.e., Kirk's Complaint and Vivian's Counterclaim).

27

28 Each party relied on various "expert" reports attached to their respective filings.

1
2 Ultimately, this Court appointed Dr. Paglini to provide evaluative services regarding the
3 issue of child custody. Notwithstanding the significant time, energy, and resources
4 devoted to the issue of custody (or perhaps as a result thereof), the parties entered into
5 a Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). Thereafter, the
6 parties resolved the remaining issues of the divorce action, placing the terms on the
7 record at the December 3, 2012 hearing. Their agreement included a specific reservation
8 of jurisdiction to allow this Court to entertain a motion to be filed by either party
9 regarding the issue of attorneys' fees. See Decree of Divorce 28-29 (Oct. 31, 2013).
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12 II. ATTORNEYS' FEES

13 A. LEGAL BASES
14

15 On April 3, 2013, Vivian's Motion was filed. "It is well established in Nevada
16 that attorney's fees are not recoverable unless allowed by express or implied agreement
17 or when authorized by statute or rule." *Schouweiler v. Yancey Co.*, 101 Nev. 827, 830,
18 712 P.2d 786, 788 (1985), quoted in *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727
19 (2005). Pursuant to Vivian's Motion (Apr. 3, 2013), Vivian seeks an award of
20 attorney's fees on the following bases:
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1
2 Discovery and Evidentiary Hearing; Exhibits to Defendant's Opposition to
3 Plaintiff's Countermotion for Equitable Relief; Exhibits to Defendant's
4 Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions;
5 and Exhibits to Defendant's Opposition to Plaintiff's Countermotion for
6 Declaratory Relief (Sep. 11, 2013) (354 pages in length); and

- 7
8 (9) Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for
9 Reasonable Discovery and Evidentiary Hearing, Equitable Relief,
10 Attorneys' Fees and Sanctions, and Declaratory Relief (Oct. 21, 2013) (57
11 pages in length, exclusive of exhibits).

12 This Court has entertained extensive briefing² on the issues raised by way of the
13 foregoing papers filed by each party, as well as arguments offered by counsel at the
14 hearing held on October 30, 2013. Based on the papers on file and the arguments of
15 counsel, this Court makes the following findings and conclusions:

16 I. SUMMARY OF LITIGATION: A successful settlement?

17 On March 18, 2011, Plaintiff, KIRK ROSS HARRISON ("Kirk"), filed his

18 ~~Complaint for Divorce against the Defendant, VIVIAN MARIE HARRISON ("Vivian")~~

19 (2) Fails to prepare for a presentation.

20 (3) So multiplies the proceedings in a case as to increase costs
unreasonably and vexatiously.

21 (4) Fails or refuses to comply with these rules.

22 (5) Fails or refuses to comply with any order of a judge of
the court.

23 ⁵In *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972), the husband challenged
24 the lower court's award of attorney's fees. The Nevada Supreme Court held that "[t]he wife
25 must be afforded her day in court without destroying her financial position. This would imply
26 that she should be able to meet her adversary in the courtroom on an equal basis." *Id.* at 227,
27 495 P.2d at 621. Vivian's Motion also cites *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d
1071, 1073 (1998) in support of her request ("[t]he disparity in income is also a factor to be
considered in the award of attorney fees."). Considering the relative income parity of the parties,
however, there has been no showing that a disparity in income exists that justifies an award of
fees. Nevertheless, the issue of whether Vivian was able to "meet [Kirk] in the courtroom on an
equal basis" is a legitimate issue that was debated and discussed throughout the papers filed by
the parties.

28 ⁶NRS 18.010 is generally inapplicable in evaluating each party's requests for fees as a
"prevailing" party. Because the parties successfully negotiated a resolution of nearly all contested

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DISTRICT JUDGE

MILY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

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2 B. POST-RESOLUTION MOTIONS

3 Pursuant to EDCR 7.60, each party is entitled to an award of attorneys' fees
4 associated with Defendant's Motion for an Order Appointing a Parenting Coordinator
5 and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan;
6 Motion for Sanctions and Attorneys' Fees (May 10, 2013), and Plaintiff's Motion to
7 Enter Decree of Divorce (May 13, 2013). In this regard, although there was a good faith
8 dispute regarding the appointment of a parenting coordinator and the language of the
9 Order Appointing Parenting Coordinator, there was no reasonable basis to delay the
10 selection of a counselor for the parties' children, particularly in light of recent papers
11 filed by Kirk in which he requested a modification of the Stipulation and Order
12 Resolving Parent/Child Issues (Jul. 11, 2012). Considering the factual allegations raised
13 in all papers filed regarding the issue of custody, any delay in initiating the counseling
14 process for the children is bewildering. At the same time, Plaintiff's Motion to Enter
15 Decree of Divorce (May 13, 2013) was unopposed by Vivian and the Decree entered by
16 the Court more closely mirrored the language proposed by Kirk. See Plaintiff's
17 Submission of Proposed Decree of Divorce (Sep. 27, 2013).

18 Pursuant to EDCR 7.60 and EDCR 5.11, aspects of both of the foregoing
19 Motions should have been resolved in advance of the October 30, 2013 hearing. This
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26 issues, there is no "prevailing" party. Each party requested primary physical custody of their
27 minor children in their underlying pleadings. Thus, neither party could be construed as the
28 prevailing party regarding the physical custody designation. Nevertheless, it is not lost on the
Court that the allegations that Vivian suffered from psychological infirmities that impacted her
ability to parent the children went unproven from an evidentiary standpoint.

1 Court finds that the attorneys' fees attributable to the foregoing motions should be
2 offsetting, and no fees are awarded to either party.
3

4 C. SUMMARY OF FEES AND COSTS INCURRED AND PAID
5

6 Each party received \$550,343.25 in community funds earmarked for attorneys'
7 fees. See Letter to Court from Edward Kainen, Esq. (Jan. 15, 2014), Letter to Court
8 from Radford Smith, Esq. (Jan. 15, 2014) and Kirk's Opposition and Countermotions
9 125 (May 28, 2013). Based on the billing statements offered to the Court, Kirk paid
10 a total of \$448,738.21 in fees and costs from March 8, 2011 through January 15, 2013.
11 In contrast, Vivian paid a total of \$686,341.33 in fees and costs from May 2, 2011
12 through January 30, 2013. See Exhibits to Kirk's Opposition and Countermotions Ex.
13 15 - 19 (May 28, 2013), and Defendant's and Plaintiff's Attorney Fee Billing
14 Statements (Apr. 5, 2013). Exhibit 1 attached hereto is a spreadsheet summarizing the
15 amounts paid by each party. Exhibit 2 attached hereto is a spreadsheet summarizing the
16 fees and costs incurred. A review of the billing statements and the Court's Exhibit 2
17 reveals the following:
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- 21 ○ Vivian incurred \$687,506.28 in fees and costs from May 2, 2011 through
22 January 19, 2013.⁷ Thus, as of January 30, 2013, Vivian paid
23 \$137,163.03 in fees and costs from her separate property portion of the
24 community assets. In contrast, Kirk incurred \$469,864.17 in fees and
25 costs from March 8, 2011 through December 21, 2012.⁸ Thus, as of

26 ⁷These dates (i.e., May 2, 2011 and January 19, 2013), represent the first and last billing
27 entries for fees and costs incurred by Vivian.

28 ⁸These dates (i.e., March 8, 2011 and December 21, 2013), represent the first and last
billing entries for fees and costs incurred by Kirk.

1
2 January 15, 2013, Kirk retained \$80,479.08 in unused community funds
3 allocated for attorneys' fees.

4 ○ The fees and costs incurred by the parties to litigate the financial issues
5 (i.e., post-Stipulation and Order Resolving Parent/Child Issues (Jul. 11,
6 2012)) appear to be relatively equal. Specifically, Vivian incurred
7 \$548,229.38 in fees and costs through the date the Stipulation and Order
8 Resolving Parent/Child Issues (Jul. 11, 2012) was filed. The balance of
9 \$139,276.90 was incurred after the custody issue had been resolved.⁹ Kirk
10 incurred \$349,593.56 through the same period of time. The balance of
11 \$120,270.61 was incurred after the custody issue had been resolved. The
12 difference in the amount incurred for post-custody issues totals
13 \$19,006.29, or less than eight percent (8%). In contrast, the difference
14 in the amount of fees and costs incurred by each party prior to the entry
15 of the Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012)
16 totals \$198,635.83.

17 ○ Kirk incurred a total of \$54,947 in fees and costs from the first reference
18 of time spent on preparation of his Custody Motion (Sep. 14, 2011)
19 (August 6, 2011 billing entry of Jolley Urga Wirth Woodbury & Standish)
20 through the date the Custody Motion was filed (i.e., through September
21 14, 2011). Vivian incurred a total of \$105,957.50 in fees and costs from
22 the first reference of time spent on preparation of her Custody
23 Countermotion (Oct. 27, 2011) (September 14, 2011 billing entry of
24 Radford J. Smith, Chartered) through the date her Opposition to Custody
25 Motion was filed (i.e., through October 27, 2011).¹⁰

26 ○ Kirk's Custody Motion (Sep. 14, 2011) (with accompanying affidavits)
27 consisted of 206 pages. This included the Custody Motion (48 pages),
28 Kirk's Affidavit and Supplemental Affidavit (totaling 132 combined

29
30 ⁹To be clear, this Court recognizes that the fees and costs incurred prior to July 11, 2012
31 included time spent on issues unrelated to child custody. Nevertheless, the entry of the
32 Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) should represent the end
33 *by and large* of time spent on the child custody issue.

34 ¹⁰Again, this Court recognizes that the fees and costs referenced were not entirely related
35 to the child custody issues during the relevant periods of time defined above. In fact, Vivian
36 offered that, based on her analysis of the billing statements, Kirk was billed the following
37 amounts for the underlying custody papers: \$19,887.50 for the Custody Motion, \$8,450.00
38 for Kirk's Reply to Vivian's Custody Countermotion and \$1,400 for Kirk's Opposition to
39 Defendant's Motion for Temporary Orders. *See* Exhibits to Vivian's Reply Ex. T (Sep. 11,
40 2013).

pages)¹¹, the Affidavit of Tahnee Harrison (16 pages) and the Affidavit of Whitney Harrison (10 pages)¹². Borrowing from Kirk's "value" billing analysis,¹³ the monetary value of Kirk's Custody Motion was \$103,464 (206 pages multiplied by the hourly rate of \$500). As noted above, Kirk was billed \$54,947 during that period of time, \$48,517 less than the "value" of the work product created. Relying on Vivian's analysis of the billing statements, Kirk was billed only \$19,887.50 for this initial paper, \$83,576.50 less than the "value" of the work product created. (This analysis does not include any value attributed to the time devoted by Kirk in the drafting of Dr. Roitman's report. The record suggests that Kirk was intimately involved in the preparation of the report. See Exhibits to Vivian's Reply Ex. Z, AA, and DD (Sep. 11, 2013). The report attached to the Custody Motion consisted of 36 pages, or a value of \$18,000. Because such a report typically would be prepared by an expert and not an attorney, the "savings" would be attributed to the costs incurred.)

- Vivian's Custody Countermotion (Oct. 27, 2011) (with accompanying affidavits) consisted of 188 pages. This included Vivian's Sworn Declaration as well as the declarations/affidavits of Michele Walker, Nyla Roberts, Kim Bailey, Annette Mayer, Heather Atkinson, Lizbeth Castelan, and Jeffry Lite. The record reflects, however, that Ms. Roberts and Ms. Walker drafted their own statements (consisting of 15 pages each). See Exhibits to Kirk's Opposition and Countermotions Ex. 11 (May 28, 2013). Using the same "value" billing analysis, but excluding the statements of

¹¹It does not appear to be disputed that Kirk prepared his own affidavits and the initial Custody Motion, although his counsel "did a major re-write of our motion for temporary custody," billing Kirk approximately 37 hours. Exhibits to Kirk's Opposition and Countermotions, Ex. 1 (May 28, 2013).

¹²Although Kirk similarly was involved in the drafting of the Affidavit of Tahnee Harrison and the Affidavit of Whitney Harrison, Kirk's counsel also spent time in preparation of the same. Exhibits to Kirk's Opposition and Countermotions Ex. 2 (May 28, 2013).

¹³In his Opposition and Countermotions, Kirk offered the standard he applied with respect to what he considered a reasonable value associated with the preparation of papers filed with the Court. 51 (May 28, 2013). Specifically, the "standard was an average of one hour per page for research and writing combined." *Id.* In his Affidavit, Kirk referenced the preparation of "points and authorities" as part of his value billing analysis. See Kirk's Opposition and Countermotions, Ex. 5 (May 28, 2013). In light of the comprehensive and detailed nature of the affidavits submitted by both parties, this Court applied the same analysis. The approach promoted by Kirk is analytically instructive in the context of the requests for fees pending before this Court. Although the billing rates by the attorneys in this matter varied slightly, this Court used the same billing rate of \$500 per hour for this theoretical exercise.

1
2 Ms. Roberts and Mr. Walker, the monetary value of Vivian's Custody
3 Countermotion was \$79,000 (158 pages multiplied by the hourly rate of
4 \$500). As noted above, Vivian was billed \$105,957.50, \$26,957.50 more
5 than the "value" of the work product created. Although non-attorneys may
6 have authored some of these papers (and some of the "statements" do
7 appear to have been drafted by the affiant), the resulting difference is not
8 significant when considering the totality of the filings, including Kirk's
9 extensive drafting contributions to Dr. Roitman's report. Indeed, it is not
10 unreasonable to expect significant time to have been spent in reading and
11 analyzing Kirk's exhaustive Custody Motion. The record supports a
12 conclusion that Kirk was actively involved in drafting of most papers
13 (including his drafting of papers in response to the instant Motion (Apr.
14 3, 2013)). See Kirk's Opposition and Countermotions Ex. 15 - 19 (May
15 28, 2013) (billing summaries); Defendant's and Plaintiff's Attorney Fee
16 Billing Statements (Apr. 5, 2013); and Kirk's Opposition and
17 Countermotions Ex. 2 (May 28, 2013) (Affidavit of Edward Kainen, Esq.).
18 To this end, Kirk's value billing analysis provides some assistance to this
19 Court in comparing the paperwork generated and the corresponding fees
20 incurred.

- 21 ○ A similar "value" analysis could be applied to other papers filed with this
22 Court, particularly those papers associated with the child custody dispute.
23 For example, Kirk's Custody Reply (Jan. 4, 2012) consisted of 105 pages
24 (inclusive of various affidavits), or a value of \$52,500. Further, Vivian's
25 Custody Reply (Jan. 27, 2012) consisted of 67 pages (inclusive of various
26 affidavits/declarations), or a value of \$33,500.
- 27 ○ Applying the same "value" analysis to the papers associated with Vivian's
28 Motion (Apr. 3, 2013) is instructive.¹⁴ The total length of points and
authorities associated with Vivan's filings (which included her Motion and
her Replies) was 120 pages, or \$60,000 in value. The total length of point
and authorities associated with Kirk's filings (which included his
Opposition, Countermotions and Replies) was 212 pages, or \$106,000 in
value. The difference in monetary value of the parties' respective filings is
\$46,000.

26
27 ¹⁴Vivian filed a Request to File Supplemental Information in Support of Motion for
28 Attorney's Fees; In the Alternative, Supplemental Motion for Attorney's Fees (Jan. 15, 2014).
This Court is not inclined to review additional billing records on an existing request for fees.
Rather, this Court relies on the value billing analysis in evaluating the issue of fees and "leveling
the playing field."

1
2 D. LITIGATION OF FINANCIAL AND CHILD CUSTODY ISSUES

3 The papers submitted by both parties conceptually divide the litigation (including
4 settlement aspects) into two *general* categories considered by the Court: (1) litigation
5 associated with financial issues; and (2) litigation associated with child custody issues.
6

7 (1) Financial Issues

8 With respect to the litigation associated with financial issues, this Court does not
9 find there is a basis to award fees to either party beyond this Court affirming the
10 Discovery Commissioner's recommendation made at the March 9, 2012 hearing to
11 award Vivian the sum of \$5,000. (This Court does not find a basis to reject or alter the
12 Discovery Commissioner's recommendations regarding attorney's fees.) Although both
13 parties submitted papers complaining about discovery improprieties and the conduct of
14 the other party with respect to the resolution of financial issues (and the relative
15 "simplicity" of the financial issues), this Court does not find that either party has
16 supplied this Court with an adequate legal or factual basis to award additional fees
17 related to the manner in which either party litigated the financial issues. It is not this
18 Court's prerogative to scrutinize the litigation methods employed by four of the most
19 highly esteemed and credentialed attorneys practicing family law in the State of Nevada
20 based on the record before the Court. This is particularly so after considering the
21 unused statutory mechanisms available to the parties to pursue a more expeditious
22 resolution of the financial issues. Further, this Court's review of the billing statements
23 (to the extent such information was decipherable amid extensive redactions by both
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1 parties) submitted by the parties does not give rise to this Court finding or concluding
2 that an award of attorneys' fees is appropriate on the bases cited in their respective
3 papers.¹⁵
4

5 In Kirk's Opposition and Countermotions (May 28, 2013), Kirk expressed his
6 dismay about "heated" discussions with his attorneys regarding their wise advice against
7 the filing of a "motion for partial summary judgment to equally divide all of the
8 community financial accounts, the gold and silver coins, and the income stream from the
9 Tobacco case." 6 (May 28, 2013). Kirk expressed frustration about being thwarted in
10 his desire to resolve these financial issues expeditiously, complaining that "parties in
11 Family Court are more hostages, than clients." *Id.*
12

13 On September 19, 2013, this Court entered its Orders Incident to the Stipulation
14 and Order Resolving Parent/Child Issues and the December 3, 2012 Hearing. Therein,
15 this Court directed that "each party may file and serve by the close of business on
16 September 27, 2013, any offer(s) to allow decree concerning property rights of parties
17 made pursuant to NRS 125.141." Orders Incident to the Stipulation and Order
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22 ¹⁵In Kirk's Opposition and Countermotions (May 28, 2013), Kirk identified billing
23 entries for Gary Silverman, Esq., dated November 28, 2011 (totaling 24 hours) and November
24 29, 2011 (totaling 26 hours). This Court concurs that such billing would be considered
25 egregious. In Vivian's Reply to Kirk's Opposition and Countermotions (Sep. 11, 2013), Mr.
26 Silverman explained that his billings "for the mediation were inadvertently double entered and
27 he has removed those charges from his billing and refunded the fees to Ms. Harrison." Although
28 Kirk in his Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and
Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief
(Oct. 21, 2103) found Mr. Silverman's explanation implausible, this Court disagrees. Although
not common or routine, the fact that two time entries were created for the same day (with
slightly different descriptions) is not outside the realm of possibility. Mr. Silverman
acknowledged the error and noted his remedial actions.

1
2 Resolving Parent/Child Issues and the December 3, 2012 Hearing 4 (Sep. 19, 2013).
3 Notwithstanding the alleged simplicity of financial issues, neither party submitted "an
4 offer to allow a decree to be entered concerning the property rights of the parties" as
5 authorized by NRS 125.141.¹⁶ (The settlement letter dated August 27, 2012 (included
6 as Exhibit 2 to Kirk's Opposition and Countermotions (May 28, 2013) and Exhibit
7 DDD to Vivian's Reply (Sep. 11, 2013)) does not qualify as an offer pursuant to NRS
8 125.141.)
9

10 The utilization of the process authorized by NRS 125.141 allows a party to
11 pursue pro-actively the resolution of certain financial issues. Indeed, this process can be
12 effective because it allows a court to penalize financially an unreasonable party (in the
13 form of attorney's fees). This Court believes that, even without final appraisals, each
14 party had sufficient information and knowledge upon which such an offer could have
15 been made well before the actual settlement was reached. Indeed, the May 22, 2013
16 report of Clifford R. Beadle, CPA, outlined in detail the simplicity of the financial issues
17 and the relatively small value of unresolved financial issues. See Kirk's Opposition and
18 Countermotions Ex. 3 (May 28, 2013). Therein, Mr. Beadle summarized that the value
19 of "undisputed assets" to be divided ranged between 89.30 to 90.36 percent of the total
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24 ¹⁶This Court recognizes that the resolution of all financial issues may have hinged on the
25 completion of additional discovery and/or evaluative services. If so, the so-called "simplicity"
26 may be an overstatement of reality. This Court would not expect the parties to reasonably
27 engage in piecemeal negotiations of such financial issues. To the extent either party reasonably
28 believed that the financial issues could have (and indeed should have) been resolved in short-
order due to their alleged simplicity, this Court would have expected *at least one* offer to allow
entry of decree from one of the parties. Thus, if the unresolved issues were "over really nothing"
(Kirk's Opposition and Countermotions 36 (May 28, 2013)), each party should have made at
least one offer pursuant to NRS 125.141.

1
2 community. Similarly, in his e-mail to James Jimmerson, Esq., Mr. Silverman noted that
3 "[i]t is a custody matter, primarily. The property issues are fairly straightforward [sic]."
4 Exhibits to Vivian's Reply Ex. GG (Sep. 11, 2013). For Kirk to accuse the process in
5 Family Court to be akin to "hostage-taking," yet at the same time fail to avail himself
6 of NRS 125.141 is incongruous.
7

8 In summary, each party's failure to utilize the process authorized by NRS
9 125.141, while at the same time proclaiming the relative simplicity of the financial
10 issues, mitigates against this Court engaging in an evaluation of alleged improper or
11 costly litigation tactics of either party. Further, as noted above, a similar amount of
12 attorney's fees was incurred by each party after the entry of the Stipulation and Order
13 Resolving Parent/Child Issues (Jul. 11, 2013) (i.e., when only financial issues remained
14 in dispute).
15
16

17 (2) Child Custody Issues

18 With respect to the litigation associated with the issue of custody, this Court
19 finds that Vivian is entitled to an award of fees pursuant to NRS 125.150, in
20 conjunction with establishing parity between the parties as discussed in *Sargeant, supra*.
21 Again, such an award of fees is based principally on the time spent and fees incurred
22 litigating the issue of child custody.
23
24

25 In his Complaint for Divorce, Kirk requested joint legal and "primary physical
26 care, custody and control of the minor children herein." 2 (Mar. 18, 2011). In her
27 Answer to Complaint for Divorce and Counterclaim for Divorce, Vivian requested joint
28

1 legal custody and "primary physical custody of the minor children, subject to the rights
2 of specific visitation of Plaintiff/Counterdefendant." 3 (Nov. 23, 2011). There is
3 nothing in the record that suggests that either party would capitulate to the other party
4 being awarded primary physical custody of the minor children, or that mediation would
5 have led to such a result.
6

7
8 The Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) confirms
9 to the parties joint legal custody and joint physical custody of their children.
10 Preliminarily, the issue of custody is expressly excluded as an issue subject to the "offer
11 of judgment" provisions of NRS 125.141(6). Further, inasmuch as the parties have
12 utilized this post-resolution process to regurgitate the very same issues that were argued
13 as part of the underlying custody proceedings, this Court finds little salutary or
14 constructive value to rehashing these same arguments.¹⁷ The parties ultimately
15 stipulated that joint physical custody is in the best interest of their children.¹⁸
16
17

18
19 ¹⁷This Court recognizes that said regurgitation perhaps was not the intent or motivation
20 of the parties in submitting their respective papers on the attorney's fees issue. Nevertheless,
21 the result for the Court is the same.

22 ¹⁸In his Opposition and Counter motions, Kirk argued that, based on Dr. Roitman's
23 advice, he "was willing to agree to custody terms he knew were not in Brooke's and Rylee's best
24 interest just to get this over." 39, FN 24 (May 28, 2013). Later, Kirk stated: "Kirk wanted this
25 matter resolved expeditiously, amicably, and on the merits, and without putting his children and
26 Vivian through an extended court battle and trial." *Id.* at 77. These statements, however, are
27 inconsistent with the record and Kirk's requests during the litigation. Notably, the delay in
28 finalizing custody by way of evidentiary proceedings was caused, in part, by Kirk's plea for this
Court to appoint Dr. Paglini as a "neutral" expert (which Vivian opposed). Kirk vehemently
argued that he would be bound by Dr. Paglini's recommendations. But for Kirk's impassioned
request for Dr. Paglini's appointment, an evidentiary hearing resolving the custody issue would
have been set and held earlier than the entry of the parties' Stipulation and Order Resolving
Parent/Child Issues (Jul. 11, 2012). The return hearing on the referral to Dr. Paglini (by which
time Dr. Paglini would have been expected to complete his report) was scheduled for May 16,
2012. Referral Order for Outsourced Evaluation Services (Feb. 24, 2012). Although this Court

1 Moreover, there is no basis for this Court to now make findings that either parent suffers
2 from any mental deficiency compromising his or her ability to care for the minor
3 children, particularly considering the fact that Kirk requested that the custody
4 evaluation undertaken by Dr. John Paglini not be completed.¹⁹
5

6 The tone of the custody litigation was set by Kirk's filing of his Custody Motion
7 (Sep. 14, 2011). This filing initiated a "battle of experts" that culminated with this
8 Court's appointment of Dr. Paglini. In addition to Kirk's Affidavit, the Custody Motion
9 (Sep. 14, 2011) was comprised of an unsigned letter from Kirk to Vivian, the Affidavit
10 of Tahnee L. Harrison, the Affidavit of Whitney J. Harrison, photographs, the
11 Psychiatric Analysis from Norton A. Roitman, MD, DFAPA (with attached documents
12
13
14

15
16 is unaware of the status of Dr. Paglini's actual completion of his report as of July 11, 2012 (the
17 time the parties' entered their stipulated resolution), it was Kirk who adamantly opposed Dr.
18 Paglini completing what Kirk had requested. (At the hearing on July 18, 2012, Vivian argued
19 that Dr. Paglini's report was nearly complete, while Kirk argued that the completion of Dr.
20 Paglini's report would not be possible without additional input from Kirk.) Notably, it appears
21 settlement discussions regarding custody began within weeks of the February 24, 2012 hearing
(when Dr. Paglini was appointed). See letter dated March 5, 2012 included in the Exhibits to
22 Vivian's Reply Ex. VV (Sep. 11, 2013). Further, Kirk offered that in "late February 2012,
23 Vivian and I began discussing the terms of a possible custody arrangement through our older
24 children." Exhibits to Kirk's Opposition and Countermotions Ex. 5 (May 28, 2013).

25 ¹⁹To the extent Kirk believed (or believes) the minor children were exposed to serious risk
26 while in Vivian's care, he would have insisted on the completion of the evaluation (which was
27 well underway at the time the issue of custody was resolved) even with a stipulated resolution
28 of custody. Kirk expressed that "no one would be happier than Kirk if it is determined that
Vivian does not have Narcissistic Personality Disorder." Kirk's Opposition and Countermotions
23: FN 16 (May 28, 2013). Yet, Kirk argued against having Dr. Paglini complete his evaluation.
If the purpose of Kirk's request to appoint Dr. Paglini was to assure him that "Vivian does not
have Narcissistic Personality Disorder" (which Kirk offered as a motivating factor for his request
to delay the resolution of custody by way of Dr. Paglini's appointment, and which arguably
would have been resolved conclusively with the completion of Dr. Paglini's report), it is
inconsistent to vociferously oppose the completion of the report while at the same time continue
to suggest that Vivian suffers from a psychological infirmity that impairs her parenting ability.

1 regarding various medications), and the Supplemental Affidavit of Kirk Harrison. Kirk's
2 Custody Motion relied, in part, on the aforementioned Psychiatric Analysis submitted
3 by Dr. Norton Roitman, in which Dr. Roitman declared "to a reasonable degree of
4 *medical certainty*" that "Vivian Harrison is suffering from a Narcissistic Personality
5 Disorder." 216 (Sep. 14, 2011) (emphasis added). Dr. Roitman acknowledged
6 limitations to this conclusion "in recognition of the lack of direct psychological
7 examination and testing." *Id.* Notwithstanding his acknowledgment of the limitations
8 created by having never met Vivian personally (and having relied on the veracity of the
9 information supplied by Kirk), Dr. Roitman's psychological assessment effectively
10 framed the complexity of the custody issue and established the blueprint for highly
11 contentious litigation.

12
13 In response to Kirk's Custody Motion, Vivian filed her Custody Countermotion
14 (Oct. 27, 2011). In addition to the Sworn Declaration of Vivian Harrison, Vivian's
15 Custody Countermotion was comprised of a disc, a Volunteer Application Form from
16 The Hope Foundation, various credit card summaries, grade reports for the minor
17 children, an unsigned letter from Tahnee to Vivian, a July 19, 2005 Psychiatric
18 Evaluation from Ventana Health Associates, a handwritten Last Will & Testament of
19 Kirk R. Harrison, a handwritten statement entitled "My Mom," an August 13, 2011
20 report from Ole J. Thienhaus, M.D., FACPsych, a September 24, 2011 report from Ole
21 J. Thienhaus, M.D., FACPsych, photographs, various pharmaceutical and LabCorp
22 records, the Sworn Declaration of Michele Walker, the Sworn Declaration of Nyla
23 Roberts, the Sworn Declaration of Kim Bailey, the Affidavit of Annette Mayer, the

1 Sworn Declaration of Heather J. Atkinson, the Affidavit of Lizbeth Castlan, and the
2 Sworn Declaration of Jeffry Life.
3

4 Vivian supplemented the record with her Custody Reply (Jan. 27, 2012).
5 Attached thereto were reports from Paul S. Appelbaum, MD, and Elsa P. Ronningstam,
6 Ph.D., that challenged the findings of Dr. Roitman's Psychiatric Analysis. Kirk was not
7 involved in the preparation of these reports.
8

9 The volume of resulting paperwork in response to the Custody Motion (Sep. 14,
10 2011) and the Custody Countermotion (Oct. 27, 2011) was previously noted. In
11 summary, both parties submitted reports generated by way of their respective *unilateral*
12 retention of experts. These reports *all* failed to include the participation of the other
13 party. The precipitating salvo, however, was fired by way of Kirk's Custody Motion
14 (Sep. 14, 2011). Between the filing of the Custody Motion (Sep. 14, 2011) and the
15 finalization of the Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012),
16 hundreds of thousands of dollars in community funds were expended by the parties.
17

18 In light of the voluminous nature of the papers filed and work generated by the
19 allegations made by both parties, this Court is not inclined to engage in a qualitative
20 analysis of whether the work performed was justified under the circumstances. Based
21 on the sheer volume of papers filed by both parties related to the custody issue, the
22 significance of the custody issue to Kirk and Vivian cannot be overstated. Indeed, it
23 would be impossible to quantify monetarily the value of custody. Considering the
24 gravity of the custody issue before the Court and the framework of litigation established
25 by Kirk's Custody Motion (Sep. 14, 2011), this Court does not find the amount of time
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1 spent by Vivian's counsel to be unreasonable. Indeed, the record established that Kirk
2 benefitted from his experience as an attorney and his ability to prepare detailed and
3 comprehensive papers in the prosecution of his claims. This Court would have expected
4 an extensive amount of time devoted to read and digest the content of the Custody
5 Motion (Sep. 14, 2011). In retrospect, the overall tenor of this initiating motion and
6 Kirk's argument suggests that if Vivian would not succumb to the specific relief sought
7 by way of the Custody Motion and psychological diagnosis, she would at least capitulate
8 to the manner in which Kirk proposed that the issue of custody be litigated.

9
10
11
12 Notwithstanding the voluminous papers filed with the Court, the parties
13 ultimately reached a stipulated resolution of the custody issue. As noted previously, the
14 ability of two parents to reach such a stipulated resolution should be lauded as a success.
15 Thus, the fact that Kirk and Vivian entered into a Stipulation and Order Resolving
16 Parent/Child Issues (Jul. 11, 2012) is a success of the process, and more importantly, a
17 benefit to Brooke and Rylee. An "after-the-fact" analysis of the merits of the parties'
18 respective positions related to the child custody issue is not productive. To do so would
19 inhibit constructive settlement discussions and would be contrary to the sound policy
20 of encouraging the resolution of parenting issues by the individuals who should be most
21 in tune with the needs of their children — i.e., their parents.

22
23
24 Unfortunately, this entire post-resolution process has degenerated into attempts
25 by both parties to litigate the very issues that were the subject of settlement. To this
26 end, this Court was inundated with a seemingly endless diatribe of both finger-pointing
27
28

1 and rationalizations.²⁰ As with prior papers filed in this matter, the length of the papers
2 filed by both parties exceeded the limitations imposed by EDCR 2.20(a), with Kirk's
3 Opposition and Countermotions (May 28, 2013) consisting of an astounding 133 pages
4 in points and authorities alone. Therein, Kirk bemoaned the process in Family Court,
5 once again relying on Dr. Roitman to educate him that "[y]ou just don't get it. You are
6 not going to solve your family's problems in Family Court." Opposition and
7 Countermotions 6 (May 28, 2013). Kirk then opines: "What a sad commentary. The
8 one forum in the Nevada judicial system where it is most important to expeditiously and
9 amicably resolve problems, because children's emotional well being, lives, and futures
10 are at stake, is unquestionably the worst." *Id.* at 6. At the outset of this litigation, Kirk
11 should have been disabused of any notion that a complete stranger (i.e., the Court) is
12 in the best position to solve his family's problems. Indeed, the parties have failed to a
13 degree when it is left up to the Court — a stranger to the parties' children — to resolve
14 these issues.

15
16 In his Opposition and Countermotions, Kirk takes no responsibility whatsoever
17 for the directional path of this litigation, but instead lectures about how the "one forum
18 in the Nevada judicial system where it is important to expeditiously and amicably
19 resolve problems, because children's emotional well being lives, and futures are at stake,

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25 ²⁰Amidst the personal attacks strewn throughout the papers, each party did provide this
26 Court with a measure of levity. For example, as part of his critique of the amount of time
27 Vivian's attorneys spent in preparing papers in response to Kirk's Custody Motion, Kirk offered:
28 "A monk with only a quill pen in dim candlelight would be more productive." Kirk's Opposition
and Countermotions 53 (May 28, 2013). Vivian retorted with: "A genie with a magic wand
could not have finished all of that work in 41.8 hours," in light of the comparatively low amount
of fees incurred by Kirk. Vivian's Reply 28 (Sep. 11, 2013).

1
2 is unquestionably the worst." *Id.* It would indeed be shortsighted to believe that an
3 unprecedented 48-page initiating motion (accompanied by a 118-page, 241-paragraph
4 affidavit and a psychiatric diagnosis "*to a reasonable degree of medical certainty*" that Vivian
5 suffered "from a Narcissistic Personality Disorder") would not somehow engender a
6 massive response of time and effort.²¹ See Custody Motion (Sep. 14, 2011). It similarly
7 would be shortsighted to believe that such a Custody Motion could possibly be
8 perceived or received by Vivian as an effort to "do what was indisputably best for . . .
9 Vivian" (6) or to "get Vivian help."²² 4 (Sep. 14, 2011). Yet, despite such an initial
10 barrage of paperwork, Kirk uses 133 pages of diatribe to attack Vivian, Vivian's
11 attorneys and this Court as being responsible entirely for the manner in which this case
12 was litigated. See Kirk's Opposition and Countermotions (May 28, 2013). On 15
13 occasions in his Opposition and Countermotions (May 28, 2013), Kirk repeated nearly
14 verbatim the following: "The difference in fees billed by Vivian's attorneys in this case
15 versus the fees billed by Kirk's attorneys in this case is a function of how Vivian
16 and/Vivian's attorneys chose to manage this case and how they overbilled this case,
17 rather than any drafting Kirk did on any points and authorities." As if he was an
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24 ²¹Both parties complained about the process (or being "jaded" by the process) in some
25 fashion. Yet, both parties behaved in a manner not seen in most cases. Notably, Kirk argues
26 that "the letter opinions from [Vivian's] two national experts are so qualified to be entirely
27 worthless." Opposition and Countermotions 79 (May 23, 2013). If said reports are considered
28 "entirely worthless," the "qualifying" factors associated with Dr. Roitman's report (including the
fact that he *never* met with the person he was diagnosing) render his report "entirely worthless"
as well.

²²At the point in time that Dr. Roitman's reports was thrust into the litigation, his report
could hardly be viewed as a therapeutic tool.

1
2 innocent bystander throughout this entire process, Kirk fails to acknowledge that his
3 unprecedented approach to the initial paper he filed with this Court (i.e., his Custody
4 Motion (Sep. 14, 2011)) had any correlation to Vivian's response thereto and the path
5 of this litigation.
6

7 The sad reality is that the amount of fees awarded herein likely pales in
8 comparison to the emotional and financial toll this post-divorce process has created.
9 This entire process has generated more animosity and conflict that is not healthy for the
10 parties or their children, leading the Court to ask, is it worth it? Yet, amidst
11 complaining about this process, Kirk curiously requested the opportunity to further
12 lengthen these proceedings by pursuing additional discovery and an evidentiary hearing
13 regarding the issue of attorneys' fees — which would equate to even more fees.
14

15 In evaluating the amount of fees that should be awarded, this Court has
16 considered the factors enunciated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345,
17 455 P.2d 31 (1969). Specifically, this Court has considered:
18

19 (1) The quality of the advocates. Both parties are represented by experienced
20 and highly esteemed advocates. Indeed the quality of representation was at an
21 exceptional level. (The high regard in which each party's attorneys are held magnifies
22 the disappointment of this Court in the unnecessary personal attacks strewn throughout
23 the papers filed with this Court.)
24

25 (2) The character of the work to be performed. This Court's analysis of the
26 character of the work performed is detailed above.
27

28

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

1
2 (3) The work actually performed. The work actually performed is represented
3 in the billing summaries submitted to the Court. In this regard, each party provided the
4 Court with billing statements encompassing the fees and costs associated with their
5 respective representation. This information included monthly billing statements from
6 Jolley Urga Wirth Woodbury & Standish, Ecker & Kainen/Kainen Law Group,
7 Silverman, Decaria & Kattelman, Radford J. Smith/Smith & Taylor and the Dickerson
8 Law Group. Kirk attached these monthly billing statements to his Opposition and
9 Countermotions (May 28, 2013) as Exhibits 15, 16, 17, 18 and 19. (The billing
10 statements attached as Exhibit 16 associated with Smith & Taylor, however, end with
11 the billing entry dated April 18, 2012.) Vivian filed these monthly billing statements
12 as part of her Defendant's and Plaintiff's Attorney Fee Billing Statements (Apr. 5, 2013).
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16 (4) The result obtained. Although this Court does not view this factor as a
17 "prevailing party" analysis, the Court reiterates that this matter ultimately was resolved
18 by way of stipulation. The resolution was different than each party's relief requested in
19 their underlying pleadings. Nevertheless, it is not lost on the Court that Kirk's allegation
20 that Vivian suffered from a serious psychological disorder that impeded her parenting
21 abilities was not proven by *competent* evidence. In fact, over Vivian's objection, this
22 Court granted Kirk's request to halt Dr. Paglini's completion of his evaluation of Vivian's
23 alleged condition.
24
25

26 Based on the billing statements submitted to the Court, Vivian exhausted the
27 entire amount of funds allocated to her from the marital community for attorneys' fees.
28 In contrast, Kirk retained \$80,479.08 from the same allocation of funds from the marital

1 community. Further, borrowing from Kirk's value analysis of fees billed, Kirk saved at
2 least \$48,517 (\$83,576.50 according to Vivian's analysis) based on the amount that he
3 would have otherwise paid for the Custody Motion (Sep. 14, 2011). Separate and apart
4 from an analysis of the specific billing entries from Kirk's attorneys, this same value
5 based billing analysis suggests that Kirk donated significant time and expertise to the
6 preparation of various papers filed on his behalf. Absent a finding that Vivian's response
7 to Kirk's initial filing was unreasonable (which this Court cannot find), Vivian is entitled
8 to an award of fees to "meet her adversary in the courtroom on an equal basis." *Sargeant*
9 *v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972).
10
11
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13 The amount of fees awarded to Vivian should include one-half of the amount of
14 community funds Kirk saved as a result of his efforts (\$40,240), as well as the excess
15 amount in value billing associated with the papers filed by both parties relative to
16 Vivian's Motion (Apr. 3, 2013) (\$46,000). In summary, this Court finds that Vivian is
17 entitled to an award of fees from Kirk totaling \$86,240, plus the sum of \$5,000 based
18 on the March 9, 2012 recommendation of the Discovery Commissioner, for a total of
19 \$91,240.
20
21

22 Based on the foregoing findings and conclusions, and good cause appearing
23 therefore,
24


25 IT IS HEREBY ORDERED that Vivian's Motion is GRANTED in part, and
26 Vivian is awarded the sum of \$91,240 in attorneys' fees, which said sum is reduced to
27 judgment in Vivian's favor and against Kirk.
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IT IS FURTHER ORDERED that Kirk's Request for Reasonable Discovery and Evidentiary Hearing, his Countermotion for Equitable Relief, his Countermotion for Attorney's Fees, and his Countermotion for Declaratory Relief are DENIED.

IT IS FURTHER ORDERED that all other relief sought by the parties by way of their papers filed with the Court not otherwise specifically addressed or granted herein is DENIED.

DATED this 10th day of February, 2014.


BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

Docketing Statement Attachment No. 7

Alvin D. L...

CLERK OF THE COURT

1 **ORDER**

2 **RADFORD J. SMITH, CHARTERED**

3 **RADFORD J. SMITH, ESQ.**

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13 *Attorneys for Defendant*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **KIRK ROSS HARRISON,**

17 Plaintiff,

18 vs.

19 **VIVIAN MARIE LEE HARRISON,**

20 Defendant.

CASE NO.: D-11-442611-D

DEPT NO.: Q

FAMILY DIVISION

RECEIVED

JUN 10 2014

23 **ORDER FROM HEARING**

24 DATE OF HEARING: December 18, 2013

25 TIME OF HEARING: 11:00 a.m.

FAMILY COURT
DEPARTMENT Q

26 This matter, having coming on for hearing for Plaintiff's Motion for Judicial Determination of the
27 Teenage Discretion and Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment and for
28 Defendant's Countermotion for Attorney's Fees and Defendant's Countermotion to Clarify Orders on the

1 18th day of December, 2013; Plaintiff, Kirk Harrison, being present and represented by Thomas Standish,
2 Esq., of Standish Law Group and by Edward L. Kainen, Esq., of the Kainen Law Group; and Defendant,
3 Vivian Harrison, being present and represented by Radford J. Smith, Esq., of Radford J. Smith,
4 Chartered, and by Gary Silverman, Esq., of Silverman, Decaria & Kattleman; the Court, having heard the
5 arguments of counsel, having reviewed the pleadings and papers on file in this matter, and being fully
6 advised in the premises, and good cause appearing therefore, makes the following findings and orders:
7

8 1. In regards to TEENAGE DISCRETION; the parties had resolved parent/child
9 issues and a Stipulation was entered on July 11, 2012. Section 6 of that agreement
10 addresses the issue of TEENAGE DISCRETION and in review of that section, the Court does not
11 view that language as giving the minor child authority to make decisions or to change custody.
12 The parties agreed to the language and part of that included implementation of a counselor and
13 parenting coordinator. The process to implement those has been delayed and is to be
14 implemented forthwith. Court views the language as that, the counselor (Dr. Ali has been
15 selected) would be involved in the TEENAGE DISCRETION process, as would the parenting
16 coordinator. The purpose for such would be to avoid the Court's intervention, though those
17 processes would not supplant this Court's authority and the parties may still petition the Court
18 to address any issues they may have.
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22 2. The request to suspend, remove or otherwise modify the TEENAGE
23 DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and
24 the Court expects the counselor to be involved in this process. The purpose of TEENAGE
25 DISCRETION is not to remove blocks of time from a party and if a party is being removed for a
26 period of time (aside from vacations), then the Court would be concerned. TENAGE
27 DISCRETION should be implemented from time-to-time and there should not be any issues
28

1 should Brooke wish to make a modification for a few hours and the Court would expect
2 communication in this regard. Again, the counselor and the parenting coordinator are to be
3 engaged in this process.

4
5 3. Per STIPULATION, accounts ending 8278 and 2521 are Plaintiff's sole and separate
6 property.

7 4. With regard to accounts ending 8682, 1275 and 2713; to the extent that these accounts
8 were Plaintiff's prior to the marriage, then they are his sole and separate property. It is the Defendant's
9 burden to show that any community property funds were deposited or placed into those accounts which
10 would create a community property interest in those accounts. Otherwise, it is clear to the Court that
11 those three accounts are the Plaintiff's sole and separate property and the Decree of Divorce shall be
12 corrected to reflect such. Court views this issue as an issue that did not need to be brought before the
13 Court.
14

15 5. The Decree of Divorce is to be corrected to reflect that The Measo Associates is held in
16 both parties name.
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18 6. With regard to the A/B list; to the extent items were not included in the list prepared by
19 Joyce Newman, absent an agreement between the parties, those items are to be divided by way of an A/B
20 list (which was the intent of the Court's Order).
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22 7. With regard to the provision regarding reimbursement; the Court views this is a mutual
23 provision. To the extent there is a dispute as to any items that should be reimbursed, the items may be
24 submitted to the Court on a separate list with an explanation and the Court would make the determination
25 as to whether or not it needs to be reimbursed. It is the Court's understanding that this process with
26 Melissa Attanasio and Cliff Beadle has not been completed yet. The accounting by Ms. Attanasio and
27 Mr. Beadle is to be completed by January 31, 2014. The Court expects an exchange of information and
28

1 documents which are lacking. Again, this provision is mutual and the items are limited to what was in
2 the Temporary Order and to the extent there is a reimbursable expense, there must be some backup to
3 demonstrate that the expense was covered by the Temporary Orders.
4

5 8. The matter is set for a two hour Evidentiary Hearing on January 22, 2014 at 1:30 p.m.
6 regarding the monies placed into Tahnee's account for the purpose of her education (after the initiation of
7 this litigation, but prior to the Joint Preliminary Injunction). To be clear, the Court shall not be seeking to
8 take money away from Tahnee. The issue shall be whether or not there needs to be a reimbursement for
9 one-half of those monies that were paid to create this account. The Court must determine whether or not
10 there was an agreement that these funds were to be used solely for medical school education purposes or
11 not. At this time, the Court views this as an omitted asset as Plaintiff's name was also on the account.
12

13 9. Discovery is open as to Tahnee's account and how it was created and the account history.
14

15 10. The Parties are to provide their proposed exhibits to the Court Clerk by the close of
16 business on January 17, 2014.

17 11. The Court shall allow out of state witnesses to testify by way of video (Skype or
18 Facetime), so long as the Court is able to see the individual and have them sworn in. The Court would
19 expect to hear from Ms. Attanasio and Mr. Readle.
20

21 12. With regard to any Ranch items which may have belonged to the Plaintiff's father, the
22 Court views those items as the Plaintiff's sole and separate property. The Court shall review the prove-
23 up hearing in this regard as Plaintiff is indicating that all the property located at the Ranch was to be
24 awarded to him. The Court shall address this issue at the Evidentiary Hearing after it has reviewed the
25 record. To be clear, this issue shall not be a part of the hearing.
26

27 *Mandatory Provisions:* The following statutory notices relating to custody/visitation of the minor
28 children are applicable to the parties herein:

1 Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if
2 either party intends to move their residence to a place outside the State of Nevada, and take the minor
3 child with them, they must, as soon as possible, and before the planned move, attempt to obtain the
4 written consent of the other party to move the minor children from the State. If the other party refuses to
5 give such consent, the moving party shall, before they leave the State with the children, petition the Court
6 for permission to move with the children. The failure of a party to comply with the provision of this
7 section may be considered as a factor if a change of custody is requested by the other party. This
8 provision does not apply to vacations outside the State of Nevada planned by either party.
9

10
11 The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in
12 pertinent part:

13 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR
14 DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A
15 CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that
16 every person having a limited right of custody to a child or any parent having no right of
17 custody to the child who willfully detains, conceals or removes the child from a parent,
18 guardian or other person having lawful custody or a right of visitation of the child in
19 violation of an order of this court, or removes the child from the jurisdiction of the court
20 without the consent of either the court or all persons who have the right to custody or
21 visitation is subject to being punished by a category D felony as provided in NRS 193.130.

22 Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980,
23 adopted by the 14th Session of The Hague Conference on Private International Law are applicable to the
24 parties:

25 Section 8. If a parent of the child lives in a foreign country or has significant commitments
26 in a foreign country;

27 (a) The parties may agree, and the Court shall include in the Order for custody of the
28 child, that the United States is the country of habitual residence of the child for the
purpose of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the
Court determines that the parents pose an imminent risk of wrongfully removing or
concealing the child outside the country of habitual residence. The bond must be in an

1 amount determined by the Court and may be used only to pay for the cost of locating the
2 child and returning him to his habitual residence if the child is wrongfully removed from
3 or concealed outside the country of habitual residence. The fact that a parent has
4 significant commitments in a foreign country does not create a presumption that the parent
5 poses an imminent risk of wrongfully removing or concealing the child.

6 The State of Nevada in the United States of America is the habitual residence of the parties'
7 children.

8 IT IS SO ORDERED.

9 Dated this _____ day of JUN 11 2014, 2014.


10
11 
12 DISTRICT COURT JUDGE

13 Submitted by:

Approved as to Form and Content:

14 RADFORD J. SMITH, CHARTERED

KAINEN LAW GROUP PLLC

15
16 
17 RADFORD J. SMITH, ESQ.

EDWARD L. KAINEN, ESQ.

18 Nevada Bar No. 002791 11878

Nevada State Bar No. 005029

19 64 N. Peccos Road, Suite 700.

10091 Park Run Drive, Suite 110

Henderson, Nevada 89074

Las Vegas, Nevada 89145

Attorneys for Defendant

Attorneys for Plaintiff

Docketing Statement Attachment No. 8


CLERK OF THE COURT

E-SERVED
JUN 16 2014

1 **NEOJ**
2 **RADFORD J. SMITH, CHARTERED**
3 **RADFORD J. SMITH, ESQ.**
4 Nevada State Bar No. 002791
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8 F: (702) 990-6456
9 rsmith@radfordsmith.com

6 **GARY R. SILVERMAN, ESQ.**
7 **SILVERMAN, DECARIA, & KATTLEMAN**
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9 6140 Plumas St.#200
10 Reno, NV 89519
11 T: (775) 322-3223
12 F: (775) 322-3649
13 silverman@silverman-decaria.com
14 Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

13 **KIRK ROSS HARRISON,**

14 Plaintiff,

15 vs.

16 **VIVIAN MARIE LEE HARRISON,**

17 Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

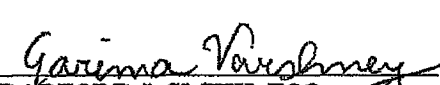
FAMILY DIVISION

NOTICE OF ENTRY OF ORDER

20 PLEASE TAKE NOTICE that on the 13TH day of June, 2014, the Honorable Judge Duckworth
21 entered an Order From Hearing, a copy of which is attached hereto.

22 Dated this th16 day of June, 2014:

24 **RADFORD J. SMITH, CHARTERED**

25 
26 **RADFORD J. SMITH, ESQ.**
27 Nevada Bar No. 002791
28 64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

11878

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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 the 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 ENTRY OF ORDER" on this 12th day of June, 2014 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:

Tom J. Standish, Esq.
Standish Law Group
1635 Village Center Circle, Suite 180
Las Vegas, Nevada 89134
tjs@standishlaw.com
Attorney for Plaintiff

Edward L. Kainen, Esq.
Kainen Law Group
10091 Park Run Dr., #110
Las Vegas, Nevada 89145
ed@kainenlawgroup.com
Attorney for Plaintiff

 
An employee of RADFORD J. SMITH, CHARTERED

Alvin D. Lamm

CLERK OF THE COURT

1 **ORDER**

2 **RADFORD J. SMITH, CHARTERED**

3 **RADFORD J. SMITH, ESQ.**

4 Nevada Bar No. 002791

5 64 N. Pecos Road, Suite 700

6 Henderson, Nevada 89074

Telephone: (702) 990-6448

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7 **GARY R. SILVERMAN, ESQ.**

8 **SILVERMAN, DECARIA, & KATTELMAN**

9 Nevada Bar No. 000409

10 6140 Plumas Street, Suite 200

11 Reno, Nevada 89519

12 Telephone: (775) 322-3223

13 Facsimile: (775) 322-3649

14 silverman@silverman-decaria.com

15 *Attorneys for Defendant*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **KIRK ROSS HARRISON,**

19 **Plaintiff,**

20 **vs.**

21 **VIVIAN MARIE LEE HARRISON,**

22 **Defendant.**

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY DIVISION

RECEIVED

JUN 10 2014

23 **ORDER FROM HEARING**

24 **DATE OF HEARING: December 18, 2013**

25 **TIME OF HEARING: 11:00 a.m.**

**FAMILY COURT
DEPARTMENT Q**

26 This matter, having coming on for hearing for Plaintiff's Motion for Judicial Determination of the
27 Teenage Discretion and Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment and for
28 Defendant's Countermotion for Attorney's Fees and Defendant's Countermotion to Clarify Orders on the

✓

1 18th day of December, 2013; Plaintiff, Kirk Harrison, being present and represented by Thomas Standish,
2 Esq., of Standish Law Group and by Edward L. Kainen, Esq., of the Kainen Law Group; and Defendant,
3 Vivian Harrison, being present and represented by Radford J. Smith, Esq., of Radford J. Smith,
4 Chartered, and by Gary Silverman, Esq., of Silverman, Decaria & Kattleman; the Court, having heard the
5 arguments of counsel, having reviewed the pleadings and papers on file in this matter, and being fully
6 advised in the premises, and good cause appearing therefore, makes the following findings and orders:
7

8 1. In regards to TEENAGE DISCRETION; the parties had resolved parent/child
9 issues and a Stipulation was entered on July 11, 2012. Section 6 of that agreement
10 addresses the issue of TEENAGE DISCRETION and in review of that section, the Court does not
11 view that language as giving the minor child authority to make decisions or to change custody.
12 The parties agreed to the language and part of that included implementation of a counselor and
13 parenting coordinator. The process to implement those has been delayed and is to be
14 implemented forthwith. Court views the language as that, the counselor (Dr. Ali has been
15 selected) would be involved in the TEENAGE DISCRETION process, as would the parenting
16 coordinator. The purpose for such would be to avoid the Court's intervention, though those
17 processes would not supplant this Court's authority and the parties may still petition the Court
18 to address any issues they may have.
19
20
21

22 2. The request to suspend, remove or otherwise modify the TEENAGE
23 DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and
24 the Court expects the counselor to be involved in this process. The purpose of TEENAGE
25 DISCRETION is not to remove blocks of time from a party and if a party is being removed for a
26 period of time (aside from vacations), then the Court would be concerned. TENAGE
27 DISCRETION should be implemented from time-to-time and there should not be any issues
28

1 should Brooke wish to make a modification for a few hours and the Court would expect
2 communication in this regard. Again, the counselor and the parenting coordinator are to be
3 engaged in this process.

4
5 3. Per STIPULATION, accounts ending 8278 and 2521 are Plaintiff's sole and separate
6 property.

7 4. With regard to accounts ending 8682, 1275 and 2713; to the extent that these accounts
8 were Plaintiff's prior to the marriage, then they are his sole and separate property. It is the Defendant's
9 burden to show that any community property funds were deposited or placed into those accounts which
10 would create a community property interest in those accounts. Otherwise, it is clear to the Court that
11 those three accounts are the Plaintiff's sole and separate property and the Decree of Divorce shall be
12 corrected to reflect such. Court views this issue as an issue that did not need to be brought before the
13 Court.
14

15
16 5. The Decree of Divorce is to be corrected to reflect that The Measo Associates is held in
17 both parties name.

18 6. With regard to the A/B list; to the extent items were not included in the list prepared by
19 Joyce Newman, absent an agreement between the parties, those items are to be divided by way of an A/B
20 list (which was the intent of the Court's Order).

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22 7. With regard to the provision regarding reimbursement; the Court views this is a mutual
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25 as to whether or not it needs to be reimbursed. It is the Court's understanding that this process with
26 Melissa Attanasio and Cliff Beadle has not been completed yet. The accounting by Ms. Attanasio and
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1 documents which are lacking. Again, this provision is mutual and the items are limited to what was in
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6 regarding the monies placed into Tahnee's account for the purpose of her education (after the initiation of
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17 11. The Court shall allow out of state witnesses to testify by way of video (Skype or
18 Facetime), so long as the Court is able to see the individual and have them sworn in. The Court would
19 expect to hear from Ms. Attanasio and Mr. Beadle.
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21 12. With regard to any Ranch items which may have belonged to the Plaintiff's father, the
22 Court views those items as the Plaintiff's sole and separate property. The Court shall review the prove-
23 up hearing in this regard as Plaintiff is indicating that all the property located at the Ranch was to be
24 awarded to him. The Court shall address this issue at the Evidentiary Hearing after it has reviewed the
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5 give such consent, the moving party shall, before they leave the State with the children, petition the Court
6 for permission to move with the children. The failure of a party to comply with the provision of this
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11 The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in
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18 guardian or other person having lawful custody or a right of visitation of the child in
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27 Section 8. If a parent of the child lives in a foreign country or has significant commitments
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(a) The parties may agree, and the Court shall include in the Order for custody of the
child, that the United States is the country of habitual residence of the child for the
purpose of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the
Court determines that the parents pose an imminent risk of wrongfully removing or
concealing the child outside the country of habitual residence. The bond must be in an

1 amount determined by the Court and may be used only to pay for the cost of locating the
2 child and returning him to his habitual residence if the child is wrongfully removed from
3 or concealed outside the country of habitual residence. The fact that a parent has
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6 The State of Nevada in the United States of America is the habitual residence of the parties'
7 children.

8 IT IS SO ORDERED.

9 Dated this _____ day of JUN 11 2014, 2014.


10
11 
12 DISTRICT COURT JUDGE

13 Submitted by:

Approved as to Form and Content:

14 RADFORD J. SMITH, CHARTERED

KAINEN LAW GROUP, PLLC

15
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17 RADFORD J. SMITH, ESQ.
18 Nevada Bar No. 002791
19 64 N. Pecos Road, Suite 700
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Attorneys for Defendant

EDWARD L. KAINEN, ESQ.
Nevada State Bar No. 005029
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Attorneys for Plaintiff