

HARRISON V. HARRISON
CASE NUMBER 66157
CROSS-APPELLANT'S EXHIBITS
N-O
OF THE DOCKETING STATEMENT

EXHIBIT “N”

1 **RPLY**

2 RADFORD J. SMITH, ESQ.
3 RADFORD J. SMITH, CHARTERED
4 Nevada State Bar No. 002791
5 64 N. Pecos Rd., Suite 700
6 Henderson, NV 89074
7 T: (702) 990-6448
8 F: (702) 990-6456
9 Email: rsmith@radfordsmith.com

6 GARY R. SILVERMAN, ESQ.
7 SILVERMAN, DECARIA, & KATTLEMAN
8 Nevada State Bar No. 000409
9 6140 Plumas St. #200
10 Reno, NV 89519
11 T: (775) 322-3223
12 F: (775) 322-3649
13 Email: silverman@silverman-decaria.com

14 Attorneys for Defendant

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

14 KIRK ROSS HARRISON,

15 Plaintiff,

16 v.

17 VIVIAN MARIE LEE HARRISON,

18 Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

FAMILY DIVISION

21 **PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERMOTIONS TO RESOLVE**
22 **PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN**
23 **INTERVIEW OF THE MINOR CHILDREN, AND FOR ATTORNEY'S FEES AND SANCTIONS**

24 DATE OF HEARING: October 30, 2013

25 TIME OF HEARING: 9:00 a.m.

26 Defendant VIVIAN MARIE LEE HARRISON ("Vivian") submits her Reply to Plaintiff's
27 Oppositions to Countermotions set forth above.
28

INTRODUCTION

Vivian has countermoved for an order, pursuant to EDCR 5.13, directing the parties' minor children, Brooke, 14, and Rylee, 10 to an interview through the Family Mediation Center ("FMC"). Based upon the difficulty in the relationship between Brooke and Plaintiff Kirk Ross Harrison ("Kirk"), Brooke's continued desire to spend more time with Vivian, and Kirk's undermining of the plan to address Brooke's discretion, requests that the Court reserve a hearing date on the issue of custody, and determine adequate cause for hearing upon return from the children's interviews. Kirk opposes Vivian's Countermotion.

Kirk's Opposition continues upon the theme he has repeatedly asserted in this action: Vivian is a drug-addled narcissist who "callously manipulates" the children and is the cause of all of their problems, including those that they have with Kirk. Vivian respectfully submits, however, that an overview of all the pleadings in this case leads to this conclusion: while Kirk lacks basic respect and care for Vivian as the girls' mother, his feeling toward her long ago crossed from disrespect to contempt. His ability to fairly, objectively judge Vivian's behavior is diminished or gone.

Kirk's Opposition itself is an insight into his lack of objectivity and reasoning. To defeat Vivian's request for a hearing on change of custody, to eliminate the implementation of the clause designed to avoid litigation regarding the issue of custody arising from teen discretion, and to support his attempt to emasculate any role a parenting coordinator would normally play in this action, Kirk claims:

1. Even while he faces multiple witnesses to Vivian's continued involvement with the children, a mountain of receipts showing her involvement, a multiple-page list of activities and trips she has engaged in with girls (which Kirk has not challenged), and Brooke and Rylee's statements that Vivian submits support her involvement, Vivian "abandoned" the children for six years,

1 2. Though Kirk claims that Vivian spent six years away from the children and did virtually
2 nothing for them while Kirk provided for all of their needs, Vivian was able to “influence” the girls since
3 from September 14, 2011 (the end of the six year period) to today to overcome their true feelings and
4 instead desire to live primarily with her;
5

6 3. Though he provides a placid, spontaneous, open and “peaceful happy monastery” of a
7 home for the girls, they want to live in Vivian’s home that Kirk alleges (at least when Vivian was caring
8 for the children previously) is a “volatile, unstable, screaming, swearing, hitting, throwing, accusatory,
9 arguing, fingerpointing, environment” (Kirk’s Reply and Opposition, filed October 22, 2013, page 11);
10

11 4. Though his relationship with the children is one of “love and care,” and the children are
12 straight “A,” accomplished and admired children, the Court cannot trust the children to state their needs
13 and desires truthfully because of Vivian’s “influence” and “callous manipulation”;
14

15 5. His problems with Brooke, described in her email attached to Vivian’s motion, (in which
16 Brooke details Kirk’s multiple references to her “lying,” his specific thinly-veiled derogation of Vivian as
17 someone who is improperly influencing her, his direct attempt to alienate Rylee from Brooke by
18 contending to Rylee that Brooke would not care if he died, and his suggestion to Brooke that she abandons
19 her sister Rylee by wanting to spend time with Vivian), were just a one-time event during a trip to
20 Lagoon¹;
21

22 6. If Brooke and Rylee are given no choice to spend any additional time with Vivian, or to
23 live with her, they will be happier. He ostensibly alleges that any conflict he has with Brooke will end
24 because Brooke will realize change is hopeless, she will suppress her desire to spend more time with
25

26
27 ¹ One must wonder why, if this was a one-time event, Kirk reacted to Brooke’s claim of cramps by suggesting Brooke didn’t
28 really care for him, did not want to do things with the family, would not care if he died. He contends that Brooke’s not wanting
to go to an amusement park with cramps led to him calling his lawyer, his psychiatrist expert, and the parties’ adult daughter.
None of this suggests this was a one-time problem, and does suggest Kirk may not possess the skills he thinks he does for
extended custody of the girls.

1 Vivian because she knows it is futile, and *that* will prevent motions to modify or change custody that do
2 not have a “legitimate” basis; and,

3
4 7. Even though Vivian repeatedly requested joint physical custody both before and after
5 Kirk’s filing, agreed to joint physical custody and the provisions of the teenage discretion provision even
6 though Brooke was adamantly indicating that she did not want to live jointly with Kirk, expressly stated
7 that the reason she was requesting a therapist and PC be put in place was to allow Kirk time to mend his
8 relationship with Brooke, and did not initiate any post trial litigation even after Kirk advised her that
9 Brooke wanted to live with her (a fact that she and Kirk have known for years that she sarcastically replied
10 to in an email as if it were a revelation), *she* is competing with Kirk regarding the children. Kirk, on the
11 other hand, who hid his filings and his basis for relief for months before filing his pleadings, who sought
12 primary custody with supervised visitation, filed (and continues to file) hundreds of pages of vile insults
13 toward Vivian, claims that he only resolved the custody case due to cost and damage to the family
14 (implying the plan he entered was not in the best interest of the children), still contends that Vivian suffers
15 from psychological disorders, was a drug addict, did not provide care for the girls for six years, damaged
16 Rylee by sleeping with her (even in the face of insurmountable evidence to the contrary) and now
17 contends that she is scheming and manipulative, filed motions designed to renege on his agreement, and
18 now moves to preclude the children from having *any* voice in their care, is only attempting to prevent the
19 children from spending more time with Vivian out of his concern for their best interest. As stated in her
20 Opposition, it is reasonable to believe Kirk’s view of Vivian and the family is delusional.

21
22 Vivian’s explanation of current events is simpler: Kirk’s pressure and ridicule of the girls for
23 wanting to spend additional time with Vivian has broken their relationship with Kirk, and the girls want to
24 be with Vivian because his home has become intolerable for them and her home, always there for them
25 since infancy, is also safe and welcoming. If one infers from his pleadings that Kirk actively dislikes or
26
27
28

1 abhors Vivian, then it follows that the girls' desire to live with Vivian is fueled by their reluctance to live
2 in a home where they may not openly and unconditionally love their mother.

3 Kirk proposes there be no forum for the girls' expressions as to problems in co-parenting, except
4 through a parent or lawyers. Kirk reasons Brooke's acts of insubordination are not engendered by her true
5 feelings but by Vivian's "influence," and nothing the girls say may be believed to be of their own will.
6 His plea is that unless the girls say they want to live with him in the current arrangement, the Court must
7 believe the girls have been manipulated by Vivian and are thus unworthy of belief ("they are not neutral
8 witnesses. Vivian has successfully taught to believe things that are not true.") (Kirk's Reply and
9 Opposition, page 11).

12 Vivian asks the Court order that persons who can detect an insincere, programmed child talk to the
13 children Kirk alleges are insincere and programmed. Vivian further requests that the Court promptly
14 implement the teen discretion/parenting coordinator terms to which she agreed and to which Kirk, a
15 lawyer represented lawyers, also agreed. Vivian points out that this would not be her course if she had
16 any concern that she had improperly influenced the children. She has not asked the Court to hastily act
17 without such an interview, and she welcomes a review of any request for custody after those interviews.
18 She asks, however, that the Court reserve a date for a hearing to address what Vivian views as Brooke's
19 mature and intelligent desire to alter the current custodial timeshare – a desire that will begin to subsume
20 and adversely affect all other custody criteria if left unheard and not considered.

23 II.

24 THE COURT SHOULD DIRECT THE CHILDREN TO BE INTERVIEWED, AND DETERMINE 25 WHETHER THERE IS ADEQUATE CAUSE FOR A HEARING ON CUSTODY

26 Kirk objects to an interview of the children because he claims that Vivian is controlling or
27 influencing Brooke to act and feel in ways that she would not otherwise act and feel. Vivian indicates
28 that, as made plain by Brooke's written description of Kirk's actions toward her, it is Kirk's disrespectful

1 and manipulative behavior that has lead to Brooke's problems with Kirk. Both arguments call for an
2 interview of the children. If, as Kirk contends, Vivian is using Brooke and Rylee like puppets, or as
3 Vivian contends, the children, particularly Brooke, have a good faith, sincere desire for a modification of
4 custody, the Court must interview Brooke and Rylee to fulfill its duty to weigh their discretion.
5

6 The law, and the psychological literature supporting the law, grants children a voice in their care.
7 Only through being permitted *to* manage their lives do teens learn *how* to manage their lives. The
8 Legislature has spoken: "You may be heard, if you have any sense."
9

10 The perniciousness of Kirk's argument is that this particular witness (Brooke) was the
11 victim of improper and secret dealing, i.e., she was tampered with. He claims the words will not be the
12 witnesses'. He argues that unless she says she wants to keep the current Order in effect, she cannot be
13 believed. Kirk claims that before the girls spent an extended period of time with Vivian over vacation,
14 there were no problems in his home. That claim defies logic, and the persons to best know if there were
15 problems that existed between them and Kirk prior to any vacation with Vivian are the children. Again,
16 Kirk's argument supports an interview of the children.
17

18 Kirk claims Vivian has created a "new reality" and created, with her "hired guns" (p. 12, line 20) a
19 "revisionist reality" (Reply and Opposition, p. 12, line 24) for the girls, exemplified by their claim he
20 never bought them dance clothes and shoes when he had done so at least once. Kirk depicts a North
21 Korea in Vivian's home, where she is Kim Jong-un and the children are brainwashed, Kirk-hating peasants
22 who voice slogans she implanted in them. He presents no evidence by way of his own declaration or third
23 party declarations stating the girls exhibit signs of mind control or are subject to the conditions which
24 permit it: cut off from family or friends; break down of sense of self-esteem; creation of a new identity;
25 physical separation and isolation from the world or Kirk. There is no basis for Kirk's claims that Vivian
26
27
28

1 has placed a "new reality" into the girls' memories. Indeed, it is Kirk that has repeatedly insisted on
2 trying to convince the Court that he "raised them since Brooke was 7."

3 Kirk ignores that there could be other problems that led to Brooke's indication that she wanted to
4 spend more time or live with Vivian: (1) his treatment of the children and the atmosphere in his home; (2)
5 a visitation schedule which would make any child as overscheduled as the girls so dizzy and disoriented
6 they might not want to have to live out that schedule in two homes; and, (3) their strong bond with Vivian.

7
8 Vivian's Countermotion regarding Brooke's custody arises from her status as a mature and
9 intelligent fourteen year old, and her continually stated desire to live with Vivian. It further arises out of
10 Kirk's attempt to limit her from exercising the teenage discretion she desires with the guidance of a
11 therapist. It is submitted Kirk's desire to muzzle his daughter may arise from his inability to understand
12 *his* behavior is all or partly responsible for the very problems for which he blames others--including his
13 very own daughter. Kirk's attack on Vivian in his motion on the same tired grounds raised in nearly every
14 pleading he files with the Court demonstrates his *continued* anger and disdain have hardened and now
15 corrode his ability to parent the girls. The tactics he admits he uses to stop Brooke from exercising even
16 understandable instances of her desire to spend time with Vivian (Kirk claims there are only two instances
17 of Brooke exercising teenage discretion) evidences that it is he, not Vivian, who perceives time with the
18 children as a competition.
19
20
21

22 One of the two instances involved Brooke's desire to go with Vivian to purchase dance clothes. In
23 that circumstance, Kirk advised Brooke that it was unacceptable, discouraged her from going by asking
24 why she could not go with Vivian on "Vivian's time", and challenged her recollection of her history of
25 buying dance clothes with Vivian and not him. He is so obsessed with that issue that he has examined
26 years of records to find a single receipt for purchases of dance clothes in St. George, Utah in 2009.
27 Contrary to Kirk's half-assertion in his Opposition ("Vivian has not gone on family trips to Tuacahn for
28

1 several years, so it is doubtful she was there”), Vivian *was* with the family at Tuacahn and chose the
2 clothes from the outdoor sale that was occurring at the store in St. George in 2009. As stated in her
3 Opposition and Countermotion, she has no recollection of Kirk ever buying dance clothes for the girls.

4
5 More importantly, whether Kirk ever purchased clothes for Brooke or Rylee is not the issue;
6 Brooke wanted to spend time with her mother shopping. This is not a slight to either Kirk or Rylee as
7 Kirk suggests. Brooke does not see the world in terms of court orders, Kirk does. Brooke just wants to be
8 free to spend some time with her mother – there may be time when she wants to spend special time with
9 her father. Vivian negotiated and achieved a solution that would allow her to do either (the “teenage
10 discretion” provision is mutual), but Kirk’s lack of introspection cannot allow him to conceive that one of
11 his children may actually like spending time with Vivian. When Brooke wanted to go shopping with her
12 mother on a Saturday, Kirk demanded she explain herself and suggested that she was lying.² *That* is the
13 issue, not whether Kirk bought dance clothes for the girls near Trader Joe’s in 2007 or any other factual
14 minutiae that Kirk wants to obsess upon. Kirk’s anger toward Vivian prevents him from seeing this, and
15 instead he views any desire by Brooke to spend time with her mother as nefarious manipulation by
16 Vivian--“a win”--which he cannot abide.

17
18
19 Kirk also falsely alleges that Vivian planned an event at her home for the Homecoming Dance. As
20 indicated in her Opposition Vivian did not plan this event, Brooke and her friends did. Brooke wanted to
21 be with her mother during the time she was applying her make-up, and the make-up of her friends for their
22 first high school dance. Again, Kirk sees this as a slight. His response shows absolutely no
23 understanding. He claims that he has learned a lot about make-up. *Opposition*, page 24. One has to ask
24 whether he makes these arguments with a straight face. He wanted Brooke to be at his house while
25
26
27

28 ² Kirk somehow believes that telling Brooke and Rylee that “you shouldn’t lie” is different from calling them liars. “Kirk has not and never will accuse Brooke or Rylee of lying.” Kirk’s *Opposition*, page 18. It is doubtful these children can make that semantic distinction – all they hear is their father accusing them of lying.

1 getting dressed and putting his make-up on with the other girls so he, not Vivian, could help with their
2 make-up? This is his basis to accuse Vivian of "callous manipulation"?

3 The depths of Kirk's lack of understanding about the needs of a teenage girl is culminated by his
4 failure to admit that maybe he should have left the room when Brooke wanted to talk to a doctor about
5 things that were coming out of her body after she had her first period. He offers no explanation for that
6 behavior.
7

8 Kirk's, not Vivian's, actions continue to be divisive. His Opposition repeats his allegations that
9 Brooke's desire to spend time with her mother is an abandonment of her sister. He fails to recognize how
10 harmful that statement is to Brooke and Rylee.
11

12 Kirk submits as evidence of Vivian's improper influence a self-serving letter from his lawyer that
13 concluded, without citation to any fact other than what Kirk told him, that Vivian had caused Brooke and
14 Rylee to spend time with her at the Atkinson's home (two doors down from the marital residence) in order
15 to deprive Kirk of time with them. Kirk's lawyer's [Kirk's] claim was and is factually baseless. At or
16 around that time Vivian was at the Atkinson's designing and sewing costumes for the girls' dance
17 theater's production of Mary Poppins (for the lead cast). The girls wanted to be with Vivian generally,
18 and again during that process, and it allowed them to play with the Atkinson's children, with whom they
19 are very close. This was time after school, and before their after school activities. They were across the
20 street, and could come and go as they please. Kirk had made the home environment increasingly hostile
21 (he placed locks on doors, snoopied into her email, etc). Consequently, Vivian spent time at the Atkinsons,
22 and the children followed. See February 4, 2013 letter from Radford Smith to Edward Kainen, attached to
23 Vivian's Amended Opposition filed October 18, 2013.
24
25

26 Vivian has not manipulated the children, and she wants them interviewed. By making her request
27 conditional, she recognizes that there are options to explore to determine the best course for the children.
28

1 Vivian requests that the Court order an interview of the children, and that the system the parties agreed-to
2 regarding any exercise of their discretion be put in place.

3
4 **1. Kirk's Allegations as to Matters Occurring Prior to July 11, 2012 are not Applicable to
Vivian's Motion for Hearing on the Issue of Custody**

5 To the extent Kirk's Reply and Opposition to Countermotion addresses his filings and allegations
6 prior to July 11, 2012, they are inadmissible to rebut Vivian's request for hearing on the issue of custody.
7
8 *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994), and *Hopper v. Hopper*, 113 Nev. 1138,
9 946 P.2d 171 (1997); *but see*, *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004)(Domestic
10 violence unknown at time of order to court or party seeking change of custody is not inadmissible as basis
11 for change of custody, modifying, but not overruling, *McMonigle*).

12
13 Kirk invokes facts predating his execution of the joint physical custody agreement. If those facts
14 existed, why did he agree to joint custody? Can the Court infer those alleged "facts" never occurred? Is
15 recitation of those facts another attempt to poison the Court? More darkly, is Kirk unable to stop
16 repeating his story to the Court and anyone else who will listen--including his daughters.

17
18 **2. Kirk's Continued Attempt to Manipulate Brooke and Rylee by Enmeshing the Adult
Children in this Litigation Should be Denied.**

19 Kirk believes "that involving the children in their parents' dispute is not in their best interest" but
20 asks the Court interview adult children, Tahnee and Whitney, if it interviews the minor children.
21 *Opposition* page 12, lines 8-14. That request should be denied – the minor daughters' interviews are
22 prompted by the Court's duty under NRS 125.480 to hear the preference of minor children mature and
23 intelligent enough to provide one. Court-annexed programs are designed to determine if children are
24 telling the truth in a context designed to protect them from litigation, while trials are designed to
25 determine if adults are telling the truth.
26
27
28

1 Kirk's request is part of a more disturbing pattern. Brooke has indicated to Vivian that Kirk has
2 repeatedly used the girls as his proxy to advise them that they are doing something wrong if they want to
3 spend additional time with Vivian. This is not healthy for any of the children, but Kirk's use and
4 influence over the adult daughters has been present since before this case began. While Kirk repeatedly
5 indicates that they changed their affidavits that Kirk wrote for them, we do not know what changes were
6 made or why, what the content of the original affidavits were, or whether the changes actually took two
7 hours or was the meeting with Kirk's lawyer composed of discussions unrelated to any modifications of
8 the affidavit, such as any pledged limitations on their involvement in the action. We do not know if Kirk
9 fairly characterized what he was trying to do in this case to the adult daughters. We have at least one
10 example in the case of a witness, Laurie Larsen, for which Kirk solicited a statement, that later wrote a
11 statement for Vivian expressing that she, Ms. Larsen did not understand the purpose of the initial
12 statement she signed when it was presented to her by Kirk. These are matters for cross-examination of
13 adult witnesses if Kirk is uncaring enough to again place his adult daughters in the middle of this case.
14
15
16

17 III.

18 CONCLUSION

19 Vivian submits that it is Kirk that has treated this matter as a competition, not Vivian. His insults
20 and attacks on Vivian have not resulted in any order granting him the relief he has requested through the
21 Courts during this action. His method of attacking Vivian through the pleadings has caused her to become
22 numb to the repeated unsubstantiated claims. She realizes she cannot cause Kirk to feel differently about
23 her, but she can try to prevent him from ingraining his anger and hatred in Brooke and Rylee.
24

25 Vivian's countermotion seeks a interview of Brooke and Rylee, and the reservation of a hearing
26 date. As discussed in her Motion and Reply, the facts outlining the difficulties between Kirk and Brooke
27 contained in both Kirk's original motion, and Vivian's Opposition compose adequate cause for hearing on
28

1 the issue of custody. Nevertheless, Vivian would like the girls interviewed before the Court makes its
2 determination to proceed forward so the parties and the Court can fully understand any need for
3 modification, and perhaps negotiate a resolution before this matter proceeds further. Brooke's desire to
4 live with Vivian, however, is not an issue that will go away by either ignoring it, as Kirk suggests, or
5 delaying the matter interminably until she begins to act out. Vivian respectfully requests that the Court
6 take the limited action she has proposed to determine Brooke and Rylee's best interest.

8 Dated this th 28 day of October, 2013

9 RADFORD J. SMITH, CHARTERED

10
11 Garima Vareshtney
12 RADFORD J. SMITH, ESQ. for

13 Nevada State Bar No. 2791 11878

14 Attorney for Defendant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

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

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND FOR ATTORNEY'S FEES AND SANCTIONS"

on this 28th day of October, 2013, 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;

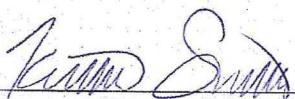
☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

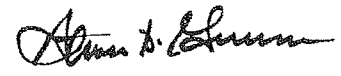
☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

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

Tom J. Standish, Esq.
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Attorney for Plaintiff

Edward L. Kainen, Esq.
10091 Park Run Dr., Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff


An employee of Radford J. Smith, Chartered



CLERK OF THE COURT

1 **MOTN**
EDWARD L. KAINEN, ESQ.
2 Nevada Bar No. 5029
KAINEN LAW GROUP, PLLC
3 10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
4 Telephone (702) 823-4900
Facsimile (702) 823-4488
5 Administration@KainenLawGroup.com

6 THOMAS STANDISH, ESQ.
Nevada Bar No. 1424
7 JOLLEY URG A WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, 16th Fl.
8 Las Vegas, Nevada 89169
Telephone (702) 699-7500
9 Facsimile (702) 699-7555
tjs@juww.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-11-44361 I-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 FOR A JUDICIAL DETERMINATION OF THE TEENAGE**
26 **DISCRETION PROVISION**

27 COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys,
28 THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URG A, WIRTH, WOODBURY &
STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby
...

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS
2 125C.101(1) to make a judicial determination regarding Section 6 of the Order Resolving Parent/Child
3 Issues, entered July 11, 2012.

4 This Motion is made and based upon the papers and pleadings on file herein, the Points
5 and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

6 DATED this 18 day of November, 2013.

7 KAINEN LAW GROUP, PLLC

8
9 By: 

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

15 **NOTICE OF MOTION**

16 TO: VIVIAN MARIE HARRISON, Defendant; and

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

18 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
19 hearing before the above-entitled Court on the ____ day of 12 / 18 / 13 2013, at the hour of
20 11 : 00 AM .m., or as soon thereafter as counsel may be heard.

21 DATED this 18 day of November, 2013.

22 KAINEN LAW GROUP, PLLC

23 By: 

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Kirk previously filed, "Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" on October 1, 2013. Vivian filed an opposition and countermotions thereto on October 16, 2013. Kirk filed his reply and opposition to Vivian's countermotions on October 23, 2013. Vivian filed her reply regarding her countermotions on October 28, 2013. Said motion and countermotions were set for hearing before this Court on October 30, 2013.

During that hearing the Court indicated its preference to wait until there was a Parenting Coordinator in place. The Court also was unequivocal that it did not want to conduct an evidentiary hearing or interview the minor children.

While Kirk is not going to re-state all of his concerns as to why the teenage discretion provision should be stricken, suffice it to say, that exactly what Kirk was concerned would happen, has happened. An incident occurred subsequent to that hearing. After that incident, the parties set forth their opposing interpretations of Section 6 in an exchange of letters. It is evident from these letters there was, and remains, no meeting of the minds regarding Section 6 and this provision should therefore be stricken. In the event this Court is unwilling to strike said provision, then the parties need this Court's immediate judicial determination of the meaning of this provision going forward. The Parenting Coordinator is not authorized to, and should not, make such a legal determination. If the provision is not stricken, the parties need, and are entitled to, such a determination from the Court.

Under Subsection 6.2, an aggrieved party under this provision can seek relief with either the Parenting Coordinator and/or the Court.

II. STATEMENT OF FACTS

For purposes of understanding the most recent incident when this matter came to a head, the relevant time period is the two weeks between November 1st at 7:35 a.m., and November 13th at 2:06 p.m. Under the terms of the joint physical custody order, during that two week time period, the only time Kirk was to have with Brooke¹ was less than two days (actually it was only 41 hours) between

¹ Rylee was on a school field trip to California during this time period.

1 November 6th (Wednesday) at 2:06 p.m. and November 8th (Friday) at 7:15 a.m. This time was all the
2 more precious, as during the brief period Brooke was to be with Kirk, Brooke had a dance class on
3 Wednesday evening for 1 ½ hours, was to attend school on Thursday between 7:35 a.m. and 2:06 p.m.,
4 and had another dance class Thursday afternoon and evening from 3:45 p.m. until 9:00 p.m.

5 At 7:36 a.m. on November 6th – the very day Kirk was to pick up Brooke from school – Brooke
6 sent a text to Kirk providing, *"Decided I'm going to stay at moms today and tomorrow."* If Kirk would
7 have agreed with this request, he would not have been able to see Brooke at all for this entire almost two
8 week period. Kirk responded, ten minutes later, *"This is not something you can decide. I will pick you
9 up from school at 2:06 p.m. and we can talk then. Love you."* There was no further response from
10 Brooke – at least not to Kirk. Indeed it would become crystal clear that there was certainly
11 communication with Vivian.

12 Despite there being no communication between Kirk and Vivian, just three and one-half hours
13 after the text exchange between Brooke and Kirk, Vivian's attorneys faxed a two and one-half page
14 letter to Kirk's counsel at 11:17 a.m., providing that Vivian intended to "honor" Brooke's wishes. A true
15 and correct copy of this letter is attached hereto as **Exhibit "1."** Kirk's counsel faxed a response later
16 that day and subsequently spoke to Vivian's attorney on the telephone. A true and correct copy of Kirk's
17 counsel's response letter is attached hereto as **Exhibit "2."** During the telephone conversation between
18 counsel, Vivian's attorneys then fired off yet another letter the same day concerning this incident. A
19 true and correct copy of Vivian's attorney's letter concerning the same incident is attached hereto as
20 **Exhibit "3."**

21 During the telephone call between counsel on November 6th, Vivian's attorney admitted that
22 Vivian had indeed spoken to Brooke about "her rights" under the teenage discretion provision, but that
23 doing so was "not in violation" because the communication "happened prior to entry of the parties'
24 Parenting Agreement." The "Parenting Agreement" is the Stipulation and Order Resolving Parent/Child
25 Issues, which was entered by this Court on July 11, 2012. The facts and common sense clearly indicate
26 Vivian has also been speaking to Brooke about teenage discretion during her summer vacations with
27 Vivian this past summer and continuing to the present time. More importantly, it is clear that Brooke's
28 understanding of "her rights" under the provision is based wholly on Vivian's *beliefs* about teenage

1 discretion, as opposed to what the provision actually provides. Ironically, in the same telephone
2 conversation when Vivian's attorney admitted that Vivian spoke with Brooke about teenage discretion.
3 Vivian's attorney indicated that it was legally inappropriate under the agreement *for Kirk* to even
4 respond or have a discussion with Brooke about Brooke's demand to change the custody arrangement
5 for the next two days.

6 Wanting to exercise his already-limited time with Brooke, and at least discuss the text with
7 Brooke, Kirk arrived at Brooke's school on Wednesday afternoon, as scheduled, to pick her up. Vivian,
8 however, still insistent that she was going to "respect" Brooke's wishes, was also at the school to pick
9 up Brooke. Shortly after 2:06 p.m., Brooke walked past Kirk's car, got in Vivian's car, and they drove
10 away. Having already made it clear to Vivian's attorney that Kirk did not consent to this, Kirk chose
11 not to make a scene at school to enforce the custody agreement. As a consequence, Kirk **did not see**
12 Brooke for almost two weeks.²

13 Vivian has clearly not acted in good faith, based on her decision to discuss teenage discretion
14 with Brooke and insisting on arriving at Brooke's school to pick her up even after Kirk voiced his
15 objection to same.

16 Although the Court has appointed Margaret Pickard as the Parenting Coordinator, a judicial
17 determination is needed and, as noted, the parties have the right under Subsection 6.2 to request the
18 Court to address such issues.

19 **III. ARGUMENT**

20 **A. Vivian's Interpretation of Section 6 Is That A 14 Year Old Child Has The** 21 **Unfettered Absolute Right To Order Changes To The Agreed Custody Schedule**

22 As can be readily seen from the two letters from Vivian's attorneys, **Exhibits 1 and 3**, it is
23 Vivian's position that the 14 year old child of the parties has the absolute *right*, at any time and for any
24 reason, to overrule the custody arrangement between the parties. According to Vivian, the parent then
25

26 ² This is not the first time that Vivian's intentional misconduct has resulted in Kirk inequitably losing
27 two precious days with his children. Attached hereto is **Exhibit "5,"** which is incorporated herein by
28 reference. As a consequence of Vivian's conniving conduct, Kirk was deprived of another two days
with Brooke and Rylee this summer.

1 having custody must immediately *obey* the command without question. This must be done irrespective
2 of the context in which the order of the 14 year old child is made, irrespective of other plans that have
3 been made, irrespective of the adverse impact it may have upon the 10 year old younger sister, or any
4 other member of the family, etc.

5 **B. Kirk's Interpretation of Section 6 Is That A 14 Year Old Child Has The Right To**
6 **Make, Presumptively, Infrequent Requests For Minor Departures To the Agreed**
7 **To Custody Schedule**

8 As can be readily seen from the letter from Kirk's counsel, **Exhibit 2**, it is Kirk's position that
9 it is unreasonable to interpret Section 6 in such a way to give a 14 year old child, "carte blanche to make
10 changes to the custodial schedule whenever they see fit." It is Kirk's interpretation of Section 6,
11 assuming, *arguendo*, for the moment that Vivian's prior material breaches of Section 6 have not
12 rendered the provision totally unworkable, that the 14 year old child has the right to request,
13 presumably, on a very infrequent basis, a limited departure from the regular custody schedule. In the
14 event of such a *request*, it is implicit that both parents must not unreasonably withhold their consent to
15 such a request, taking into account the particular circumstances existing at the time of the request -- as
16 every responsible parent should do regardless.³ Tom Standish, Esq., who negotiated the provision, is
17 unequivocal that it was never intended that a 14 year old child was given the right to determine
18 departures to the agreed custody schedule between the parties, "[I]t was never intended that a child could
19 assert control over their own timeshare merely because they have reached the age of 14 years."
20 Affidavit of Thomas J. Standish, Esq., dated October 29, 2013, ¶6, which is attached hereto as **Exhibit**
21 **"4."**

22 Section 6 does not provide a 14 year old child with authority to "decide" where she is going to
23 be. As a matter of fact, Section 6.1 specifically provides that "the parties *do not intend by this section*
24 *to give the children the absolute ability to determine their custodial schedule with the other parent.*" If

25 ³ It should be noted that Kirk has acted in good faith, and has in fact acquiesced to Brooke's four (4)
26 prior requests, despite the fact they were, in all likelihood, "prompted" or "suggested" by Vivian -- to
27 spend additional time with Vivian during his custodial period to buy dance shoes, to do make up for the
28 Homecoming dance, to work on a project (because Vivian or, rather, Heather Atkinson, had the
materials), and to do make up for Halloween. In fact, Kirk even voluntarily offered for Brooke and
Rylee to spend additional time with Vivian Halloween night as an olive branch and because Halloween
is a much more significant event for Vivian than for Kirk.

1 the actual intent was to give a 14 year old child carte blanche to stay where she wants, with whatever
2 parent she wants, whenever she wants, it would have said so and in that case a custody schedule would
3 not mean anything, yet there is a custody schedule set forth in the same custody order.

4
5 **C. The Language of Section 6 and The Application of Common Sense Inescapably**
6 **Result In the Conclusion the 14 Year Old Child Has The Right To Make A Request**
7 **For A Departure From The Agreed To Custody Schedule**

8 Subsections 6.1, 6.2 and 6.3 provide:

9 **6.1. The parties do not intend by this section to give the**
10 **children the absolute ability to determine their custodial schedule with**
11 **the other parent.** Rather, the parties intend to allow the children to feel
12 comfortable in **requesting and/or making adjustments to their weekly**
13 **schedule**, from time to time, to spend additional time with either parent
14 or at either parent's home.

15 **6.2. Such adjustments shall not be prompted or suggested**
16 **by either parent**, but shall originate with the child(ren). The parties shall
17 not allow the children to use this flexibility as a means to avoid spending
18 time with the other parent, and they **shall each encourage the children**
19 **to follow the regular schedule** to the extent possible. If either party feels
20 that his or her time is being unduly eroded by this provision as an attempt
21 by the other parent to minimize that parent's custodial time, he or she
22 may address this issue with the Parenting Coordinator and/or the Court.

23 **6.3. The Parenting Coordinator will not have the ability**
24 **to revoke this provision, but may address those concerns within the**
25 **context of the rights, duties and obligations of the Parenting Coordinator**
26 **as detailed in the order appointing the Parenting Coordinator. Nothing**
27 **in this section is intended to limit the discretion of the District Court in**
28 **making child custody determinations.**

(Emphasis added)

Kirk respectfully submits that when this provision is read as a whole, the undeniable conclusion,
based not only upon the literal language, but upon common sense as well, is that the 14 year old child
may make a **request** for a departure to the schedule, but does not have the authority to determine that
the departure will be made. All of the controlling highlighted language above supports such a
conclusion, except for the grammatically questionable use of the conjunctive and disjunctive "and/or"
in Subsection 6.2. Despite the single incident of poor language choice, in the context of the rest of the
language contained in Section 6, it is absolutely inconsistent to interpret this language as granting the

1 14 year old child the absolute right to "make" the custody determination. In fact, it is nonsensical to
2 provide that the 14 year old child has the right to request "and/or" the right to make the determination.
3 If the 14 year old child has the right to make the determination, then there would be no reason to simply
4 make a request.

5
6 **D. There Are Several Independent Additional Reasons Why Section 6 Should Be Stricken And Vivian's Interpretation Of Section 6 Must Fail**

7 There are several independent reasons why Section 6 should be stricken and Vivian's
8 interpretation of the provision must fail.

9
10 **1. Section 6 Should be Stricken As Teenage Discretion Provisions Should Generally Be Suspect As They Unnecessarily Create Uncertainty and Instability For The Children and There Was No Meeting Of The Minds In the Negotiation And Drafting Of This Teenage Discretion Provision**

11
12 "Teenage discretion" provisions such as this should be seriously questioned by the courts under
13 any circumstances, but especially when the parents do not get along. These provisions create
14 unnecessary uncertainty and instability for the children. Under a joint custody arrangement, the children
15 know from week to week the time they will be spending with each parent. These provisions undermine
16 and disrupt that certainty and stability, unnecessarily creating uncertainty and instability on a weekly
17 basis. As the Court has already seen, this is especially true in this matter.

18 There was clearly no meeting of the minds by the attorneys who negotiated the terms of this
19 provision. Tom Standish, who negotiated this provision, is adamant this provision was never intended
20 to give a 14 year old child control over the determination. The child is only given the right to make a
21 request without any "suggestion" or "prompting" by either parent and where both parents are obligated
22 to "encourage the children to follow the regular schedule." On the other hand, as evidenced by his
23 letters, Mr. Smith argues this provision gives a 14 year old child the absolute right to determine their
24 own timeshare. According to Mr. Smith, the child issues the *order* and the custodial parent must *obey*
25 the order without any question or discussion.

26 ...

27 ...

28 ...

1 Where such a provision is highly suspect and generally questionable under any circumstances,
2 where there was clearly no meeting of the minds by the individuals who negotiated the provision,
3 resulting in interpretations which are essentially polar opposites, the provision should be stricken by the
4 Court.

5
6 **2. Section 6 Should Be Stricken As Vivian's Suggestions, Prompting, And**
7 **Encouragement To Brooke To Depart From The Regular Schedule**
8 **Whenever Possible, In Direct Violation and Contravention Of The Explicit**
9 **Terms of Section 6, And Vivian Telling Brooke She Has The Absolute Right**
10 **To Dictate Her Timeshare On A Daily Basis, Have Created A Totally**
11 **Untenable Situation For the Children and Kirk**

12 After Vivian had uninterrupted custody of Brooke and Rylee for 21 days, the first day back with
13 Kirk, on July 17, 2013, Brooke announced that since she was now 14 years old, she can decide where
14 she lives. After Vivian had uninterrupted custody of Brooke and Rylee for 14 days, on August 2, 2013,
15 Brooke announced she was going to live with Vivian full time.⁴ It is evident that Vivian has convinced
16 Brooke that Brooke has the absolute right to dictate her timeshare on a daily basis. On August 25, 2013,
17 Brooke informed Kirk that he had to take her to Vivian's house *anytime she wanted* and Brooke had the
18 *right to stay for as long as she wanted*. It is not a coincidence that Brooke's position mirrors the
19 extreme position taken by Vivian.

20 The disputes which the parties and their children are now embroiled are a foreseeable direct
21 consequence of Vivian's material breaches of the safeguards Kirk's counsel put in place to avoid the
22 very scenario which now exists. *See*, Affidavit of Thomas Standish, **Exhibit "4"** hereto. Vivian's prior
23 and continuing misconduct is a blatant violation of the safeguards in Section 6 and constitute material
24 breaches of material and essential provisions, which has, in effect, prospectively nullified the
25 effectiveness of those provisions to protect the best interests of Brooke and Rylee, as well as Kirk's
26 rights under the joint custody order.

27 On Thursday, November 14, 2013, Brooke informed Kirk she intended to go to Vivian's house
28 during the upcoming weekend to work on props and costumes for dance, etc. Brooke had just been with

⁴ Vivian's attorneys actually assert that Vivian has not discussed the "teenage discretion" provision with Brooke since sometime before this Court's custody order was entered July 11, 2012, and, therefore, the timing of all of this is just an incredible coincidence.

1 Vivian for 13 uninterrupted days and was to return to Vivian on Monday, November 18, 2013. The
2 costumes are not to be turned in until Wednesday evening, November 20, 2013. Kirk told Brooke he
3 would like to think about it and perhaps Brooke could spend a shorter period at Vivian's house this
4 weekend and the rest could be done while she was with Vivian on Monday and Tuesday. Brooke spoke
5 with Vivian that night on the telephone and was visibly upset with Kirk the next day for no otherwise
6 apparent reason.

7 At 1:33 p.m. on Saturday, November 16, 2013, Brooke came to Kirk and informed him that *he*
8 *had to take she and Rylee to Vivian's house at 2:00 p.m.* to make the props and costumes that had to be
9 turned in to Dance, Etc. on Wednesday evening, November 20, 2013. Kirk asked Brooke why they
10 couldn't do it at his house and Brooke responded that Vivian already had gotten the materials. When
11 Kirk asked why they couldn't simply go to the store and purchase the needed materials, Brooke said
12 she didn't want to do that. Kirk asked how long it would take and Brooke said two to three hours.
13 When Kirk asked what would happen if it took longer than three hours, Brooke responded that *Vivian*
14 *and she had been texting and Vivian had to leave at 5:00 p.m.* Kirk relented and took both Brooke and
15 Rylee to Vivian's house at 2:00 p.m. All of the foregoing, was coordinated by Vivian and Brooke,
16 around Vivian's schedule. It was irrelevant that the plans Vivian made included Rylee. It was irrelevant
17 that Vivian did not discuss the matter with Kirk, but used Brooke as the conduit. It was irrelevant that
18 Kirk had previously made plans with Brooke, Rylee and Joseph to decorate the Christmas tree that
19 afternoon and to have dinner together.⁵ Those plans, during Kirk's custody time with the children, had
20 to take a back seat and be delayed.

21 Vivian has wrongfully, in direct contravention of the explicit terms of Section 6, firmly
22 embedded in Brooke's mind that Brooke has the absolute right to determine her custody on a daily basis,
23 and if Kirk does anything other than immediately and fully comply, Brooke perceives Kirk as doing
24 something horribly improper and contrary to what she is entitled. Under such circumstances, Section
25 6 must be stricken.

26 _____
27 ⁵ Under the agreed custody schedule, the next weekend Kirk has Brooke and Rylee is the weekend of
28 December 13, 2013, and Kirk is taking Brooke and Rylee to Whitney's graduation ceremony from
Physician's Assistant School at Methodist University in Fayetteville, North Carolina..

3. Any Teenage Discretion Provision, As Applied, Which Causes A 14 Year Old Child To Feel Like She Must Chose Between Her Parents And, Importantly, Motivates One Of The Parents To Encourage that Child To Make That Choice On A Weekly Basis, Is Fundamentally Wrong

Custody arrangements should be determined by parents. The best interests of the children should be paramount in making that determination. The choice of how much time a 14 year old child spends with each parent should not be foisted upon that child through an ill-conceived and misinterpreted "teenage discretion" provision. A 14 year old child should not be compelled on a weekly basis to determine how much time she wants to spend with each parent for that particular week, especially when there is an indisputable history of one of the parents manipulating that child.

The interpretation advocated by Vivian, that a 14 year old child has the absolute right to determine departures from the agreed custody arrangement, not only undermines the joint custody agreement between the parties, but it unduly places too much stress upon a 14 year old child to make a choice between her parents on a weekly basis, and which choice, in most instances, inherently involves leaving her 10 year old sister.

Encouraging a 14 year old child to chose which parent to spend time with on a weekly basis is not in the best interests of the child, unnecessarily creates uncertainty and instability for her 10 year old younger sibling, undermines the certainty and stability inherent in an agreed parenting arrangement, creates an atmosphere which will motivate one of the parents to do what is most popular with the 14 year old child, as opposed to doing what is best for the 14 year old child, and encourages a parent, so inclined, to continue a parental competition, which is not in the best interests of the children. The continued existence of Section 6 provides a vehicle for the continued unnecessary manipulation of the children.

The Court is respectfully urged to do what is clearly in the best interests of these children and strike Section 6.

...

...

...

...

4. **Section 6, As Interpreted by Vivian, Violates NRS 125.510(5) and NRS 125C.010 as the Right To Visitation On A Weekly Basis Is Not Defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved."**

NRS 125.510 states in pertinent part as follows:

1. In determining the custody of a minor child in an action brought under this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties. The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

* * * *

5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

(Emphasis added.)

1 NRS 125C.010 contains language similar to NRS 125.510(5). These statutes implement specific
2 custody and timeshare rules in the best interests of a minor child. Specifically, these statutes, as well
3 as, NRS 125.460, provide for the children to have specific, ongoing and frequent contact with both
4 parties. Allowing the children to have the unhampered right to determine their own schedule with each
5 parent flies in the face of these statutes, as well as the parties' intent at the time they entered into the
6 Stipulation and Order Resolving Parent/Child Issues.

7 Section 6, as interpreted by Vivian, violates both NRS 125.510(5) and NRS 125C.010 as the
8 right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights
9 of the parties can be properly enforced and that the best interest of the child is achieved." According
10 to Vivian, the 14 year old child has the absolute right to order a departure from the agreed custody
11 schedule at any time, regardless of the circumstances. Based upon Vivian's interpretation, the right to
12 visitation on a weekly basis is **not** defined with sufficient particularity. The right to visitation is
13 whatever the 14 year old child arbitrarily determines it will be at any time, with Vivian's suggestion,
14 prompting, and encouragement. For the same reason, the "specific times and other terms of the right
15 of visitation" as set forth in this Court's order are also without "sufficient particularity" as they are
16 subject to change on a weekly, if not daily basis, by the unfettered determination of a 14 year old child.
17 None of this should be acceptable to the Court.

18 During the hearing on October 30, 2013, the Court confirmed that teenage discretion should not
19 give a child full and complete control to make decisions regarding the custody timeshare. Specifically,
20 at 10:59:10, the Court stated as follows:

21 "I don't need a child interview. The less I can embroil a child in this
22 process, ultimately the better I feel a child is insulated from this process.
23 The parties agreed that it was in the best interest of the children to
24 exercise joint physical custody. I don't want this to become a situation
25 where it is just a matter of time, where as soon as you turn fourteen you
26 get to decide where you want to live, that's not how it works. Under NRS
27 125.490, there is a presumption now because you agreed to joint physical
28 custody. There is a presumption that joint physical custody is in the best
interest of the children and to overcome that I don't find... say an
interview came forward and that's what I hear, that there is a desire to
live primarily with Mom. If that is, I find, I would be hard pressed to find
that the expressions standing alone, of a fourteen year old child, would
be sufficient to overcome that presumption. That's why I don't need it."

...

The bottom line is that by allowing the present untenable situation to continue (a situation wholly created by Vivian's blatant violations of the written safeguards and her *continuing* misconduct), it continues to empower a 14 year old child to do Vivian's bidding and continues to allow Vivian to wrongfully empower that 14 year old child. That *is not* what Kirk bargained for when reaching a parenting agreement with Vivian. Kirk will continue to pursue resolution of this matter with Margaret Pickard while this Motion is pending. However, given the interpretation advocated by Vivian, and supported by her attorneys, it cannot be resolved absent a judicial determination by this Court. According to Vivian's attorneys, Brooke has full right and control to *decide* where she wants to be and when, and Kirk would be "violating the rules" if he even attempts to talk to Brooke about the same – Vivian however, appears to be free to continue her discussions with Brooke with impunity.

5. **Section 6, As Interpreted by Vivian, Violates NRS 125.460 As It Encourages A Parent, Vivian, To Not Share The Rights And Responsibilities of Child Rearing**

NRS 125.460 states as follows:

The Legislature declares that it is the policy of this State:

1. **To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and**
2. To encourage such parents to share the rights and responsibilities of child rearing.

(Emphasis added.)

Section 6, as interpreted by Vivian, violates NRS 125.460, which provides "that it is the policy of this State . . . [t]o encourage such parents to share the rights and responsibilities of child rearing."

Clearly, Vivian is using her interpretation to undermine Kirk's right to share in the rights and responsibilities of child rearing. According to Vivian's attorneys, Vivian, based upon Vivian's interpretation, can utilize Section 6 to obtain "defacto primary custody." (Exh. S to Vivian's opposition to Kirk's counter motions re attorneys' fees, p. 9, l. 16-17)

It is respectfully submitted that to allow a 14 year old child the absolute right to "make" these type of custody decisions, which are ongoing departures from the agreed schedule, is against the stated policy of this State, as it will undermine Kirk's right to share in the rights and responsibilities of child rearing.

1 IV. CONCLUSION

2 The parties urgently need guidance from this Court by making a timely determination of Section
3 6. Section 6 should be stricken by this Court. This provision creates uncertainty and instability for the
4 children and conflict between the parties, within which the children will remain embroiled until there
5 is a resolution. At a minimum, it is obvious that there was no meeting of the minds between the parties
6 regarding essential terms. Vivian's material breaches of material and essential terms of Section 6,
7 including embedding in Brooke's mind that she has the absolute unfettered right to determine her own
8 custody, has undermined any chance for the provision to be reasonably applied.

9 However, if the Court is not willing to strike the provision at this time, the parties need this
10 Court's determination as to whether, under the existing provision, a 14 year old child has the right to
11 *order* a departure from the agreed to custody schedule, as argued by Vivian, or whether, under the
12 provision, a 14 year old child has the right to *request* a departure from the agreed to custody schedule.

13 Kirk has been reasonable and accommodating, if only to keep the peace and to prevent a needless
14 confrontation, but it has resulted in continued demands, further immersion of the children into their
15 parents' custody dispute and ongoing encroachment into his custodial periods. Vivian does not care
16 about the impact on Brooke, who is placed in emotional turmoil and now forced to choose between her
17 parents on a weekly basis in order to placate one of them - even on the most basic of issues as when to
18 return to the car. Vivian, consumed by competition at every interaction, has tried to create problems
19 by not being able to exercise even a modicum of common courtesy in day-to-day situations (e.g. keeping
20 the girls talking in the house for 20 to 35 minutes while Kirk waits in the car outside her house). As a
21 result of Vivian immersing Brooke in this conflict (both by sharing information Brooke never should
22 have had, and by completely butchering the explanation of the provisions), the parties are in all too
23 frequent conflicts, that was otherwise much more limited.

24 Kirk implores the Court, in the best interests of Brooke and Rylee, to revoke this provision in
25 its entirety. In the alternative, Kirk requests the Court to determine that a 14 year old child has the right
26 to *request*, rather than the right to *order*, a departure from the agreed to custody schedule. However,
27 under the latter alternative, Vivian will continue to manipulate and embroil the children in conflict.
28 ...

Accordingly, Kirk requests the following:

1. That the Court modifies the Stipulation and Order Resolving Parent/Child Issues by revoking and striking Section 6 so that this type of abuse by Vivian can be avoided in the future.
2. That Kirk be given two custodial days for the two custodial days – November 6 & 7 – which were wrongfully taken from him as a consequence of Vivian's misconduct and her manipulation of Brooke.
3. That Kirk be given the two custodial days for the two custodial days – July 31 and August 1 – Vivian fraudulently took from Kirk as a result of her "change" of the dates for the sewing camp, as set forth in Exhibit "5", hereto.
4. That the Court impose an additional penalty upon Vivian as a deterrent to future attempts by Vivian to wrongfully take custodial days from Kirk (if Kirk only gets back the four days which were wrongfully taken by Vivian, then Vivian has incurred no penalty for what she has done, and there is no deterrent from doing it again).
5. That the Court award Kirk attorney's fees for having to bring this matter to the Court's attention.
6. For such other and further relief as the Court deems just and proper in the premises.

DATED this 18 day of November, 2013.

KAINEN LAW GROUP, PLLC

By: 

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

EXHIBIT 1

RADFORD J. SMITH, Esq.
 RHONDA F. FORSBERG, Esq.
 GAYNA VARSHNEY, Esq.
 JOLENE HOEFT, PARALEGAL
 KENNETH F. SMITH, PARALEGAL
 KELLY BLANKENSHIP, PARALEGAL

RADFORD J. SMITH, CHARTERED

A Professional Corporation
 64 NORTH PECOS ROAD, SUITE 700
 HENDERSON, NEVADA 89074

TELEPHONE: (702) 890-6466
 FACSIMILE: (702) 890-6466
 RSMITH@RADFORDSMITH.COM

VIA FACSIMILE
 Edward Kainen, Esq.

November 6, 2013

FAXED
 NOV 06 2013

Re: *Harrison v. Harrison*

Dear Ed:

This morning Vivian dropped Rylee off for a two-day school trip to Catalina. Brooke approached Vivian, without prompting from Vivian of any kind, and indicated that she would like to stay with Vivian for the next couple of days. Under the provisions of paragraph 6 of the parties' parenting plan (the July 11, 2012 order), Brooke has the discretion to choose to spend this time with Vivian. That provision reads in pertinent part:

6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.

6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting *and/or making adjustments to their weekly schedule*, from time to time, to spend additional time with either parent or at either parent's home.

When Brooke advised Kirk of her choice to make the adjustment to the weekly schedule on this occasion, Kirk incorrectly informed Brooke that she does not have that discretion. Kirk's statement is contrary to the plain language of the agreement. Brooke does have that discretion, and Vivian intends to honor it.

If Kirk feels that either Brooke's choice or Vivian's actions are in violation of the Parenting Plan, the remedy is spelled out in paragraph 6.

6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

Edward Kainen, Esq.
November 6, 2013
Page 2

6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.

Thus, under the plain terms of the Parenting Plan, if Kirk believes that the child's discretion has been exercised in violation of the Plan, he may bring this matter to mediation with Ms. Pickard under the Order entered by Judge Duckworth appointing her, or he may file a motion with the Court. He does not have the unilateral ability to deny the exercise of Brooke's discretion. Consequently, consistent with Brooke's exercise of that discretion, Vivian will pick her up after school.

Kirk's suggestion to Brooke that she does not have discretion, and the pressure that he has placed on Brooke as outlined in Vivian's Opposition to Kirk's motion to remove paragraph 6 from the parenting plan (which motion Judge Duckworth denied), is precisely what Vivian wanted to avoid. The intent of the paragraph was to allow either child, after reaching 14 years of age, to exercise occasional discretion to spend time with a parent outside the custodial schedule. The paragraph is neutral, and grants the children the right to vary the schedule and avoid any demand by the other party for strict compliance with the weekly visitation schedule. Kirk seeks to undermine the application of the provision by the very means it was designed to avoid.

Vivian strongly hopes that Kirk will not continue to violate the provision by either informing Brooke that she cannot exercise the discretion granted to her, or by causing havoc (by demanding that she come with him for example) in order to intimidate and pressure Brooke. Paragraph 6 sets up a reasonable and specific method for addressing concerns of either parent regarding a child's exercise of discretion, and Vivian will participate in any sessions with Ms. Pickard to address Kirk's concerns. She has already contacted Ms. Pickard, and I am providing a copy of the Parenting Plan and Order appointing Ms. Pickard to her. Also, Judge Duckworth has appointed Lisa Linning as the child's therapist per Vivian's request, but Ms. Linnings office has declined the appointment. Consequently, Vivian accepts the appointment of Dr. Jamal Ali, who Kirk had proposed as the children's therapist. Vivian will contact Dr. Ali, and we will provide him a copy of the parenting plan and order appointing him as therapist.

Please let me know Kirk's intended actions so we can avoid any difficulties that may arise by any actions he intends to take in response to Brooke's exercise of the discretion granted her under paragraph 6 of the Parenting Plan.

Edward Kainen, Esq.
November 6, 2013
Page 3

I you would like to discuss this matter, I will be available most of the day either at the office or on my cell. I look forward to hearing from you.

Sincerely,


RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.
Board Certified Nevada Family Law Specialist

RJS:

Enc:

cc: Vivian Harrison
Gary Silverman, Esq.
Thomas Standish, Esq.

EXHIBIT 2

KAINEN
LAW GROUP
A Professional Limited Liability Company

■ ■

November 6, 2013

Via Facsimile: (702) 990-6456

Radford Smith, Esq.
Radford J. Smith, Chartered
64 north Pecos Road, Suite 700
Henderson, Nevada 89074

Re: Kirk Harrison v. Vivian Harrison

Dear Rad:

I am in receipt of your letter dated November 6, 2013, regarding this matter.

The parties' parenting agreement gives the children the ability to *request* changes to the custodial schedule. It *does not* give the children carte blanche to make changes to the custodial schedule whenever they see fit. The children cannot simply "advise" their parents when they are going to adjust the custodial schedule. This is confirmed in paragraph 6.1 of the agreement, which plainly provides:

6.1 The parties *do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent*. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home."

In other words, the children are to discuss any proposed adjustments with the parent who has custody at the time they wish to make a request to the schedule -- in this case, Kirk, not Vivian.

Kirk took Brooke to school last Friday morning, November 1, at which time Vivian's custodial time began. Kirk will pick Brooke up today at 2:06 p.m., and will only have her until this coming Friday morning. After dropping Brooke off at school Friday at 7:30 a.m., he will not see Brooke again until next Wednesday, November 13, 2013. Further, tomorrow, November 7, Brooke has dance from 3:45 p.m. until 9:00 p.m. As you can see, Brooke's time with Kirk over this two-week period is already very limited.

* ♦ EDWARD KAINEN

ANDREW L. KYNASTON

RACHEAL H. MASTEL

T: 702.823.4900 F: 702.823.4488

■ 10091 Park Run Drive, Suite 110 Las Vegas, NV 89145-8868 ■

* Nevada Board Certified Family Law Specialist

♦ Fellow of the American Academy of Matrimonial Lawyers

www.KainenLawGroup.com

Radford Smith, Esq.
November 6, 2013
Page 2

Accordingly, Kirk will pick up Brooke up from school, as this is his custodial time, and he will discuss the matter with Brooke. Should Vivian pick up Brooke after school today or keep Brooke during his custodial period over his objection, she will be in violation of the parties' parenting agreement and will be cause for Kirk to file a Motion with the Court to resolve this matter.

Your attention to this matter is appreciated.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: 

EDWARD L. KAINEN, ESQ.

ELK/cn

cc: Kirk Harrison

EXHIBIT 3

RADFORD J. SMITH, Esq.
 RHONDA P. FORSEBERG, Esq.
 GARIMA VARSHNEY, Esq.
 JOLENE HOEST, PARALEGAL
 KENNETH F. SMITH, PARALEGAL
 KELLY BLANKENSHIP, PARALEGAL

RADFORD J. SMITH, CHARTERED

A Professional Corporation
 64 NORTH PECOS ROAD, SUITE 700
 HENDERSON, NEVADA 89074

TELEPHONE: (702) 990-6446
 FACSIMILE: (702) 990-6456
 RSMITH@RADFORDSMITH.COM

VIA FACSIMILE
 Edward Kainen, Esq.

November 6, 2013

FAXED
 NOV 6 2013

Re: Harrison v. Harrison

Dear Ed:

Reference is made to your letter of earlier today. Brooke's exercise of discretion to spend a brief period of time with Vivian is not a request to change the custodial schedule contained in the agreement, that custodial schedule will continue. The provision reads:

"[T]he parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home."

There is no other way to read that provision other than a grant to allow Brooke to "make adjustments" to her weekly schedule. This was the discretion that was granted to her as part of the order. It appears that because he was unable to have the Court eliminate the stipulated provision, Kirk intends to ignore it, cause additional problems, then undermine it. Vivian will proceed according to the order, and retrieve Brooke today from school per her wishes.

Moreover, his plan to discuss Brooke's stated exercise of discretion with her, and obviously attempt to influence her not to spend time with Vivian, is exactly what is prohibited by the provision. Kirk should follow the procedure outlined in the plan and have him address this issue through Ms. Pickard.

I cannot comprehend why Kirk would continue to put Brooke through this kind of pressure. I believe that if he just took the pressure off her, allowed her to meet with a counselor, addressed his relationship or issues with the relationship through the Parenting Coordinator, that this issue would resolve itself. Instead, his response is to threaten to file a motion. I would ask that he reconsider that course.

While I appreciate that he will miss time alone with Brooke, she has unequivocally advised him of her desire to spend the next couple of days with Vivian. There may come a time when either Brooke or Rylee want to spend time with him on a day Vivian is scheduled to have them - she will, of course, comply with the provisions of the agreement.

November 6, 2013

Page 2

Your letter did not respond to Vivian's acceptance of Kirk's proposal of Dr. Ali. I presume, since Kirk originally proposed him, he would be acceptable. Please let me know.

Sincerely,


RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.

Board Certified Nevada Family Law Specialist

RJS:

cc: Gary Silverman (via email)
Vivian Harrison (via email)
Thomas Standish, Esq. (via email)

EXHIBIT 4



CLERK OF THE COURT

1 **AFFD**

2 **THOMAS J. STANDISH, ESQ.**

3 Nevada Bar No. 1424

4 tjs@juwww.com

5 **JENNIFER POYNTER-WILLIS, ESQ.**

6 Nevada Bar No. 9281

7 jpw@juwww.com

8 **JOLLEY, URG, WIRTH, WOODBURY & STANDISH**

9 3800 Howard Hughes Parkway, 16th Floor

10 Las Vegas, Nevada 89169

11 (702) 699-7500

12 (702) 699-7555

13 **EDWARD L. KAINEN, ESQ.**

14 Nevada Bar No. 5029

15 ed@kainenlawgroup.com

16 **KAINEN LAW GROUP, PLLC**

17 10091 Park Run Drive, Suite 110

18 Las Vegas, NV 89145

19 (702) 823-4900

20 (702) 823-4488 (Fax)

21 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

22 **KIRK ROSS HARRISON,**

23 Plaintiff,

24 vs.

25 **VIVIAN MARIE LEE HARRISON,**

26 Defendant

CASE NO.: D-11-443611

DEPT NO.: Q

Hearing Date: October 29, 2013

Hearing Time: 10:00 a.m.

AFFIDAVIT OF THOMAS J. STANDISH, ESQ.

filed in Support of Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order
Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition
to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on
Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and
Sanctions

STATE OF NEVADA)

COUNTY OF CLARK)

ss.

Thomas J. Standish, Esq., being first duly sworn, deposes and says:

1 1. The matters stated in this Affidavit are based upon my personal knowledge or
2 upon information and belief, if so stated. If called upon to testify, I could and would
3 competently testify to the facts set forth herein.

4 2. I am the attorney for Kirk Harrison (hereinafter "Kirk"), the Plaintiff in case
5 number D-11-443611-D. I am employed by the law firm of Jolley Urga Wirth Woodbury &
6 Standish, and am duly licensed to practice law in the State of Nevada. I was retained as co-
7 counsel to Edward Kainen, Esq. for Kirk, in June 2011.

8 3. On behalf of Kirk Harrison, I negotiated the terms of the Stipulation and Order
9 Resolving Parent/Child Issues, entered July 11, 2012, with Radford J. Smith, Esq.

10 4. In particular, I negotiated with Mr. Smith Paragraph 6 of said stipulation and
11 order, which for purposes of clarity is set forth hereafter:

12 6. Notwithstanding the foregoing time-share arrangement, the
13 parents agreed that, once each child reaches the age of fourteen (14) years, such
14 child shall have "teenage discretion" with respect to the time the child desires to
15 spend with each parent. Thus, while the parents acknowledge the foregoing
16 time-share arrangement, the parents further acknowledge and agree that it is in
17 the best interest of each of their minor children to allow each child the right to
18 exercise such "teenage discretion" in determining the time the child desires to
19 spend with each parent once that child reaches 14 years of age.

20 6.1. The parties do not intend by this section to give the children
21 the absolute ability to determine their custodial schedule with the other parent.
22 Rather, the parties intend to allow the children to feel comfortable in requesting
23 and/or making adjustments to their weekly schedule, from time to time, to spend
24 additional time with either parent or at either parent's home.

25 6.2. Such adjustments shall not be prompted or suggested by
26 either parent, but shall originate with the child(ren). The parties shall not allow
27 the children to use this flexibility as a means to avoid spending time with the
28 other parent, and they shall each encourage the children to follow the regular
schedule to the extent possible. If either party feels that his or her time is being
unduly eroded by this provision as an attempt by the other parent to minimize
that parent's custodial time, he or she may address this issue with the Parenting
Coordinator and/or the Court.

 6.3. The Parenting Coordinator will not have the ability to revoke
this provision, but may address those concerns within the context of the rights,
duties and obligations of the Parenting Coordinator as detailed in the order
appointing the Parenting Coordinator. **Nothing in this section is intended to
limit the discretion of the District Court in making child custody
determinations.**

6.4. In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

5. The emboldened language was specific material language that I bargained for on my client's behalf. I advised my client that these emboldened provisions were critical to the teenage discretion provision and to safeguard the situation from either parent wrongfully pressuring, influencing, or encouraging a child to change the timeshare in that parent's favor.

6. Upon reviewing Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, it is clear that the actions described in that motion constitute multiple violations of the above revisions prohibiting either parent from prompting a child or suggesting to a child that such child should advocate a shift in the timeshare in favor of the prompting parent. The actions as alleged against Vivian in that Motion, would constitute a clear effort by a parent to undermine the entire Paragraph 6, as it was never intended that a child could assert control over their own timeshare merely because they have reached the age of 14 years.

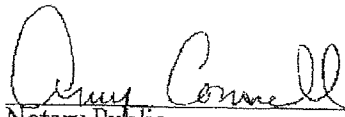
FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of October, 2013.


THOMAS J. STANDISH, ESQ.

State of Nevada
County of Clark

Subscribed and sworn before me
this 29 day of October, 2013.


Notary Public

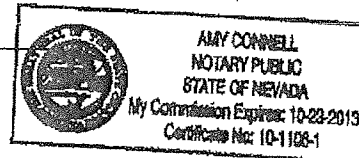


EXHIBIT 5

EXHIBIT 5
*(to Plaintiff's Motion For a Judicial Determination
of the Teenage Discretion Provision)*

Vivian has demonstrated again and again throughout this litigation that she cannot be trusted to abide by the orders of this Court or do the right thing. Subparagraph 6.2 specifically and affirmatively requires each parent to **"encourage the children to follow the regular schedule"** and to not **"prompt"** or **"suggest"** any changes in the regular schedule. These provisions require and presume good faith conduct on the part of each parent **not** to encourage or manipulate the child to seek to be with one parent more than the other. Vivian's behavior throughout this litigation gives every indication that presumption, with respect to Vivian, is erroneous.

Section 7.1, entitled, "Summer Vacation or Intersession Break" of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, sets forth the procedure to be followed in establishing the parties vacations with the children each summer. Pursuant to that provision, sometime prior to March 1 of each year, Vivian must notify Kirk of the dates of her ten day sewing camp each summer. By the explicit terms of Section 7.1, Kirk "shall not designate vacation time during the period of the children's sewing camp." Therefore, Vivian must *first* designate the dates of the sewing camp.

In accordance with Section 7.1, Vivian identified the dates of the sewing camp as **July 20-30.**¹ Kirk thereafter, in accordance with Section 7.1, then designated his vacation times with the children as follows: "The dates for the Utah/Lagoon trip are August 14 through August 20. The dates for my summer vacation with the girls are as follows: June 19 through June 25 and August 2 through August 8." In addition, under the regular custody schedule during the summer, Kirk has

¹ Although this is for 11 days, rather than 10 days, Vivian was then obligated to take the sewing trip of 10 days within that 11 day period.

Brooke and Rylee from Wednesday at 9:00 a.m. until Friday at 9:00 a.m. each week. Therefore, based upon Vivian's designation of sewing camp and Kirk's designation of summer vacations, *Kirk was have Brooke and Rylee, among other days, Wednesday, July 31 and Thursday, August 1.*

Despite the foregoing, three weeks later, in direct contravention of the procedure set forth in Section 7.1, Vivian notified Kirk that she unilaterally "changed" the dates of the "sewing camp" to **July 24 through August 1, 2013** (Vivian already had July 20 through July 23, as part of her normal visitation). However, by making the change, Vivian "took" two days from Kirk with the girls – July 31 and August 1. Vivian then, incredulously, took the position that even though she was in actuality taking *more days*, since she only "took" 9 days *for the sewing camp*, she was entitled to take another day from Kirk. As a consequence of these manipulations, Kirk was forced to take the Utah/Lagoon trip at about the time he had planned to take the California trip and take the Utah/Lagoon trip at about the time he had planned to take Brooke and Rylee to California. Through this ploy of Vivian in "changing" the dates of the "sewing camp," *Vivian fraudulently took two days of Kirk's time with Brooke and Rylee.*

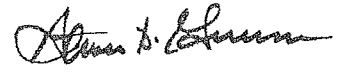
The truth is, that Vivian's late and improper "change" was nothing more than calculated manipulation of the custody schedule, and it is undisputed that *the actual dates of the sewing camp never changed.* The sewing camp – the Martha Pullen School of Art Fashion was in Huntsville, Alabama from **July 21 until July 28, 2013**. These dates are well within the confines of Vivian's pre-March 1 notice that the sewing camp was between **July 20-30**. Vivian checked out of the hotel in Huntsville, Alabama on August 30, 2013 and Vivian and the girls flew home that day as already planned. The *sole purpose* of Vivian's late and improper notification of a "change" of the sewing camp dates to Kirk was to take two of Kirk's days with Brooke and Rylee and to try to steal a third.

When Kirk picked up Brooke and Rylee on the morning of August 2, 2013, the first thing Brooke said to Kirk was that she and Rylee were “suffering from jet lag”, implying they had flown home the day before. However, a couple of days later during their trip, Kirk and the girls were in a Walmart in Lehi, Utah, and Kirk suggested they buy school supplies like they had done previously during the annual Utah/Lagoon trip. Rylee responded they had already gone with Vivian to buy school supplies. When Kirk asked if they did so during their sewing camp trip, Rylee responded that they had gone shopping in Las Vegas a couple of days *after* they got back from the sewing camp.²

If the Court only grants Kirk the two days Vivian fraudulently took from Kirk, there is no deterrent to future antics like this from Vivian. Vivian will have the time with the girls she otherwise should have had – she would lose nothing. Kirk respectfully requests, that some sort of sanction be imposed on Vivian to discourage such future conduct.

² The fact that Vivian would involve Brooke in the perpetuation of this fraud and the attempted cover up of her fraudulent behavior, speaks volumes as to what Vivian is capable and routinely does. More specifically, it is highly relevant circumstantial evidence of Vivian’s continuing manipulation of Brooke regarding the teenage discretion provision.

EXHIBIT “O”



CLERK OF THE COURT

1 **MOTN**
2 EDWARD L. KAINEN, ESQ.
3 Nevada Bar No. 5029
4 KAINEN LAW GROUP, PLLC
5 10091 Park Run Drive, Suite 110
6 Las Vegas, Nevada 89145
7 Telephone (702) 823-4900
8 Facsimile (702) 823-4488
9 Administration@KainenLawGroup.com

6 THOMAS STANDISH, ESQ.
7 Nevada Bar No. 1424
8 JOLLEY URG A WIRTH WOODBURY & STANDISH
9 3800 Howard Hughes Parkway, 16th Fl.
10 Las Vegas, Nevada 89169
11 Telephone (702) 699-7500
12 Facsimile (702) 699-7555
13 tjs@juwww.com

14 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-11-44361 I-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.**

23 **PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE**
24 **DISCRETION PROVISION**

25 COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys,
26 THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URG A WIRTH, WOODBURY &
27 STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby
28 ...

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS
2 125C.101(1) to make a judicial determination regarding Section 6 of the Order Resolving Parent/Child
3 Issues, entered July 11, 2012.

4 This Motion is made and based upon the papers and pleadings on file herein, the Points
5 and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

6 DATED this 18 day of November, 2013.

7 KAINEN LAW GROUP, PLC

8
9 By: 

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

12 **NOTICE OF MOTION**

13
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 _____ day of 12 / 18 / 13 2013, at the hour of
18 11 : 00 AM .m., or as soon thereafter as counsel may be heard.

19 DATED this 18 day of November, 2013.

20 KAINEN LAW GROUP, PLLC

21
22 By: 

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Kirk previously filed, "Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" on October 1, 2013. Vivian filed an opposition and countermotions thereto on October 16, 2013. Kirk filed his reply and opposition to Vivian's countermotions on October 23, 2013. Vivian filed her reply regarding her countermotions on October 28, 2013. Said motion and countermotions were set for hearing before this Court on October 30, 2013.

During that hearing the Court indicated its preference to wait until there was a Parenting Coordinator in place. The Court also was unequivocal that it did not want to conduct an evidentiary hearing or interview the minor children.

While Kirk is not going to re-state all of his concerns as to why the teenage discretion provision should be stricken, suffice it to say, that exactly what Kirk was concerned would happen, has happened. An incident occurred subsequent to that hearing. After that incident, the parties set forth their opposing interpretations of Section 6 in an exchange of letters. It is evident from these letters there was, and remains, no meeting of the minds regarding Section 6 and this provision should therefore be stricken. In the event this Court is unwilling to strike said provision, then the parties need this Court's immediate judicial determination of the meaning of this provision going forward. The Parenting Coordinator is not authorized to, and should not, make such a legal determination. If the provision is not stricken, the parties need, and are entitled to, such a determination from the Court.

Under Subsection 6.2, an aggrieved party under this provision can seek relief with either the Parenting Coordinator and/or the Court.

II. STATEMENT OF FACTS

For purposes of understanding the most recent incident when this matter came to a head, the relevant time period is the two weeks between November 1st at 7:35 a.m., and November 13th at 2:06 p.m. Under the terms of the joint physical custody order, during that two week time period, the only time Kirk was to have with Brooke¹ was less than two days (actually it was only 41 hours) between

¹ Rylee was on a school field trip to California during this time period.

1 November 6th (Wednesday) at 2:06 p.m. and November 8th (Friday) at 7:15 a.m. This time was all the
2 more precious, as during the brief period Brooke was to be with Kirk, Brooke had a dance class on
3 Wednesday evening for 1 ½ hours, was to attend school on Thursday between 7:35 a.m. and 2:06 p.m.,
4 and had another dance class Thursday afternoon and evening from 3:45 p.m. until 9:00 p.m.

5 At 7:36 a.m. on November 6th – the very day Kirk was to pick up Brooke from school – Brooke
6 sent a text to Kirk providing, *"Decided I'm going to stay at moms today and tomorrow."* If Kirk would
7 have agreed with this request, he would not have been able to see Brooke at all for this entire almost two
8 week period. Kirk responded, ten minutes later, *"This is not something you can decide. I will pick you
9 up from school at 2:06 p.m. and we can talk then. Love you."* There was no further response from
10 Brooke – at least not to Kirk. Indeed it would become crystal clear that there was certainly
11 communication with Vivian.

12 Despite there being no communication between Kirk and Vivian, just three and one-half hours
13 after the text exchange between Brooke and Kirk, Vivian's attorneys faxed a two and one-half page
14 letter to Kirk's counsel at 11:17 a.m., providing that Vivian intended to "honor" Brooke's wishes. A true
15 and correct copy of this letter is attached hereto as Exhibit "1." Kirk's counsel faxed a response later
16 that day and subsequently spoke to Vivian's attorney on the telephone. A true and correct copy of Kirk's
17 counsel's response letter is attached hereto as Exhibit "2." During the telephone conversation between
18 counsel, Vivian's attorneys then fired off yet another letter the same day concerning this incident. A
19 true and correct copy of Vivian's attorney's letter concerning the same incident is attached hereto as
20 Exhibit "3."

21 During the telephone call between counsel on November 6th, Vivian's attorney admitted that
22 Vivian had indeed spoken to Brooke about "her rights" under the teenage discretion provision, but that
23 doing so was "not in violation" because the communication "happened prior to entry of the parties'
24 Parenting Agreement." The "Parenting Agreement" is the Stipulation and Order Resolving Parent/Child
25 Issues, which was entered by this Court on July 11, 2012. The facts and common sense clearly indicate
26 Vivian has also been speaking to Brooke about teenage discretion during her summer vacations with
27 Vivian this past summer and continuing to the present time. More importantly, it is clear that Brooke's
28 understanding of "her rights" under the provision is based wholly on Vivian's *beliefs* about teenage

1 discretion, as opposed to what the provision actually provides. Ironically, in the same telephone
2 conversation when Vivian's attorney admitted that Vivian spoke with Brooke about teenage discretion.
3 Vivian's attorney indicated that it was legally inappropriate under the agreement *for Kirk* to even
4 respond or have a discussion with Brooke about Brooke's demand to change the custody arrangement
5 for the next two days.

6 Wanting to exercise his already-limited time with Brooke, and at least discuss the text with
7 Brooke, Kirk arrived at Brooke's school on Wednesday afternoon, as scheduled, to pick her up. Vivian,
8 however, still insistent that she was going to "respect" Brooke's wishes, was also at the school to pick
9 up Brooke. Shortly after 2:06 p.m., Brooke walked past Kirk's car, got in Vivian's car, and they drove
10 away. Having already made it clear to Vivian's attorney that Kirk **did not** consent to this, Kirk chose
11 not to make a scene at school to enforce the custody agreement. As a consequence, Kirk **did not see**
12 Brooke for almost two weeks.²

13 Vivian has clearly not acted in good faith, based on her decision to discuss teenage discretion
14 with Brooke and insisting on arriving at Brooke's school to pick her up even after Kirk voiced his
15 objection to same.

16 Although the Court has appointed Margaret Pickard as the Parenting Coordinator, a judicial
17 determination is needed and, as noted, the parties have the right under Subsection 6.2 to request the
18 Court to address such issues.

19 III. ARGUMENT

20 A. Vivian's Interpretation of Section 6 Is That A 14 Year Old Child Has The 21 Unfettered Absolute Right To Order Changes To The Agreed Custody Schedule

22 As can be readily seen from the two letters from Vivian's attorneys, Exhibits 1 and 3, it is
23 Vivian's position that the 14 year old child of the parties has the absolute *right*, at any time and for any
24 reason, to overrule the custody arrangement between the parties. According to Vivian, the parent then
25

26 ² This is not the first time that Vivian's intentional misconduct has resulted in Kirk inequitably losing
27 two precious days with his children. Attached hereto is Exhibit "5," which is incorporated herein by
28 reference. As a consequence of Vivian's conniving conduct, Kirk was deprived of another two days
with Brooke and Rylee this summer.

1 having custody must immediately *obey* the command without question. This must be done irrespective
2 of the context in which the order of the 14 year old child is made, irrespective of other plans that have
3 been made, irrespective of the adverse impact it may have upon the 10 year old younger sister, or any
4 other member of the family, etc.

5 **B. Kirk's Interpretation of Section 6 Is That A 14 Year Old Child Has The Right To**
6 **Make, Presumptively, Infrequent Requests For Minor Departures To the Agreed**
7 **To Custody Schedule**

8 As can be readily seen from the letter from Kirk's counsel, **Exhibit 2**, it is Kirk's position that
9 it is unreasonable to interpret Section 6 in such a way to give a 14 year old child, "carte blanche to make
10 changes to the custodial schedule whenever they see fit." It is Kirk's interpretation of Section 6,
11 assuming, *arguendo*, for the moment that Vivian's prior material breaches of Section 6 have not
12 rendered the provision totally unworkable, that the 14 year old child has the right to request,
13 presumably, on a very infrequent basis, a limited departure from the regular custody schedule. In the
14 event of such a *request*, it is implicit that both parents must not unreasonably withhold their consent to
15 such a request, taking into account the particular circumstances existing at the time of the request -- as
16 every responsible parent should do regardless.³ Tom Standish, Esq., who negotiated the provision, is
17 unequivocal that it was never intended that a 14 year old child was given the right to determine
18 departures to the agreed custody schedule between the parties, "[I]t was never intended that a child could
19 assert control over their own timeshare merely because they have reached the age of 14 years."
20 Affidavit of Thomas J. Standish, Esq., dated October 29, 2013, ¶6, which is attached hereto as **Exhibit**
21 "4."

22 Section 6 does not provide a 14 year old child with authority to "decide" where she is going to
23 be. As a matter of fact, Section 6.1 specifically provides that "the parties *do not intend by this section*
24 *to give the children the absolute ability to determine their custodial schedule with the other parent.*" If

25 ³ It should be noted that Kirk has acted in good faith, and has in fact acquiesced to Brooke's four (4)
26 prior requests, despite the fact they were, in all likelihood, "prompted" or "suggested" by Vivian -- to
27 spend additional time with Vivian during his custodial period to buy dance shoes, to do make up for the
28 Homecoming dance, to work on a project (because Vivian or, rather, Heather Atkinson, had the
materials), and to do make up for Halloween. In fact, Kirk even voluntarily offered for Brooke and
Rylee to spend additional time with Vivian Halloween night as an olive branch and because Halloween
is a much more significant event for Vivian than for Kirk.

1 the actual intent was to give a 14 year old child carte blanche to stay where she wants, with whatever
2 parent she wants, whenever she wants, it would have said so and in that case a custody schedule would
3 not mean anything, yet there is a custody schedule set forth in the same custody order.

4
5 C. The Language of Section 6 and The Application of Common Sense Inescapably
6 Result In the Conclusion the 14 Year Old Child Has The Right To Make A Request
For A Departure From The Agreed To Custody Schedule

7 Subsections 6.1, 6.2 and 6.3 provide:

8 6.1. *The parties do not intend by this section to give the*
9 *children the absolute ability to determine their custodial schedule with*
10 *the other parent.* Rather, the parties intend to allow the children to feel
comfortable in *requesting and/or making adjustments to their weekly*
11 *schedule*, from time to time, to spend additional time with either parent
or at either parent's home.

12 6.2. Such adjustments *shall not be prompted or suggested*
13 *by either parent*, but shall originate with the child(ren). The parties shall
not allow the children to use this flexibility as a means to avoid spending
time with the other parent, and they *shall each encourage the children*
14 *to follow the regular schedule* to the extent possible. If either party feels
that his or her time is being unduly eroded by this provision as an attempt
by the other parent to minimize that parent's custodial time, he or she
may address this issue with the Parenting Coordinator and/or the Court.

15 6.3. The Parenting Coordinator will not have the ability
16 to revoke this provision, but may address those concerns within the
context of the rights, duties and obligations of the Parenting Coordinator
as detailed in the order appointing the Parenting Coordinator. *Nothing*
17 *in this section is intended to limit the discretion of the District Court in*
18 *making child custody determinations.*

19 (Emphasis added)

20 Kirk respectfully submits that when this provision is read as a whole, the undeniable conclusion,
21 based not only upon the literal language, but upon common sense as well, is that the 14 year old child
22 may make a **request** for a departure to the schedule, but does not have the authority to determine that
23 the departure will be made. All of the controlling highlighted language above supports such a
24 conclusion, except for the grammatically questionable use of the conjunctive and disjunctive "and/or"
25 in Subsection 6.2. Despite the single incident of poor language choice, in the context of the rest of the
26 language contained in Section 6, it is absolutely inconsistent to interpret this language as granting the
27 ...
28 ...

1 14 year old child the absolute right to "make" the custody determination. In fact, it is nonsensical to
2 provide that the 14 year old child has the right to request "and/or" the right to make the determination.
3 If the 14 year old child has the right to make the determination, then there would be no reason to simply
4 make a request.

5
6 **D. There Are Several Independent Additional Reasons Why Section 6 Should Be Stricken And Vivian's Interpretation Of Section 6 Must Fail**

7 There are several independent reasons why Section 6 should be stricken and Vivian's
8 interpretation of the provision must fail.

9
10 **1. Section 6 Should be Stricken As Teenage Discretion Provisions Should Generally Be Suspect As They Unnecessarily Create Uncertainty and Instability for The Children and There Was No Meeting Of The Minds In the Negotiation And Drafting Of This Teenage Discretion Provision**

11
12 "Teenage discretion" provisions such as this should be seriously questioned by the courts under
13 any circumstances, but especially when the parents do not get along. These provisions create
14 unnecessary uncertainty and instability for the children. Under a joint custody arrangement, the children
15 know from week to week the time they will be spending with each parent. These provisions undermine
16 and disrupt that certainty and stability, unnecessarily creating uncertainty and instability on a weekly
17 basis. As the Court has already seen, this is especially true in this matter.

18 There was clearly no meeting of the minds by the attorneys who negotiated the terms of this
19 provision. Tom Standish, who negotiated this provision, is adamant this provision was never intended
20 to give a 14 year old child control over the determination. The child is only given the right to make a
21 request without any "suggestion" or "prompting" by either parent and where both parents are obligated
22 to "encourage the children to follow the regular schedule." On the other hand, as evidenced by his
23 letters, Mr. Smith argues this provision gives a 14 year old child the absolute right to determine their
24 own timeshare. According to Mr. Smith, the child issues the *order* and the custodial parent must *obey*
25 the order without any question or discussion.

26 ...

27 ...

28 ...

1 Where such a provision is highly suspect and generally questionable under any circumstances,
2 where there was clearly no meeting of the minds by the individuals who negotiated the provision,
3 resulting in interpretations which are essentially polar opposites, the provision should be stricken by the
4 Court.

5
6 **2. Section 6 Should Be Stricken As Vivian's Suggestions, Prompting, And**
7 **Encouragement To Brooke To Depart From The Regular Schedule**
8 **Whenever Possible, In Direct Violation and Contravention Of The Explicit**
9 **Terms of Section 6, And Vivian Telling Brooke She Has The Absolute Right**
10 **To Dictate Her Timeshare On A Daily Basis, Have Created A Totally**
11 **Untenable Situation For the Children and Kirk**

12 After Vivian had uninterrupted custody of Brooke and Rylee for 21 days, the first day back with
13 Kirk, on July 17, 2013, Brooke announced that since she was now 14 years old, she can decide where
14 she lives. After Vivian had uninterrupted custody of Brooke and Rylee for 14 days, on August 2, 2013,
15 Brooke announced she was going to live with Vivian full time.⁴ It is evident that Vivian has convinced
16 Brooke that Brooke has the absolute right to dictate her timeshare on a daily basis. On August 25, 2013,
17 Brooke informed Kirk that he had to take her to Vivian's house *anytime she wanted* and Brooke had the
18 *right to stay for as long as she wanted*. It is not a coincidence that Brooke's position mirrors the
19 extreme position taken by Vivian.

20 The disputes which the parties and their children are now embroiled are a foreseeable direct
21 consequence of Vivian's material breaches of the safeguards Kirk's counsel put in place to avoid the
22 very scenario which now exists. *See*, Affidavit of Thomas Standish, **Exhibit "4"** hereto. Vivian's prior
23 and continuing misconduct is a blatant violation of the safeguards in Section 6 and constitute material
24 breaches of material and essential provisions, which has, in effect, prospectively nullified the
25 effectiveness of those provisions to protect the best interests of Brooke and Rylee, as well as Kirk's
26 rights under the joint custody order.

27 On Thursday, November 14, 2013, Brooke informed Kirk she intended to go to Vivian's house
28 during the upcoming weekend to work on props and costumes for dance, etc. Brooke had just been with

⁴ Vivian's attorneys actually assert that Vivian has not discussed the "teenage discretion" provision with Brooke since sometime before this Court's custody order was entered July 11, 2012, and, therefore, the timing of all of this is just an incredible coincidence.

1 Vivian for 13 uninterrupted days and was to return to Vivian on Monday, November 18, 2013. The
2 costumes are not to be turned in until Wednesday evening, November 20, 2013. Kirk told Brooke he
3 would like to think about it and perhaps Brooke could spend a shorter period at Vivian's house this
4 weekend and the rest could be done while she was with Vivian on Monday and Tuesday. Brooke spoke
5 with Vivian that night on the telephone and was visibly upset with Kirk the next day for no otherwise
6 apparent reason.

7 At 1:33 p.m. on Saturday, November 16, 2013, Brooke came to Kirk and informed him that *he*
8 *had to take she and Rylee to Vivian's house at 2:00 p.m.* to make the props and costumes that had to be
9 turned in to Dance, Etc. on Wednesday evening, November 20, 2013. Kirk asked Brooke why they
10 couldn't do it at his house and Brooke responded that Vivian already had gotten the materials. When
11 Kirk asked why they couldn't simply go to the store and purchase the needed materials, Brooke said
12 she didn't want to do that. Kirk asked how long it would take and Brooke said two to three hours.
13 When Kirk asked what would happen if it took longer than three hours, Brooke responded that *Vivian*
14 *and she had been texting and Vivian had to leave at 5:00 p.m.* Kirk relented and took both Brooke and
15 Rylee to Vivian's house at 2:00 p.m. All of the foregoing, was coordinated by Vivian and Brooke,
16 around Vivian's schedule. It was irrelevant that the plans Vivian made included Rylee. It was irrelevant
17 that Vivian did not discuss the matter with Kirk, but used Brooke as the conduit. It was irrelevant that
18 Kirk had previously made plans with Brooke, Rylee and Joseph to decorate the Christmas tree that
19 afternoon and to have dinner together.⁵ Those plans, during Kirk's custody time with the children, had
20 to take a back seat and be delayed.

21 Vivian has wrongfully, in direct contravention of the explicit terms of Section 6, firmly
22 embedded in Brooke's mind that Brooke has the absolute right to determine her custody on a daily basis,
23 and if Kirk does anything other than immediately and fully comply, Brooke perceives Kirk as doing
24 something horribly improper and contrary to what she is entitled. Under such circumstances, Section
25 6 must be stricken.

26 _____
27 ⁵ Under the agreed custody schedule, the next weekend Kirk has Brooke and Rylee is the weekend of
28 December 13, 2013, and Kirk is taking Brooke and Rylee to Whitney's graduation ceremony from
Physician's Assistant School at Methodist University in Fayetteville, North Carolina..

3. **Any Teenage Discretion Provision, As Applied, Which Causes A 14 Year Old Child To Feel Like She Must Chose Between Her Parents And, Importantly, Motivates One Of The Parents To Encourage that Child To Make That Choice On A Weekly Basis, Is Fundamentally Wrong**

Custody arrangements should be determined by parents. The best interests of the children should be paramount in making that determination. The choice of how much time a 14 year old child spends with each parent should not be foisted upon that child through an ill-conceived and misinterpreted "teenage discretion" provision. A 14 year old child should not be compelled on a weekly basis to determine how much time she wants to spend with each parent for that particular week, especially when there is an indisputable history of one of the parents manipulating that child.

The interpretation advocated by Vivian, that a 14 year old child has the absolute right to determine departures from the agreed custody arrangement, not only undermines the joint custody agreement between the parties, but it unduly places too much stress upon a 14 year old child to make a choice between her parents on a weekly basis, and which choice, in most instances, inherently involves leaving her 10 year old sister.

Encouraging a 14 year old child to chose which parent to spend time with on a weekly basis is not in the best interests of the child, unnecessarily creates uncertainty and instability for her 10 year old younger sibling, undermines the certainty and stability inherent in an agreed parenting arrangement, creates an atmosphere which will motivate one of the parents to do what is most popular with the 14 year old child, as opposed to doing what is best for the 14 year old child, and encourages a parent, so inclined, to continue a parental competition, which is not in the best interests of the children. The continued existence of Section 6 provides a vehicle for the continued unnecessary manipulation of the children.

The Court is respectfully urged to do what is clearly in the best interests of these children and strike Section 6.

...

...

...

...

4. Section 6, As Interpreted by Vivian, Violates NRS 125.510(5) and NRS 125C.010 as the Right To Visitation On A Weekly Basis Is Not Defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved."

NRS 125.510 states in pertinent part as follows:

1. In determining the custody of a minor child in an action brought under this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties. The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

* * * *

5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

(Emphasis added.)

1 NRS 125C.010 contains language similar to NRS 125.510(5). These statutes implement specific
2 custody and timeshare rules in the best interests of a minor child. Specifically, these statutes, as well
3 as, NRS 125.460, provide for the children to have specific, ongoing and frequent contact with both
4 parties. Allowing the children to have the unhampered right to determine their own schedule with each
5 parent flies in the face of these statutes, as well as the parties' intent at the time they entered into the
6 Stipulation and Order Resolving Parent/Child Issues.

7 Section 6, as interpreted by Vivian, violates both NRS 125.510(5) and NRS 125C.010 as the
8 right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights
9 of the parties can be properly enforced and that the best interest of the child is achieved." According
10 to Vivian, the 14 year old child has the absolute right to order a departure from the agreed custody
11 schedule at any time, regardless of the circumstances. Based upon Vivian's interpretation, the right to
12 visitation on a weekly basis is **not** defined with sufficient particularity. The right to visitation is
13 whatever the 14 year old child arbitrarily determines it will be at any time, with Vivian's suggestion,
14 prompting, and encouragement. For the same reason, the "specific times and other terms of the right
15 of visitation" as set forth in this Court's order are also without "sufficient particularity" as they are
16 subject to change on a weekly, if not daily basis, by the unfettered determination of a 14 year old child.
17 None of this should be acceptable to the Court.

18 During the hearing on October 30, 2013, the Court confirmed that teenage discretion should not
19 give a child full and complete control to make decisions regarding the custody timeshare. Specifically,
20 at 10:59:10, the Court stated as follows:

21 "I don't need a child interview. The less I can embroil a child in this
22 process, ultimately the better I feel a child is insulated from this process.
23 The parties agreed that it was in the best interest of the children to
24 exercise joint physical custody. I don't want this to become a situation
25 where it is just a matter of time, where as soon as you turn fourteen you
26 get to decide where you want to live, that's not how it works. Under NRS
27 125.490, there is a presumption now because you agreed to joint physical
28 custody. There is a presumption that joint physical custody is in the best
interest of the children and to overcome that I don't find... say an
interview came forward and that's what I hear, that there is a desire to
live primarily with Mom. If that is, I find, I would be hard pressed to find
that the expressions standing alone, of a fourteen year old child, would
be sufficient to overcome that presumption. That's why I don't need it."

...

1 The bottom line is that by allowing the present untenable situation to continue (a situation wholly
2 created by Vivian's blatant violations of the written safeguards and her *continuing* misconduct), it
3 continues to empower a 14 year old child to do Vivian's bidding and continues to allow Vivian to
4 wrongfully empower that 14 year old child. That *is not* what Kirk bargained for when reaching a
5 parenting agreement with Vivian. Kirk will continue to pursue resolution of this matter with Margaret
6 Pickard while this Motion is pending. However, given the interpretation advocated by Vivian , and
7 supported by her attorneys, it cannot be resolved absent a judicial determination by this Court.
8 According to Vivian's attorneys, Brooke has full right and control to *decide* where she wants to be and
9 when, and Kirk would be "violating the rules" if he even attempts to talk to Brooke about the same –
10 Vivian however, appears to be free to continue her discussions with Brooke with impunity.

11
12 **5. Section 6, As Interpreted by Vivian, Violates NRS 125.460 As It Encourages**
13 **A Parent, Vivian, To Not Share The Rights And Responsibilities of Child**
14 **Rearing**

15 NRS 125.460 states as follows:

16 The Legislature declares that it is the policy of this State:

- 17 1. **To ensure that minor children have frequent associations and a**
18 **continuing relationship with both parents after the parents have**
19 **become separated or have dissolved their marriage; and**
20 2. To encourage such parents to share the rights and responsibilities of
21 child rearing.

22 (Emphasis added.)

23 Section 6, as interpreted by Vivian, violates NRS 125.460, which provides "that it is the policy
24 of this State . . . [t]o encourage such parents to share the rights and responsibilities of child rearing."
25 Clearly, Vivian is using her interpretation to undermine Kirk's right to share in the rights and
26 responsibilities of child rearing. According to Vivian's attorneys, Vivian, based upon Vivian's
27 interpretation, can utilize Section 6 to obtain "defacto primary custody." (Exh. S to Vivian's opposition
28 to Kirk's counter motions re attorneys' fees, p. 9, l. 16-17)

It is respectfully submitted that to allow a 14 year old child the absolute right to "make" these
type of custody decisions, which are ongoing departures from the agreed schedule, is against the stated
policy of this State, as it will undermine Kirk's right to share in the rights and responsibilities of child
rearing.

1 IV. CONCLUSION

2 The parties urgently need guidance from this Court by making a timely determination of Section
3 6. Section 6 should be stricken by this Court. This provision creates uncertainty and instability for the
4 children and conflict between the parties, within which the children will remain embroiled until there
5 is a resolution. At a minimum, it is obvious that there was no meeting of the minds between the parties
6 regarding essential terms. Vivian's material breaches of material and essential terms of Section 6,
7 including embedding in Brooke's mind that she has the absolute unfettered right to determine her own
8 custody, has undermined any chance for the provision to be reasonably applied.

9 However, if the Court is not willing to strike the provision at this time, the parties need this
10 Court's determination as to whether, under the existing provision, a 14 year old child has the right to
11 *order* a departure from the agreed to custody schedule, as argued by Vivian, or whether, under the
12 provision, a 14 year old child has the right to *request* a departure from the agreed to custody schedule.

13 Kirk has been reasonable and accommodating, if only to keep the peace and to prevent a needless
14 confrontation, but it has resulted in continued demands, further immersion of the children into their
15 parents' custody dispute and ongoing encroachment into his custodial periods. Vivian does not care
16 about the impact on Brooke, who is placed in emotional turmoil and now forced to choose between her
17 parents on a weekly basis in order to placate one of them - even on the most basic of issues as when to
18 return to the car. Vivian, consumed by competition at every interaction, has tried to create problems
19 by not being able to exercise even a modicum of common courtesy in day-to-day situations (e.g. keeping
20 the girls talking in the house for 20 to 35 minutes while Kirk waits in the car outside her house). As a
21 result of Vivian immersing Brooke in this conflict (both by sharing information Brooke never should
22 have had, and by completely butchering the explanation of the provisions), the parties are in all too
23 frequent conflicts, that was otherwise much more limited.

24 Kirk implores the Court, in the best interests of Brooke and Rylee, to revoke this provision in
25 its entirety. In the alternative, Kirk requests the Court to determine that a 14 year old child has the right
26 to *request*, rather than the right to *order*, a departure from the agreed to custody schedule. However,
27 under the latter alternative, Vivian will continue to manipulate and embroil the children in conflict.

28 ...

Accordingly, Kirk requests the following:

1. That the Court modifies the Stipulation and Order Resolving Parent/Child Issues by revoking and striking Section 6 so that this type of abuse by Vivian can be avoided in the future.
2. That Kirk be given two custodial days for the two custodial days -- November 6 & 7 -- which were wrongfully taken from him as a consequence of Vivian's misconduct and her manipulation of Brooke.
3. That Kirk be given the two custodial days for the two custodial days -- July 31 and August 1 -- Vivian fraudulently took from Kirk as a result of her "change" of the dates for the sewing camp, as set forth in **Exhibit "5"**, hereto.
4. That the Court impose an additional penalty upon Vivian as a deterrent to future attempts by Vivian to wrongfully take custodial days from Kirk (if Kirk only gets back the four days which were wrongfully taken by Vivian, then Vivian has incurred no penalty for what she has done, and there is no deterrent from doing it again).
5. That the Court award Kirk attorney's fees for having to bring this matter to the Court's attention.
6. For such other and further relief as the Court deems just and proper in the premises.

DATED this 18 day of November, 2013.

KAINEN LAW GROUP, PLLC

By: 

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

EXHIBIT 1

RADFORD J. SMITH, ESQ.
 RONDA F. FORSBERG, ESQ.
 SARIMA VARSHNEY, ESQ.
 JOLENE HOEFF, PARALEGAL
 KENNETH F. SMITH, PARALEGAL
 KELLYE BLANKENSHIP, PARALEGAL

RADFORD J. SMITH, CHARTERED
 A Professional Corporation
 64 NORTH PECOS ROAD, SUITE 700
 HENDERSON, NEVADA 89074

TELEPHONE: (702) 880-6468
 FACSIMILE: (702) 880-6468
 RSMITH@RADFORDSMITH.COM

VIA FACSIMILE
 Edward Kainen, Esq.

November 6, 2013

FAXED

NOV 06 2013

Re: *Harrison v. Harrison*

Dear Ed:

This morning Vivian dropped Rylee off for a two-day school trip to Catalina. Brooke approached Vivian, without prompting from Vivian of any kind, and indicated that she would like to stay with Vivian for the next couple of days. Under the provisions of paragraph 6 of the parties' parenting plan (the July 11, 2012 order), Brooke has the discretion to choose to spend this time with Vivian. That provision reads in pertinent part:

6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.

6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting *and/or making adjustments to their weekly schedule*, from time to time, to spend additional time with either parent or at either parent's home.

When Brooke advised Kirk of her choice to make the adjustment to the weekly schedule on this occasion, Kirk incorrectly informed Brooke that she does not have that discretion. Kirk's statement is contrary to the plain language of the agreement. Brooke does have that discretion, and Vivian intends to honor it.

If Kirk feels that either Brooke's choice or Vivian's actions are in violation of the Parenting Plan, the remedy is spelled out in paragraph 6.

6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

Edward Kainen, Esq.
November 6, 2013
Page 2

6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.

Thus, under the plain terms of the Parenting Plan, if Kirk believes that the child's discretion has been exercised in violation of the Plan, he may bring this matter to mediation with Ms. Pickard under the Order entered by Judge Duckworth appointing her, or he may file a motion with the Court. He does not have the unilateral ability to deny the exercise of Brooke's discretion. Consequently, consistent with Brooke's exercise of that discretion, Vivian will pick her up after school.

Kirk's suggestion to Brooke that she does not have discretion, and the pressure that he has placed on Brooke as outlined in Vivian's Opposition to Kirk's motion to remove paragraph 6 from the parenting plan (which motion Judge Duckworth denied), is precisely what Vivian wanted to avoid. The intent of the paragraph was to allow either child, after reaching 14 years of age, to exercise occasional discretion to spend time with a parent outside the custodial schedule. The paragraph is neutral, and grants the children the right to vary the schedule and avoid any demand by the other party for strict compliance with the weekly visitation schedule. Kirk seeks to undermine the application of the provision by the very means it was designed to avoid.

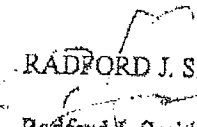
Vivian strongly hopes that Kirk will not continue to violate the provision by either informing Brooke that she cannot exercise the discretion granted to her, or by causing havoc (by demanding that she come with him for example) in order to intimidate and pressure Brooke. Paragraph 6 sets up a reasonable and specific method for addressing concerns of either parent regarding a child's exercise of discretion, and Vivian will participate in any sessions with Ms. Pickard to address Kirk's concerns. She has already contacted Ms. Pickard, and I am providing a copy of the Parenting Plan and Order appointing Ms. Pickard to her. Also, Judge Duckworth has appointed Lisa Linning as the child's therapist per Vivian's request, but Ms. Linnings office has declined the appointment. Consequently, Vivian accepts the appointment of Dr. Jamal Ali, who Kirk had proposed as the children's therapist. Vivian will contact Dr. Ali, and we will provide him a copy of the parenting plan and order appointing him as therapist.

Please let me know Kirk's intended actions so we can avoid any difficulties that may arise by any actions he intends to take in response to Brooke's exercise of the discretion granted her under paragraph 6 of the Parenting Plan.

Edward Kainen, Esq.
November 6, 2013
Page 3

I you would like to discuss this matter, I will be available most of the day either at the office or on my cell. I look forward to hearing from you.

Sincerely,


RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.
Board Certified Nevada Family Law Specialist

RJS:

Enc:

cc: Vivian Harrison
Gary Silverman, Esq.
Thomas Standish, Esq.

EXHIBIT 2

KAINEN
LAW GROUP
A Professional Limited Liability Company

☐ ☐

November 6, 2013

Via Facsimile: (702) 990-6456

Radford Smith, Esq.
Radford J. Smith, Chartered
64 north Pecos Road, Suite 700
Henderson, Nevada 89074

Re: Kirk Harrison v. Vivian Harrison

Dear Rad:

I am in receipt of your letter dated November 6, 2013, regarding this matter.

The parties' parenting agreement gives the children the ability to *request* changes to the custodial schedule. It *does not* give the children carte blanche to make changes to the custodial schedule whenever they see fit. The children cannot simply "advise" their parents when they are going to adjust the custodial schedule. This is confirmed in paragraph 6.1 of the agreement, which plainly provides:

6.1 The parties *do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent*. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home."

In other words, the children are to discuss any proposed adjustments with the parent who has custody at the time they wish to make a request to the schedule -- in this case, Kirk, not Vivian.

Kirk took Brooke to school last Friday morning, November 1, at which time Vivian's custodial time began. Kirk will pick Brooke up today at 2:06 p.m., and will only have her until this coming Friday morning. After dropping Brooke off at school Friday at 7:30 a.m., he will not see Brooke again until next Wednesday, November 13, 2013. Further, tomorrow, November 7, Brooke has dance from 3:45 p.m. until 9:00 p.m. As you can see, Brooke's time with Kirk over this two-week period is already very limited.

♦♦ EDWARD KAINEN

ANDREW L. KYNASTON

RACHEAL H. MASTEL

T: 702.823.4900 F: 702.823.4488



10091 Park Run Drive, Suite 110 Las Vegas, NV 89145-8868



www.KainenLawGroup.com

* Nevada Board Certified Family Law Specialist

♦ Fellow of the American Academy of Matrimonial Lawyers

Radford Smith, Esq.
November 6, 2013
Page 2

Accordingly, Kirk will pick up Brooke up from school, as this is his custodial time, and he will discuss the matter with Brooke. Should Vivian pick up Brooke after school today or keep Brooke during his custodial period over his objection, she will be in violation of the parties' parenting agreement and will be cause for Kirk to file a Motion with the Court to resolve this matter.

Your attention to this matter is appreciated.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: 

EDWARD L. KAINEN, ESQ.

ELK/cn

cc: Kirk Harrison

EXHIBIT 3

RADFORD J. SMITH, ESQ.
RHONDA P. FORBES, ESQ.
GARIMA VARSHNEY, ESQ.
JOLENE HOFST, PARALEGAL
KENNETH F. SMITH, PARALEGAL
KELLY BLANKENSHIP, PARALEGAL

RADFORD J. SMITH, CHARTERED

A Professional Corporation
84 NORTH PECOS ROAD, SUITE 700
HENDERSON, NEVADA 89074

TELEPHONE: (702) 890-6448
FACSIMILE: (702) 990-6456
RSMITH@RADFORDSMITH.COM

VIA FACSIMILE
Edward Kainen, Esq.

November 6, 2013

FAXED
NOV 06 2013

Re: *Harrison v. Harrison*

Dear Ed:

Reference is made to your letter of earlier today. Brooke's exercise of discretion to spend a brief period of time with Vivian is not a request to change the custodial schedule contained in the agreement, that custodial schedule will continue. The provision reads:

"[T]he parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home."

There is no other way to read that provision other than a grant to allow Brooke to "make adjustments" to her weekly schedule. This was the discretion that was granted to her as part of the order. It appears that because he was unable to have the Court eliminate the stipulated provision, Kirk intends to ignore it, cause additional problems, then undermine it. Vivian will proceed according to the order, and retrieve Brooke today from school per her wishes.

Moreover, his plan to discuss Brooke's stated exercise of discretion with her, and obviously attempt to influence her not to spend time with Vivian, is exactly what is prohibited by the provision. Kirk should follow the procedure outlined in the plan and have him address this issue through Ms. Pickard.

I cannot comprehend why Kirk would continue to put Brooke through this kind of pressure. I believe that if he just took the pressure off her, allowed her to meet with a counselor, addressed his relationship or issues with the relationship through the Parenting Coordinator, that this issue would resolve itself. Instead, his response is to threaten to file a motion. I would ask that he reconsider that course.

While I appreciate that he will miss time alone with Brooke, she has unequivocally advised him of her desire to spend the next couple of days with Vivian. There may come a time when either Brooke or Rylee want to spend time with him on a day Vivian is scheduled to have them — she will, of course, comply with the provisions of the agreement.

November 6, 2013

Page 2

Your letter did not respond to Vivian's acceptance of Kirk's proposal of Dr. Ali. I presume, since Kirk originally proposed him, he would be acceptable. Please let me know.

Sincerely,


RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.

Board Certified Nevada Family Law Specialist

RJS:

cc: Gary Silverman (via email)
Vivian Harrison (via email)
Thomas Standish, Esq. (via email)

EXHIBIT 4



CLERK OF THE COURT

1 AFFD

2 THOMAS J. STANDISH, ESQ.

3 Nevada Bar No. 1424

4 tjs@juwww.com

5 JENNIFER POYNTNER-WILLIS, ESQ.

6 Nevada Bar No. 9281

7 jpw@juwww.com

8 JOLLEY, URG, WIRTH, WOODBURY & STANDISH

9 3800 Howard Hughes Parkway, 16th Floor

10 Las Vegas, Nevada 89169

11 (702) 699-7500

12 (702) 699-7555

13 EDWARD L. KAINEN, ESQ.

14 Nevada Bar No. 5029

15 ed@kainenlawgroup.com

16 KAINEN LAW GROUP, PLLC

17 10091 Park Run Drive, Suite 110

18 Las Vegas, NV 89145

19 (702) 823-4900

20 (702) 823-4488 (Fax)

21 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

22 KIRK ROSS HARRISON,

23 Plaintiff,

24 vs.

25 VIVIAN MARIE LEE HARRISON,

26 Defendant

CASE NO.: D-11-443611

DEPT NO.: Q

Hearing Date: October 29, 2013

Hearing Time: 10:00 a.m.

AFFIDAVIT OF THOMAS J. STANDISH, ESQ.

filed in Support of Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order
Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition
to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on
Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and
Sanctions

STATE OF NEVADA)

COUNTY OF CLARK)

ss.

Thomas J. Standish, Esq., being first duly sworn, deposes and says:

1 1. The matters stated in this Affidavit are based upon my personal knowledge or
2 upon information and belief, if so stated. If called upon to testify, I could and would
3 competently testify to the facts set forth herein.

4 2. I am the attorney for Kirk Harrison (hereinafter "Kirk"), the Plaintiff in case
5 number D-11-443611-D. I am employed by the law firm of Jolley Urga Wirth Woodbury &
6 Standish, and am duly licensed to practice law in the State of Nevada. I was retained as co-
7 counsel to Edward Kainen, Esq. for Kirk, in June 2011.

8 3. On behalf of Kirk Harrison, I negotiated the terms of the Stipulation and Order
9 Resolving Parent/Child Issues, entered July 11, 2012, with Radford J. Smith, Esq.

10 4. In particular, I negotiated with Mr. Smith Paragraph 6 of said stipulation and
11 order, which for purposes of clarity is set forth hereafter:

12 6. Notwithstanding the foregoing time-share arrangement, the
13 parents agreed that, once each child reaches the age of fourteen (14) years, such
14 child shall have "teenage discretion" with respect to the time the child desires to
15 spend with each parent. Thus, while the parents acknowledge the foregoing
16 time-share arrangement, the parents further acknowledge and agree that it is in
17 the best interest of each of their minor children to allow each child the right to
18 exercise such "teenage discretion" in determining the time the child desires to
19 spend with each parent once that child reaches 14 years of age.

20 6.1. The parties do not intend by this section to give the children
21 the absolute ability to determine their custodial schedule with the other parent.
22 Rather, the parties intend to allow the children to feel comfortable in requesting
23 and/or making adjustments to their weekly schedule, from time to time, to spend
24 additional time with either parent or at either parent's home.

25 6.2. Such adjustments shall not be prompted or suggested by
26 either parent, but shall originate with the child(ren). The parties shall not allow
27 the children to use this flexibility as a means to avoid spending time with the
28 other parent, and they shall each encourage the children to follow the regular
schedule to the extent possible. If either party feels that his or her time is being
unduly eroded by this provision as an attempt by the other parent to minimize
that parent's custodial time, he or she may address this issue with the Parenting
Coordinator and/or the Court.

 6.3. The Parenting Coordinator will not have the ability to revoke
this provision, but may address those concerns within the context of the rights,
duties and obligations of the Parenting Coordinator as detailed in the order
appointing the Parenting Coordinator. Nothing in this section is intended to
limit the discretion of the District Court in making child custody
determinations.

JOLLEY URGAL WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, Suite 1600, Las Vegas, NV 89169
Telephone: (702) 699-7500 Fax: (702) 699-7535

6.4. In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

5. The emboldened language was specific material language that I bargained for on my client's behalf. I advised my client that these emboldened provisions were critical to the teenage discretion provision and to safeguard the situation from either parent wrongfully pressuring, influencing, or encouraging a child to change the timeshare in that parent's favor.

6. Upon reviewing Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, it is clear that the actions described in that motion constitute multiple violations of the above revisions prohibiting either parent from prompting a child or suggesting to a child that such child should advocate a shift in the timeshare in favor of the prompting parent. The actions as alleged against Vivian in that Motion, would constitute a clear effort by a parent to undermine the entire Paragraph 6, as it was never intended that a child could assert control over their own timeshare merely because they have reached the age of 14 years.

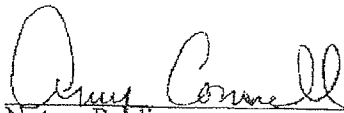
FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of October, 2013.


THOMAS J. STANDISH, ESQ.

State of Nevada
County of Clark

Subscribed and sworn before me
this 29 day of October, 2013.


Notary Public

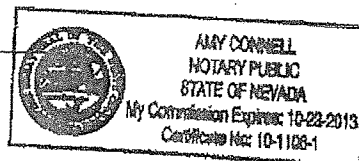


EXHIBIT 5

EXHIBIT 5
(to Plaintiff's Motion For a Judicial Determination
of the Teenage Discretion Provision)

Vivian has demonstrated again and again throughout this litigation that she cannot be trusted to abide by the orders of this Court or do the right thing. Subparagraph 6.2 specifically and affirmatively requires each parent to “**encourage the children to follow the regular schedule**” and to not “**prompt**” or “**suggest**” any changes in the regular schedule. These provisions require and presume good faith conduct on the part of each parent **not** to encourage or manipulate the child to seek to be with one parent more than the other. Vivian’s behavior throughout this litigation gives every indication that presumption, with respect to Vivian, is erroneous.

Section 7.1, entitled, “Summer Vacation or Intersession Break” of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, sets forth the procedure to be followed in establishing the parties vacations with the children each summer. Pursuant to that provision, sometime prior to March 1 of each year, Vivian must notify Kirk of the dates of her ten day sewing camp each summer. By the explicit terms of Section 7.1, Kirk “shall not designate vacation time during the period of the children’s sewing camp.” Therefore, Vivian must *first* designate the dates of the sewing camp.

In accordance with Section 7.1, Vivian identified the dates of the sewing camp as July 20-30.¹ Kirk thereafter, in accordance with Section 7.1, then designated his vacation times with the children as follows: “The dates for the Utah/Lagoon trip are August 14 through August 20. The dates for my summer vacation with the girls are as follows: June 19 through June 25 and August 2 through August 8.” In addition, under the regular custody schedule during the summer, Kirk has

¹ Although this is for 11 days, rather than 10 days, Vivian was then obligated to take the sewing trip of 10 days within that 11 day period.

Brooke and Rylee from Wednesday at 9:00 a.m. until Friday at 9:00 a.m. each week. Therefore, based upon Vivian's designation of sewing camp and Kirk's designation of summer vacations, *Kirk was have Brooke and Rylee, among other days, Wednesday, July 31 and Thursday, August 1.*

Despite the foregoing, three weeks later, in direct contravention of the procedure set forth in Section 7.1, Vivian notified Kirk that she unilaterally "changed" the dates of the "sewing camp" to **July 24 through August 1, 2013** (Vivian already had July 20 through July 23, as part of her normal visitation). However, by making the change, Vivian "took" two days from Kirk with the girls – July 31 and August 1. Vivian then, incredulously, took the position that even though she was in actuality taking *more days*, since she only "took" 9 days *for the sewing camp*, she was entitled to take another day from Kirk. As a consequence of these manipulations, Kirk was forced to take the Utah/Lagoon trip at about the time he had planned to take the California trip and take the Utah/Lagoon trip at about the time he had planned to take Brooke and Rylee to California. Through this ploy of Vivian in "changing" the dates of the "sewing camp," *Vivian fraudulently took two days of Kirk's time with Brooke and Rylee.*

The truth is, that Vivian's late and improper "change" was nothing more than calculated manipulation of the custody schedule, and it is undisputed that *the actual dates of the sewing camp never changed*. The sewing camp – the Martha Pullen School of Art Fashion was in Huntsville, Alabama from **July 21 until July 28, 2013**. These dates are well within the confines of Vivian's pre-March 1 notice that the sewing camp was between **July 20-30**. Vivian checked out of the hotel in Huntsville, Alabama on August 30, 2013 and Vivian and the girls flew home that day as already planned. The *sole purpose* of Vivian's late and improper notification of a "change" of the sewing camp dates to Kirk was to take two of Kirk's days with Brooke and Rylee and to try to steal a third.

When Kirk picked up Brooke and Rylee on the morning of August 2, 2013, the first thing Brooke said to Kirk was that she and Rylee were “suffering from jet lag”, implying they had flown home the day before. However, a couple of days later during their trip, Kirk and the girls were in a Walmart in Lehi, Utah, and Kirk suggested they buy school supplies like they had done previously during the annual Utah/Lagoon trip. Rylee responded they had already gone with Vivian to buy school supplies. When Kirk asked if they did so during their sewing camp trip, Rylee responded that they had gone shopping in Las Vegas a couple of days *after* they got back from the sewing camp.²

If the Court only grants Kirk the two days Vivian fraudulently took from Kirk, there is no deterrent to future antics like this from Vivian. Vivian will have the time with the girls she otherwise should have had – she would lose nothing. Kirk respectfully requests, that some sort of sanction be imposed on Vivian to discourage such future conduct.

² The fact that Vivian would involve Brooke in the perpetuation of this fraud and the attempted cover up of her fraudulent behavior, speaks volumes as to what Vivian is capable and routinely does. More specifically, it is highly relevant circumstantial evidence of Vivian’s continuing manipulation of Brooke regarding the teenage discretion provision.

HARRISON V. HARRISON
CASE NUMBER 66157
CROSS-APPELLANT'S EXHIBITS
M
OF THE DOCKETING STATEMENT

EXHIBIT “M”

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 **RPLY**
EDWARD L. KAINEN, ESQ.
2 Nevada Bar No. 5029
KAINEN LAW GROUP, PLLC
3 10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
4 Telephone (702) 823-4900
Facsimile (702) 823-4488
5 Administration@KainenLawGroup.com

6 THOMAS STANDISH, ESQ.
Nevada Bar No. 1424
7 JOLLEY URGAL WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, 16th Fl.
8 Las Vegas, Nevada 89169
Telephone (702) 699-7500
9 Facsimile (702) 699-7555
tjs@juwww.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: October 30, 2013
Time of Hearing: 10:00 a.m.

19
20 **PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER**
RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF
21 **AND**
PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTIONS TO RESOLVE
22 **PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN**
INTERVIEW OF THE MINOR CHILDREN, AND FOR ATTORNEY'S FEES AND
23 **SANCTIONS**

24 COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS
25 J. STANDISH, ESQ., of the law firm JOLLEY, URGAL WIRTH, WOODBURY & STANDISH, and
26 EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby submits his Reply

27 ...

28 ...

KAINEN LAW GROUP, PLLC

10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 to Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues and
2 Other Equitable Relief and his Opposition to Defendant's Countermotions to Resolve Parent/Child
3 Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and for
4 Attorney's fees and Sanctions.

5 DATED this 23rd day of October, 2013.

6 KAINEN LAW GROUP, PLC

7
8 By: 

9 EDWARD L. KAINEN, ESQ.
10 Nevada Bar No. 5029
11 10091 Park Run Drive, Suite 110
12 Las Vegas, NV 89145
13 *Attorneys for Plaintiff*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	4
A.	The Goal of the Court's Orders Must Be To Further the Best Interests of The Minor Children By Providing Stability and Continuity in Their Lives	4
B.	The Well Established Pattern of Conduct of Making False Factual Assertions and Then Making Arguments Based Upon Those Misrepresentations, Continues	6
1.	Vivian Has Been "Working" Brooke Since The Filing Of The Motion and Countermotion For Temporary Custody in This Case	6
2.	The Absence of This Teenage Discretion Provision Is The Best Way To Avoid Litigation and Obviate the Need To Seek A Resolution	7
3.	The Absence of the Teenage Discretion Provision Will Significantly Minimize the Need for a Therapist and a Parenting Coordinator	7
4.	Despite the Contrary Allegations, This "Teenage Discretion" Provision is a Far Cry From NRS 125.480(4)(a)	8
5.	Kirk's Relationship With Brooke Is Not Strained and Conflicted and Kirk Does Not Heap Pressure and Ridicule Upon Brooke	10
C.	Kirk Respectfully Submits that Vivian Should Not Be Rewarded For Her Misconduct, Especially When It Is Not In Brooke's And Rylee's Best Interest To Change the Status Quo	12
1.	Vivian Has Manipulated Brooke and Rylee To Such An Extent That They Believe That The Shared Experiences They Had With Kirk In Purchasing Dance Clothes and Dance Shoes Never Occurred	12
2.	Despite Vivian Not Helping Brooke and Rylee With Their Homework For Years, Vivian Has Convinced Brooke and Rylee That She Always Has	15
3.	Kirk Understands That Brooke and Rylee Believe Things Which Are Simply Not True Because Vivian Has Manipulated Them, So Kirk Has Never Accused Brooke or Rylee of Lying When This Occurs	18
D.	The Sympathetic Statements of Other People in The Community Are Substantially Consistent with the Sworn Affidavits of Tahnee, Whitney and Kirk	19

1	1.	Vivian Was Not Involved with Brooke and Rylee on a Day to Day Basis from February of 2006 until September 6, 2011, Except For Sleeping With Them At Night When She Was In Town	20
2	2.	The Statements from People in the Community Are Substantially Consistent With The Affidavits Submitted By Kirk	21
3	a.	Prior to the Fall of 2008	21
4	b.	Between the Fall of 2008 and September 6, 2011	21
5	c.	From September 6, 2011 Forward	21
6	3.	Vivian Attempts To Rehash The Same False Assertions Vivian Made To The Court Prior to This Court's Order Regarding Temporary Custody on February 24, 2012	22
7	4.	Vivian's Argument To Support Her Theme To Brooke That "Girls Are Supposed To Be With Their Mommies" Is Ridiculous	24
8	E.	The Incident With Brooke During the Lagoon Trip Is Far And Away The Most Troubling Exchange Kirk Has Ever Had With Brooke And Brooke, Rylee and Kirk Had A Great Time The Rest Of The Trip	25
9	F.	Vivian Falsely Accuses Kirk Of Being Manipulative When "Kirk Acted As If He Had Just Won The Lottery" When Told Rylee Would Not Need The Multiple Surgeries With The Device Implanted In Her Arm Secreting A Man-Made Hormone Into Her Body For The Next Three Years	28
10	G.	Vivian Makes Misrepresentations Throughout the Opposition	30
11	H.	This Court Is Not Prohibited from Modifying or Eliminating the Teenage Discretion Provision as Alleged by Vivian's Attorneys	32
12	I.	Vivian's Claims Regarding the Miscellaneous Items, Including Childhood Memorabilia, Are Factually Accurate	32
13	III.	CONCLUSION	33
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The opposing arguments and positions regarding the subject "teenage discretion" provision can
4 best be summarized as follows:

5

Kirk's Position	Vivian's Position
6 Wants status quo of stability and continuity to be maintained	Wants to disrupt status quo and thus create instability and discontinuity
7 Wants Brooke and Rylee to stay together for the next 4 years	8 Wants to separate Brooke and Rylee for the next 4 years and/or wants to cause so much emotional pain to Rylee in the hope of an outcome that will order Rylee living full time with Vivian regardless of the damage to Rylee in doing so
9 Does not want Brooke pressured into making a choice between her parents	10 Has been manipulating Brooke for many months in order to get Brooke to make a choice
11 Does not want Rylee to feel left behind, insecure, and distraught	12 Has displayed no hesitation whatsoever in creating a scenario where Rylee will feel left behind, insecure, and distraught
13 Kirk is a good, loving, and caring father	14 Kirk heaps pressure and ridicule upon Brooke and their home has "open conflict"
15 There is a well documented detailed history of Vivian manipulating these children	16 Tahnee, Whitney and Kirk are all lying; Vivian has always been an attentive involved mother; Vivian misspoke to Dr. Duffy when he noted "there is considerable ambivalence about her relationship with . . . her older children"
17 There is no evidence of Kirk ever coldly manipulating these children	18 There are some quotes from one of Kirk's affidavits indicating he has manipulated somebody
19 The subject provision, as applied, is contrary to the best interests of Brooke and Rylee	20 GOTCHA! Kirk agreed to the subject provision so it doesn't matter that, as applied, it is contrary to the best interests of Brooke and Rylee, or that Vivian doesn't abide by key provisions
21 The subject provision violates state policy set forth in NRS 125.460 "To encourage such parents to share the rights and responsibilities of child rearing"	22 Subject provision cannot be contrary to state policy because it merely "recognizes" that Court should consider input from certain minors under NRS 125.480(4)(a)

23
24
25
26
27
28

1 Vivian's knowing violation of the explicit	Brooke must have coincidentally conjured "her
2 safeguards of this provision has undermined	rights" and "teenage discretion" on her own at
3 any chance of it being reasonably implemented,	the same time as her 14 th birthday.
4 and; the continued existence of this provision	
5 will, undoubtedly, result in Vivian unduly	
6 subjecting Brooke and Rylee to needless	
7 emotional manipulation and distress	
8 Brooke was with Vivian for 21 straight days	Brooke must have coincidentally conjured "her
9 and the very next day announced to Kirk and	rights" and "teenage discretion" on her own at
10 Whitney that she now had the right to decide	the same time as her 14 th birthday.
11 where she lives	
12 Brooke was then with Vivian for 14 straight	Brooke coming up with all of this by herself is
13 days and within one day of her return to Kirk,	just a coincidence
14 crying and distraught, announced she wanted to	
15 live full time with Vivian	
16 In spite of everything Vivian has done, Kirk,	Vivian believes "girls are supposed to be with
17 naively, did not anticipate that Vivian would	their mommies"
18 try to separate Brooke and Rylee	

13 Vivian denies that she manipulated or prompted Brooke to leave Kirk and Rylee or caused
14 Brooke to announce her desire to live with Vivian full time, thus leaving her little sister for one-half the
15 time. In response to an email from Kirk where he accused Vivian of manipulating Brooke to live with
16 her full time, Vivian wrote,

17 "Brooke is telling you she wants to live with me . . .???? Hmmm,
18 Interesting. . . . Will speak to her and discuss options with Radford.
Thanks for letting me know!" (Vivian's email, dated 8.14.13)

19 The facts are otherwise. Brooke's two announcements were immediately following her 14th birthday
20 and right upon her return from two extended time periods with Vivian. Those are not coincidences.

21 To find additional circumstantial evidence that this did occur, one needs to look no further than
22 the affidavit of Vivian's own attorney. Exhibit S to Vivian's opposition to Kirk's countermotions
23 regarding attorneys' fees is the affidavit of Gary R. Silverman, Esq. This "affidavit" provides insight
24 as to what Vivian was being advised relative to the "teenage discretion" provision. Mr. Silverman
25 wrote,

26 "Mr. Harrison must know that the "teen" exception in the custody agreement **will be exploited**
27 **by the girls and it is Vivian who will have de facto primary custody.**"
28 (Exh. S to Vivian's opposition to Kirk's countermotions re attorneys' fees, p. 9, l. 16-17)
(emphasis added).

1 Kirk respectfully submits that the best interests of Brooke and Rylee should trump selfish
2 gamesmanship, the only goal of which is to "win."

3 After years of Vivian emotionally and physically abandoning Brooke and Rylee, Vivian now
4 wants this Court to reward her based upon baseless allegations that Kirk is pressuring and ridiculing
5 Brooke and has an environment in his home that is full of conflict. Kirk has never pressured or ridiculed
6 Brooke. The only issues Kirk has had with Brooke are refusing to go to Lagoon after driving to Layton,
7 Utah and making Kirk wait outside Vivian's house in the car for 20 to 34 minutes (when it should have
8 taken less than 5 minutes) when she picks up her things. Interestingly, both events directly involved
9 Vivian either physically being with Brooke, or in direct electronic communication with Brooke. Vivian
10 has orchestrated both problems. The home that Kirk, Brooke and Rylee share is loving, caring,
11 peaceful, calm, happy, and civil. The documented events which have historically occurred with Vivian,
12 such as drug abuse, volatility, instability, deceitfulness, lying, screaming, swearing, threatening, hitting,
13 throwing, criticizing, and blaming, do not occur in Kirk's home.

14 It should be noted that the bulk of Vivian's opposition entirely misses the mark of Kirk's motion.
15 Kirk's chief concern is that Vivian has failed to abide by the express terms of the "Teenage Discretion"
16 provision to such an extent that, as applied, Vivian has rendered it completely unworkable. Her defying
17 specific terms has resulted in the exact opposite effect of the one intended by the parties in negotiations.
18 It is also most interesting, that while Vivian tells tales criticizing Brooke's relationship with Kirk, she
19 does not ever deny violating the terms of the existing provision. Rather, for 25 pages, she simply argues
20 all the reasons such a "decision" is justified. Vivian also seems to have the same misinterpretation of
21 the provision that Brooke does - the provision does not entitle any child to make a choice as to
22 residence, but suggests the parents should consider the wishes of the child when not influenced by the
23 other parent as to short periods of time. The confusion by both Brooke and Vivian, must also be a
24 coincidence, according to Vivian.

25 ...

26 ...

27 ...

28 ...

II. ARGUMENT

A. The Goal of the Court's Orders Must Be To Further the Best Interests of The Minor Children By Providing Stability and Continuity in Their Lives

The uncertainty about the future for minor children is one of the primary issues associated with divorce litigation, particularly protracted litigation. Practitioners know that such ongoing litigation takes a toll on children, as does the instability of not knowing where they are going to be living or with whom from day to day. There is a reason that children are never asked to choose between their parents. At most, the Court considers the wishes of a mature child who is making reasonable preferences under appropriate circumstance, as one a multitude of factors. That is our statutory scheme; not the wholesale delegation of choice to children as advocated by Vivian. It is not in Brooke's best interest to foist the responsibility upon her to "choose" which parent she wants to live with more than the other parent at a particular point in time. Such a decision would force Brooke to choose between living with Rylee all of the time or leaving Rylee to spend more time with one parent than the other. Such a scenario cannot be good for either child. Most importantly though, Vivian sharing her gross misunderstanding of "teenage discretion" with Brooke, and then sending Brooke out to follow marching orders, immediately following her 14th birthday, was not fair or reasonable to Brooke. As well, arguing for 25 pages that the ends justify the means, is not legally defensible to the issue before the Court.

It is contrary to Brooke's and Rylee's best interest to have a provision which motivates either parent to lobby the children to live with one more than the other. This is especially true where there is a well documented history of Vivian engaging in conduct toward alienating Kirk from Brooke and Rylee. That is why there was an express provision prohibiting the same. Any arrangement that encourages a parent to do what is most popular with the children, as opposed to what is best for the children, is not in their best interests. An arrangement which encourages both parents to consistently do what is in the best interests of the children, regardless of whether it is the most popular decision, is much preferred to an arrangement which motivates the parents to curry favor with them.

From the outset, the functionality of this provision was speculative at best, especially given the dysfunctional relationship between the parents. Accordingly, specific provisions and safeguards were put in place, by which both parties agreed to be bound. Without those safeguards in place there would

1 have been no agreement for “teenage discretion”, and without the parties abiding by those safeguards
2 there can be no “teenage discretion.” The fact is, that Vivian has entirely ignored the written order, but
3 likes that it is called “teenage discretion”, so she attaches her own meaning and interpretation to that
4 term (a misinterpretation Brooke coincidentally shares); to her the written words mean nothing. To her
5 the mere existence of “teenage discretion” means that “Brooke has the discretion to choose, and Brooke
6 chooses me.”

7 The status quo is joint custody between Kirk and Vivian. Since the entry of this Court’s Order
8 on July 11, 2012, custody has been shared essentially on an equal basis.¹ Vivian now wants to disrupt
9 the stability and continuity in Brooke’s and Rylee’s lives. Without the “teenage discretion” provision,
10 Vivian would be relegated to litigation and be, rightfully, confronted with the Court’s “desire to provide
11 children with stability and continuity in their lives, and to discourage endless litigation and re-litigation
12 of custody issues. . .” Nevada Family Law Practice Manual, 2013 Edition. Ch. 2B.E(a). With the
13 “teenage discretion” provision, Vivian is attempting to obtain the same result. However, Vivian should
14 still be confronted with the same desire of the Court “to provide children with stability and continuity
15 in their lives” and therefore the Court should be unwilling to modify the joint custody status quo unless
16 it is clearly in the children’s best interests. NRS 125.510(2).

17 Kirk wants to maintain the stability and continuity in Brooke’s and Rylee’s lives and therefore
18 maintain the status quo of equal shared custody under the existing plan. Prior to Vivian’s vacations
19 with Brooke and Rylee this summer there really had been no problems. It is in the best interests of
20 Brooke and Rylee to modify the order to eliminate the “teenage discretion” provision. *Truax v. Truax*,
21 110 Nev. 437, 874 P.2d 10 (1994).

22 ...

23 ...

24 ...

25 ...

26

27
28 ¹ In actuality, Kirk was given more time by the Court’s Temporary Order, but agreed to equalize the
time as part of the final negotiations.

B. The Well Established Pattern of Conduct of Making False Factual Assertions and Then Making Arguments Based Upon Those Misrepresentations, Continues

1. Vivian Has Been "Working" Brooke Since The Filing Of The Motion and Countermotion For Temporary Custody in This Case

Vivian represents to the Court, "In March 2012, when the Court directed the parties share joint physical custody, the children spent the majority of their time in Vivian's care. (Vivian's opposition, p. 2, l. 11-13) The temporary custody order of this Court was followed. Therefore, the fact is that the children spent the majority of their time in Kirk's care, as specified in the Temporary Orders. The reference indicated in Vivian's papers referred to the time period *prior* to this Court's order; it refers to the time period when Vivian was **taking** Brooke and Rylee away from Kirk and parking them at the Atkinsons, many times when Vivian was not even there. This issue and Vivian's overt acts of trying to alienate Kirk from Brooke and Rylee were addressed in detail in a letter, dated February 3, 2012, from Ed Kainen, Esq. to Radford Smith, Esq., attached hereto as **Exhibit "2"**, which provides in relevant part:

For several weeks, Vivian has had Brooke and Rylee spending more time at the Atkinson home than they do in their own home. Sometimes Vivian is also there and many times she is not. Kirk strongly believes Vivian is intentionally trying to minimize the time Kirk has with Brooke and Rylee. Kirk got an email from Vivian last night that she and the girls are going to be spending Valentine's Day dinner with someone else. This type of pre-emptive behavior by Vivian has become all too common.

Kirk has also informed me that it is apparent Vivian has been working Brooke and Rylee a lot. Kirk has noticed significant changes in Brooke's attitude towards him during the last several months. On Thursday afternoon, January 27, Kirk was sitting on the couch in the living room and asked Rylee to sit with him and snuggle. Rylee responded, "I'm not supposed to snuggle you anymore dad."

(Exh. 2, p. 3 & 4)

Consistently, in Kirk's reply re custody, filed 1.4.12, it was noted, "Currently, Vivian takes Brooke and Rylee to the Atkinsons to play and to sleep over night at every opportunity." (p. 40, l. 12) This was the period immediately prior to the Court's Temporary Orders, and Vivian was trying to gain a custodial advantage by unilaterally separating Kirk from the children and securing them in a place to which Kirk had no access. The Court rightfully rejected those efforts. Kirk respectfully urges the Court to read pages 2 through 4 of this letter, as this letter provides tremendous insight as to Vivian's intentional manipulations of Brooke and Rylee in connection with their relationship with Kirk.

2. **The Absence of This Teenage Discretion Provision Is The Best Way To Avoid Litigation and Obviate the Need To Seek A Resolution**

Vivian's assertions are patently and intellectually offensive;

"The parties' counsel drafted the provision to place *less* pressure on the children to make any choice between parents by allowing the children a voice, after age 14, to spend more time with one parent without undermining the joint custodial plan. The fundamental goal of the provision was to avoid litigation, and seek resolution through therapy and a Parenting Coordinator."

First, and most importantly, if Vivian understands that the children will spend one-half their time with Vivian and one-half their time with Kirk, **and** that is not going to change, then Vivian will not be as motivated to continue her manipulation of the children (at least to the extent she has been), Vivian will have less reason to try to alienate these children from Kirk, and Vivian might realize it is not in the childrens' best interests, it is not a popularity contest and the priority is to do what is best for the children, rather than buying their loyalty. Second, without the "teenage discretion" provision there will be substantially reduced need for a parenting coordinator. If Brooke and Rylee are not put through the ringer by Vivian, and they have consistent equal parenting time with each parent, they will have what each party claims was intended. Third, the assertion that the "teenage discretion" provision was to avoid litigation" is nonsensical. It is insulting to assert that the fundamental goal of a provision like this was to avoid litigation. Clearly, the absence of the "teenage discretion" provision and the strong message from the Court that the time share is not going to change, absent a legitimate basis to do so, is the best way to avoid litigation and obviate the need to "seek resolution." Fourth, to assert this provision does not undermine the joint custodial plan is absurd.

3. **The Absence of the Teenage Discretion Provision Will Significantly Minimize the Need for a Parenting Coordinator**

Kirk did not make a "tactical delay" in identifying a therapist or parenting coordinator. The delay was caused by Radford Smith when he proposed a Parenting Coordinator Order which, among other things, unconstitutionally delegated complete judicial authority to a Parenting Coordinator, contrary to the understanding of the parties. Counsel for Kirk enumerated the objections in a letter to Mr. Smith on May 9, 2003.

Kirk agrees with the assertion that "the pressure to spend more time with Vivian is building." (Vivian's opposition, p. 3, l. 9-10) That pressure is being applied by Vivian upon Brooke!

1 There is no debate that the most effective and influential, and therefore most powerful, person
2 in the resolution of disputes is a mediator. A mediator has the power to recommend – nothing more.
3 Discovery Commissioners in the Eighth Judicial District have the power to recommend. Federal
4 Magistrates have the power to recommend. However, Kirk’s assertion that the Parenting Coordinator
5 should, similarly, have the power to recommend and not the judicial authority to decide, is described
6 by Vivian as “his attempt to reduce the power of the Parenting Coordinator to nothing.” (Vivian’s
7 opposition, p. 3, l. 15)

8 Vivian accuses Kirk of entering into the Parenting Plan in “bad faith.” Kirk respectfully submits
9 in light of the statement from Mr. Silverman, if anyone entered into the Parenting Plan in “bad faith”
10 it was Vivian and Vivian’s counsel, who have apparently knowingly devised a plan to separate Brooke
11 and Rylee from one another for one-half the time for the next 4 years. What is their retort to that fact
12 acknowledged by Mr. Silverman? Perhaps, the second part of the plan is that Rylee will be so sad that
13 she is separated from Brooke, that they hope the therapist will recommend, and the parenting
14 coordinator will **order**, that Vivian has Rylee full time before she is 14 years old. In any case, whatever
15 the goal, it appears that the manipulation of the children will continue and nothing being done removes
16 them from the ongoing conflict or makes their best interests a priority.

17 From the inception of this case, Kirk has accepted that Vivian’s attorneys have frivolously
18 attempted to impugn his character in their ever vigilant attempt to make him the “bad guy.” As
19 horrendous as all of that has been, it seems to pale next to what they have planned with regard to
20 Brooke and Rylee.

21
22 **4. Despite the Contrary Allegations, This “Teenage Discretion” Provision is a
Far Cry From NRS 125.480(4)(a)**

23 NRS 125.480(4)(a) provides that the Court shall consider “the wishes of the child if the child
24 is of sufficient age and capacity to form an intelligent preference as to his or her custody.” This statute
25 merely provides that the Court should **consider** the wishes of certain minor children.

26 This statute does not provide the Court must do what the child wants. This statute does not
27 provide the Court must ignore the known history of abuse and neglect of one parent in making its
28 determination. This statute does not provide the Court is required to separate minor children from one

1 another. The mere existence of this statute does not provide attorneys the license to devise and construct
2 agreements apparently meant for one parent to create or perpetuate an environment of manipulation of
3 minor children which is clearly not in their best interests. The statute is not intended to be used to
4 replace stability and continuity, with instability and discontinuity.

5 In one of her most bold misrepresentations of Kirk's argument, Vivian asserts, "He argues that
6 a provision recognizing teenage discretion violates public policy even though Nevada law *requires* the
7 court to weigh such discretion when determining the best interest of a child." (Vivian's opposition, p.
8 3, l. 13-14) First, and most obvious, Kirk does not argue that a provision which merely *recognizes* the
9 preferences of certain children violates public policy. It is safe to say that the "teenage discretion"
10 advocated by Vivian does a whole lot more than merely recognize preferences of certain children. That
11 "teenage discretion" provision clearly is contrary to the Nevada policy of encouraging parents "to share
12 the rights and responsibilities of child rearing." NRS 125.460 Further, the "teenage discretion" in this
13 case, *as applied*, is what is problematic.

14 This Court had occasion in this proceeding to articulate its sentiments concerning provisions
15 granting a right of first refusal. The Court may recall that Kirk requested a right of first refusal during
16 the hearing before this Court on February 24, 2012. The Court denied Kirk's request stating, "I don't
17 typically like rights of first refusal." (2.24.12 Hearing Transcript, p. 71, l. 19-24) The Court later stated
18 the reason it does not like rights of first refusal:

19 I don't generally believe in – well, not that it's a belief, but I think
20 it creates more problems than it's worth, so I don't typically award rights
of first refusal except if it's an overnight due to unavailability of a parent.

21 (2.24.12 Hearing Transcript, p. 71, l. 19-24)

22 This Court made it clear that it believes that right of first refusal provisions create more problems
23 than they are worth. Presumably, it is because when you have parents who do not get along and do not
24 communicate civilly or effectively, the right of first refusal provision creates more problems and
25 conflict. Additionally, the door is opened to claims of abuse, that are often fraught with conflict and "he
26 said / she said". All of the same is true with respect to a "teenage discretion" provision when the parents
27 do not get along, do not communicate civilly or effectively, and most importantly do not abide by
28 specific safeguards to prevent the enmeshing of the children in the conflict of the parents. Such a

1 provision is not in the best interests of the children and creates more conflict between the parents and
2 thus more of a hostile unsettled environment for the children.

3
4 **5. Kirk's Relationship With Brooke Is Not Strained and Conflicted and Kirk Does Not Heap Pressure and Ridicule Upon Brooke**

5 For many years, Kirk was the only parent that cared for Brooke and Rylee on a regular basis.
6 For all the years that Vivian did not care for them and chose not to spend time with them, Kirk was there
7 every day on a consistent basis. The history of absenteeism and abandonment is documented, and even
8 Vivian acknowledged the same issues to her own doctors about her issues with the older children.
9 Despite Vivian's revisionist claims, this issue isn't even fairly in dispute. Other than the rather costly
10 perjurious statements from Heather Atkinson and Michell Walker, no one has ever said that Kirk was
11 anything other than a dedicated, attentive and caring father. Tahnee and Whitney know better than
12 anyone else how good a father Kirk has been to Brooke and Rylee. Kirk urges the Court to reread their
13 affidavits – affidavits they each spent over two hours revising to make them their own. (Exh. 2 & 3 to
14 Kirk's motion re custody, filed 9.14.11) The Court will recall that the neighbors, other parents, and the
15 crossing guard all testified that Kirk, not Vivian, drove Brooke and Rylee to and from school, dance
16 classes, sports practices and activities. It was only Kirk, not Vivian, that consistently attended their
17 sporting events for several years. (Kirk's reply re custody, filed 1.4.12, Exh. 22, 23 & 24)² It still
18 remains interesting that prior to Vivian's self-created competition with Kirk to "win" Brooke and Rylee
19 and prior to Vivian's now-continuing efforts to alienate Kirk from Brooke and Rylee, Vivian had a
20 different view of Kirk as a parent:

21
22 Would never DREAM of doing that to the father of my children. My
23 children luv him and he is a descent human being and loves his children.
24 **He is a good father.** Although we may not see things eye to eye I would
25 never never never do anything to hurt one of the most important persons
26 in my childrens lives for anything!!!

26 ² Kirk respectfully requests the Court take another look at the photographs attached as Exh. 4 to Kirk's
27 motion re custody, filed 9.14.11 and Exh. 18 to Kirk's reply re custody, filed 1.4.12, as a reminder of
28 what Vivian was doing much of the time that Kirk was a dedicated and attentive parent to Brooke and
Rylee. For a significant period of time during 2010, Vivian spent more waking hours with the stuffed
animal "Hugo" than she did with Brooke and Rylee.

(Email from Vivian to Robert W. Lueck and copied to Bob Dickerson, Marvin Gawryn, Melissa Attanasio, Tom Standish and Kirk, dated 7.15.11, attached hereto as **Exhibit "3"**)

Kirk's dedication, love and care of Brooke and Rylee has never changed. It certainly hasn't changed while under the microscope of this litigation. He is still a good father. What has changed is that Vivian went from being a parent who largely abandoned Brooke and Rylee, to a parent determined to win her self-created competition with Kirk, and who has been attempting to alienate Kirk from Brooke and Rylee for the last two years since the filing of Kirk's motion re custody on September 14, 2011.

In spite of Vivian's persistent efforts to alienate Brooke and Rylee from Kirk, and despite the fact that Vivian's efforts have made some days more difficult than they otherwise would have been, the relationship between Kirk and Brooke and Rylee remains one of love and care. Brooke, Rylee and Kirk all enjoy each other's company. As they always have done, they enjoy eating their meals together. They still do fun things together.

As stated, there is no question, that as a consequence of Vivian's efforts to alienate Kirk from Brooke and Rylee, there are days, especially the first day Kirk gets Brooke and Rylee after being with Vivian, that Brooke and Rylee are more distant from Kirk than they were in the past. That is heart wrenching for Kirk. However, the scenario described by Vivian (on page 4, l. 1-10 of Vivian's opposition) does not exist. Kirk does not and never has heaped "pressure and ridicule" upon Brooke. It is impossible to respond to such obscure allegations such as "Kirk's actions and words show he lacks insight into the emotional and physical needs of the children."

Vivian asserts that Kirk "acknowledges there is open conflict with her in his home." (Vivian's opposition, p. 4, l. 13-14) That is false. There is no open conflict in Kirk's, Brooke's and Rylee's home. As compared to the volatile, unstable, screaming, swearing, hitting, throwing, accusatory, arguing, finger pointing environment that Vivian created with the children when Kirk was still with her, his home with Brooke and Rylee is like a peaceful, but happy monastery. Although Vivian has perhaps forgotten, the Court undoubtedly has not forgotten, it was Vivian who punched each of the older children in the head, it was Vivian who got Tahnee on the ground and kicked her repeatedly in the abdomen, and it was Vivian who hit Kirk in the face, which fact was memorialized by the Boulder City

1 Police Department. It was Vivian who one-by-one threw each of the older children out of their home
2 when they were each 14 and 15 years old..

3 Vivian requests an evidentiary hearing on custody. While Kirk assumes that the Court is not
4 inclined to conduct such a hearing, if an evidentiary hearing is the Court's inclination, Kirk's believes
5 the most enlightening witnesses as to what actually went on in the Harrison home, behind doors closed
6 to the public, will be Tahnee and Whitney.

7 Vivian also requests child interviews of the minor children. While Kirk continues to believe that
8 involving the children in their parents' dispute is not in their best interest, and that the words spoken by
9 any child may not always reflect the entirety of what is going on in any case, he will defer to the Court.
10 However, to the extent that the Court chooses to interview the minor children, Kirk requests that the
11 Court also interview Tahnee and Whitney, who grew up in the same home with the same parents, lived
12 in the home with the minor children and the parents throughout the disputed critical times, and have the
13 benefit of adulthood and added maturity. Their insight into the full picture of each of the parents and
14 the best interests of their sisters would be invaluable.

15 **C. Kirk Respectfully Submits that Vivian Should Not Be Rewarded For Her**
16 **Misconduct, Especially When It Is Not In Brooke's And Rylee's Best Interest To**
17 **Change the Status Quo**

18 **1. Vivian Has Manipulated Brooke and Rylee To Such An Extent That They**
19 **Believe That The Shared Experiences They Had With Kirk In Purchasing**
20 **Dance Clothes and Dance Shoes Never Occurred**

21 From the beginning of this case Vivian has attempted to rewrite history, and when that history
22 is incapable of rewriting, she has employed "hired guns" to explain it away. Regardless of the fact that
23 half of her rewritten claims are at odds with the other half, her claims and theories are only limited by
24 imagination. While the Court has the benefit of the written record and the evidence, the children do
25 not. In addition, when they are only being lobbied by one parent, they are fat more susceptible to buying
26 into Vivian's revisionist reality.

27 In this regard, as a result of the continuous campaign involving Brooke and Rylee, in a most
28 insidious way, Vivian has begun to change the childrens' reality and has now convinced Brooke and
29 Rylee that Kirk has never bought them dance clothes and dance shoes. This is despite the fact Brooke
30 and Rylee were with Kirk every time he made those purchases. The fact that Vivian has been able to

1 successfully convince them that these shared experiences with Kirk *never occurred* gives insight, by just
2 this one example, as to the extent of Vivian's extreme manipulation of these girls.

3 Kirk has taken Brooke and Rylee to buy them dance shoes, leotards, tights, and dance clothes
4 for dance classes. *See* Exh. 1 to motion. In spite of these facts, Vivian asserts:

5 Vivian did not, as Kirk suggests at page 6 of his Motion, "convince" Brooke that she
6 should go with Vivian to buy dance shoes – **this had been their practice for the entire**
7 **time Brooke and Rylee have been in dance.** Brooke told Vivian that she wanted
8 Vivian to take her shopping. This did not come as a surprise; Vivian cannot remember
9 a single instance where Kirk bought dance clothes and shoes for he children while
10 Vivian and Kirk were together.

11 Kirk admits that he argued with the girls when they told him that they could not
12 remember him buying dance shoes or clothes for them in the past. Motion, page 7.
13 Because Kirk's involvement in dance has been limited to driving the children, he does
14 not understand that the children do not equate the purchasing of leotards at Target with
15 **the purchase of dance clothes and shoes, which they purchase from a specialty**
16 **store.** Kirk has attempted to create a new reality whereby he was involved in the
17 purchase of dance clothes for the children – he was not, and he was not justified in
18 chiding Brooke for spending time shopping with Vivian.

19 (Vivian's opposition, p. 14, l. 26-27; p. 15, l. 1-12)

20 Based on the forgoing assertions by each party, only one of the two assertions can be true. The
21 Court will not lose site of the fact that, despite her repeated claims *to the children* that Kirk had no
22 involvement in dance purchases (to the point that the children now repeat that statement to him *as fact*),
23 in her most recent pleading Vivian seems to impliedly acknowledge regular dance purchases by Kirk,
24 but has narrowed her claims to this Court to purchases "at specialty stores". Either Kirk is right, and
25 he has purchased dance clothes and shoes "at specialty stores", or Vivian is right that Kirk has not
26 purchased dance clothes and shoes "at specialty stores".

27 Vivian cites the absence of "a single instance where Kirk bought dance clothes and shoes for the
28 children while Vivian and Kirk were together." According to Vivian, Kirk has only bought leotards at
29 Target and Kirk just doesn't understand that you purchase dance clothes and shoes "from a specialty
30 store." Vivian also asserts,

31 **"Kirk has attempted to create a new reality** whereby he was involved
32 **in the purchase of dance clothes for the children – he was not,** and he
33 **was not justified in chiding Brooke for spending time shopping with**
34 **Vivian."** (Vivian's opp., p. 15, l. 9-12) (emphasis added)

1 None of these outrageous assertions of fact has any truth to them whatsoever.³

2 Kirk did not buy leotards from Target. Kirk has bought athletic clothes, tops and bottoms, and
3 sports bras for Brooke and Rylee at Target, Nordstrom Rack and Scheels for use in dance classes. Kirk
4 has bought leotards, tights, ballet shoes, tap shoes and other dance shoes at dance specialty stores. Kirk
5 bought Brooke a pair of dance shoes at the store in Boulder City before it closed. The dance store next
6 to Trader Joe's in Henderson is called, "Judy's Dance Shoppe." The ownership of this store changed
7 within the last year or so. The prior name of the store was, "LV Dance Shoppe." Kirk has taken Brooke
8 and Rylee to buy both Brooke and Rylee dance shoes and clothes at that "specialty" store. Rylee had
9 a growth spurt and sometime later Kirk went back to the same store with Rylee and bought Rylee two
10 new leotards and Brooke another pair of dance shoes.

11 Each year, Kirk takes his children, including Brooke and Rylee, to see one or two plays at
12 Tuachan, near St. George, Utah. On one such trip Kirk learned there was a dance store ("specialty
13 store") in St. George, that sold the same dance clothes and dance shoes as LV Dance Shoppe, but at
14 considerably lower prices. The big name in dance clothes, particularly leotards, dance shoes and ballet
15 shoes is called "Bloch." The reason Kirk knows he has never bought leotards at Target is because
16 Target does not sell "Bloch" leotards. This store carried a full line of "Bloch" products. The name of
17 the "specialty store" in St. George is "Dance Magic". Kirk was able to locate evidence that on July 31,
18 2009, Kirk, with Brooke and Rylee, bought Brooke and Rylee, \$323.96 worth of dance clothes and
19 dance shoes from the specialty store, Dance Magic in St. George, Utah. Attached hereto as **Exhibit "4"**

20 ...

21 ...

22 ...

23 ...

24 ...

25

26 _____
27 ³ It should also be emphasized that Kirk never "chided" Brooke or scolded her in any way. Kirk simply
28 asked why he couldn't take her to get the dance shoes. When Brooke responded that Vivian had always
taken her, Kirk said that was simply not true. Kirk also said that if your mom wanted to take you to get
dance shoes, he could not understand why she couldn't have taken Brooke during her custodial time.

1 is a true and correct copy of Kirk's – not Vivian's – CitiCard, for the period of July 9 through August
2 7, 2009, evidencing this purchase at Dance Magic.⁴ Vivian has not gone on the family trips to Tuachan
3 for several years, so it is doubtful she was there.

4 Once again, as it has done throughout this case, *the evidence demonstrates the truth, despite*
5 *Vivian's contrary allegations.* The truth is clear, even despite Vivian convincing the children that these
6 events never occurred, and despite Vivian asserting to this Court that they did not. More to the point
7 though, the foregoing illustrates the insidiousness of the type of manipulation being employed by Vivian
8 upon Brooke and Rylee. Vivian has convinced them that experiences they have shared with Kirk, such
9 as Kirk taking them to buy the dance clothes and dance shoes they needed, *never even occurred.* With
10 this type of manipulation Vivian not only falsely minimizes Kirk's involvement with the girls, but
11 falsely overstates Vivian's involvement with the girls. It is yet another instance, where Vivian has
12 intentionally and knowingly misrepresented material facts to this Court in an effort to falsely accuse
13 Kirk of "attempting to create a new reality" and, thus once again, make Kirk the "bad guy." Kirk simply
14 uses this as another occasion to remind the Court that the claims he has made have been consistent and
15 supported by evidence, while the claims Vivian has made have wildly varied and are not supportable
16 by actual evidence.

17 Finally, Kirk would note that he did not argue with Brooke and Rylee when they said he had
18 never taken them to get dance clothes and shoes. Kirk expressed surprise and indicated that there was
19 no question that he had taken them on multiple occasions.

20
21 **2. Despite Vivian Not Helping Brooke and Rylee With Their Homework For Years, Vivian Has Convinced Brooke and Rylee That She Always Has**

22 Vivian's ability to consistently manipulate Brooke and Rylee to the point that she re-writes
23 history has been applied in several contexts. Vivian also has them believing that she has always helped
24 them with their homework.

25
26 ⁴ Most of the bankers boxes containing cancelled checks and credit card statements are in storage at the
27 ranch. Therefore, in the limited time available, Kirk has been unable to find the cancelled check or credit
28 card statement to Danceworks and the credit card statements evidencing his purchases of dance clothes
and dance shoes, primarily Bloch brand, at LV Dance Shoppe. If Kirk is able to go to the ranch and find
those documents between now and the hearing, he will supplement this Reply.

1 Vivian accuses Kirk of "bad faith" in his assertions that Vivian stopped helping Brooke and
2 Rylee with their homework. In order to make this claim Vivian deliberately misrepresents the record.
3 The Court is urged to read Vivian's opposition, page 10, lines 20-28 and page 11, lines 1-4. Vivian
4 points to a single sentence in Kirk's letter of January 4, 2010, to Dr. Roitman which she claims is
5 inconsistent with Kirk's claim. She cites the sentence, "And **as written previously**, she **has** always
6 done a good job spending time with the children with their homework and reading before bedtime."
7 (Kirk's reply, 1.4.12, Exh. 9, p. 15) (emphasis added by Kirk) The reference to "as written previously"
8 refers to page 7 of the same letter, wherein Kirk wrote, "Vivian worked with two of our three **oldest**
9 **children** each night **helping them with homework** and reading with them." (emphasis added)

10 In context, this is very clear. However, despite this undeniable fact, Vivian goes on to represent
11 to the Court, "Kirk did not qualify this to limit it only to the older children, nor did he allege anywhere
12 that Vivian was not helping the younger children." This is inaccurate and nothing more than utter
13 nonsense! There seem to be no bounds to the liberties Vivian and Vivian's attorneys will take to
14 mislead this Court.

15 These are the true facts:

16 With regard to the statements of **Tahnee**:

17 "My mother...**consistently exhibits a lack of any thought whatsoever about whether**
18 **Brooke and Rylee have had dinner or have done their homework**, rarely does
19 anything with Brooke and Rylee, rarely does anything for Brooke and Rylee, and has
20 repeatedly left Brooke and Rylee for extended periods of time without any regard
21 whatsoever for their best interests. I have witnessed the ill-effects my mother's conduct
22 has had upon Brooke in particular."

23 (Kirk's motion re custody, Exh. 2, ¶39) (emphasis added)

24 My dad takes good care of Brooke and Rylee on a daily basis. He makes them a
25 complete hot breakfast every school day morning and makes sure they always have a
26 good dinner meal. **He helps them with their homework whenever they need help.**
27 He takes them to and from school, to and from dance classes, and to and from any sports
28 activities. My dad, Brooke and Rylee do their laundry together, when my mother is
away on her many trips. He makes sure Brooke and Rylee take regular showers during
the week and brush their teeth every night. He takes them shopping and to children's
movies on a regular basis. He takes Brooke and Rylee to the ranch with their friends for
fun weekends. When my dad has to be out of town, he calls every day he is gone and
talks to Brooke and Rylee so they know he cares about them and to make sure Brooke
and Rylee have done their homework, have eaten dinner, and are going to bed on time.
He is attentive, and Brooke and Rylee know he cares deeply about them and that they
are loved by him.

(Kirk's motion re custody, Exh. 2, ¶41) (emphasis added)

1 With regard to statements of Whitney:

2 "I told my Dad that my Mother will only do things where she thinks she will be given
3 credit. For example, she will spend more time after class helping students other (sic)
4 [rather] than Brooke and Rylee with their homework."

5 (Kirk's motion re custody, filed 9.14.11, Exh. 3, ¶17)

6 My Mother spends most of her waking hours by herself in the home office with the door
7 closed. When you go in there she is usually on the internet shopping, reading, or
8 watching a dvd with Jonathan Rhys Meyers. My Mother rarely cooks a meal for Brooke
9 and Rylee. My Mother rarely cleans the kitchen. My Mother seldom does anything with
10 Brooke and Rylee other than sleep in the same bed. My Mother seldom takes Brooke
11 and Rylee anywhere or wants to do anything with them. **My Mother normally doesn't
12 help Brooke and Rylee with their homework.** In conversations with my Mother the
13 topics are usually about her – something she is buying, some cosmetic procedure,
14 something about fashion, or something about Jonathan Rhys Meyers or the Hope
15 Foundation. Almost every conversation with my Mother is about her. My Mother
16 seldom talks about Brooke or Rylee or asks about my life or what I'm doing. When my
17 Mother is home she doesn't do the laundry more than about once a month. On those
18 days when my Dad goes to the ranch to work, there have been a number of times when
19 my Mother doesn't get or make Brooke and Rylee dinner. My Mother is oblivious to
20 Brooke and Rylee's needs most of the time. I don't think she is a good influence morally
21 or shows them good character. She is obsessed with appearance and it is her practice of
22 telling her children that they have physical defects.

23 (Kirk's motion re custody, filed 9.14.11, Exh. 3, ¶26)

24 As noted previously, Vivian's calculated manipulation started early in the litigation. At the
25 outset of this litigation when Rylee was only nine years old and Kirk asked her to sit next to him on the
26 couch, Rylee responded, "I'm not supposed to snuggle you anymore dad." Vivian has also convinced
27 Brooke, and perhaps Rylee as well, that "girls are supposed to live with their mommies" - a theme that
28 permeates her most recent pleading Suffice it to say, this type of calculated manipulation is clearly not
in their best interests. As well, any provision that encourages, and perhaps rewards, that manipulation,
is not in the childrens' best interests.

Since Kirk is not a party to the conversations which occur in Vivian's home when the girls stop
by to pickup an item, he is unable to enlighten the Court or himself as to exactly what Vivian is doing
to keep the girls from returning to Kirk's car in a reasonable period of time, but Rylee's comments have
clearly indicated that they have been ready to come back to the car while Vivian keeps them talking.⁵

⁵ Similarly, Brooke is a really good kid and normally very thoughtful and considerate, especially of
Rylee. However, Kirk has no idea what Vivian says to Brooke to convince Brooke to keep Kirk waiting
in the car for 20 to 34 minutes when picking up stuff from Vivian's house, but consistently takes less
than 5 minutes when picking up the same stuff from Kirk's house.

1 However, the Court can certainly get a real sense for what has been happening by reading Exhibit "2"
2 attached hereto.

3 Vivian actually argues that the two neutral witnesses in the home are Brooke and Rylee. Kirk
4 respectfully submits that because they are the recipients of the manipulation and they are the minor
5 children who are the subject matter of this litigation, they are not *neutral* witnesses. Vivian has
6 successfully taught them to believe things that are not true. However, there were indeed two *actual*
7 *neutral* witnesses living in the home, during the critical portions of this family's history, who are both
8 adults, and without question have the best interests of Brooke and Rylee at heart. Those witnesses are
9 Tahnee and Whitney.

10 **3. Kirk Understands That Brooke and Rylee Believe Things Which Are Simply**
11 **Not True Because Vivian Has Manipulated Them, So Kirk Has Never**
12 **Accused Brooke or Rylee of Lying When This Occurs**

13 Kirk is well aware that Vivian is manipulating Brooke and Rylee into believing things that are
14 simply not true. Therefore, when he has discussions with Brooke about such things, such as simply as
15 Kirk taking Brooke and Rylee to buy dance clothes and dance shoes, Kirk has not and never will accuse
16 Brooke or Rylee of lying. What Kirk has done, albeit with limited success thus far, is attempt to refresh
17 Brooke's and Rylee's memories by reminding each of specific occasions, for example, that he took them
18 to buy dance cloths and dance shoes.

19 It is quite ironic that Vivian is the singular force of causing problems by wrongly manipulating
20 Brooke and Rylee into believing things that are verifiably false, and then accusing Kirk, as follows:

21 "The emotional conflict caused by Kirk demanding they re-write their history together is
22 debilitating. It is this kind of behavior by Kirk that Vivian sought to address through a therapist
23 and PC, but Kirk has undermined that process. Brooke is now suffering under Kirk's constant
24 barrage of criticism and disapproval."

25 (Vivian opp. p. 20, l. 24-25)

26 To actually be litigating with these facts, is truly outrageous. Vivian and Vivian's attorneys, not
27 constrained by the truth or the facts, but limited only by their own imaginations, continue to make
28 assertions premised upon patently false "facts". Then, using those false "facts", carry out an all out
29 assault upon Kirk's character. This scheme has repeatedly been employed in this case by Vivian and
30 Vivian's attorneys.

1 Kirk does not criticize Brooke. There is no “constant barrage of criticism and disapproval.” For
2 example, Brooke and Kirk have had several discussions pertaining to Brooke’s desire to be a make-up
3 artist. In those discussions, Brooke indicated that she wants to work at Disney as a make-up artist. Kirk
4 has emphasized to Brooke that most people will tell you that one of the best times of their life was their
5 college experience and Kirk does not want her to miss out on that experience. Brooke agreed and shared
6 her plan to graduate from college before becoming a make up artist. When they discussed the possibility
7 of Brooke getting bored doing make-up day after day, Brooke indicated that she hoped she would not
8 and that she would like to make-up for movies at Disney. Kirk actually encouraged her by suggesting
9 it would be fun for her if she were working there and Tahnee became a successful actress at the same
10 time there. Brooke agreed. That was the extent of the discussion. Unbelievably, despite the fact that
11 Vivian was not a party to the conversations, discussions like this are falsely characterized by Vivian as
12 a “constant barrage of criticism and disapproval” and asserting “Brooke is now suffering under Kirk’s
13 constant barrage of criticism and disapproval.” Kirk knows he has never told Brooke to consider a
14 career in medicine and he is fairly sure he has never suggested a career in law.

15
16 **D. The Sympathetic Statements of Other People in The Community Are Substantially
Consistent with the Sworn Affidavits of Tahnee, Whitney and Kirk**

17 In order to obtain sympathetic supporting affidavits, Vivian went to people in the community
18 and basically said that Kirk “was trying to take my children from me, will you help me?” Upon that
19 premise, Vivian obtained a number of statements. It is important to note that despite Vivian’s false cry
20 for help,, the statements obtained are *substantially consistent with the facts set forth in Tahnee’s,*
21 *Whitney’s, and Kirk’s affidavits.*⁶ As will be briefly explained in the following short chronology of
22 three critical time periods, with limited exceptions (affidavits that are demonstrably false or which were
23 paid for), there is really very little factual dispute.

24 ...

25 ...

26
27 ⁶ Obviously, the three notable exceptions are the perjurious statements from Heather Atkinson and
28 Michele Walker, and the statement of Lisbeth Castelan, who likely didn’t understand the affidavit in
English that she was signing. The Court is urged to re-read the analysis of all three statements contained
in Kirk’s reply re custody, filed 1.4.12, p. 65-75.

1. Vivian Was Not Involved with Brooke and Rylee on a Day to Day Basis from February of 2006 until September 6, 2011, Except For Sleeping With Them At Night When She Was In Town

It is clear from the affidavits of Tahnee and Whitney, both of whom were living in the home, (and Kirk's affidavit also), that from February of 2006 until September 6, 2011, Vivian was really not involved with Brooke and Rylee on a day to day basis. It is also clear from the affidavits of Tahnee, Whitney, Kirk, Laurie Larson, Dave Krumm, and Karen Balke⁷ that Vivian was not involved, on a day to day basis, with driving Brooke and Rylee to and from school, to and from dance classes, and to and from sports activities.⁸

What has always been acknowledged is that Vivian would make sporadic public appearances with Brooke and Rylee. For example, parent/teacher conferences, book fairs at school, sewing trips, and similarly, highly infrequent activities. The Court will likely recall Kirk's affidavit which addressed Vivian being on a sewing trip with Kim Bailey and Kim Bailey, upon her return, saying Vivian was reading her Kindle the entire trip. The Court may also recall Kirk's affidavit referencing a parent/teacher conference where Vivian gave the false impression she was actively involved in home work. However, Vivian's condition was deteriorating and from 2006 until September 6, 2011, Vivian's sporadic public involvement with Brooke and Rylee became less and less, until there was a marked drop off in her sporadic public appearances with Brooke and Rylee in the fall of 2008.⁹

⁷ The affidavits of Laurie Larson, Dave Krumm, and Karen Balke are exhibits 22, 23 & 24 to Kirk's reply re custody, filed 1.4.12.

⁸ There is evidentiary support that Vivian withdrew from the family, including Brooke and Rylee; sometime later, Vivian started spending her days isolated in Brooke's room behind a closed door and then, after a period of time, started spending her days in the home office isolated behind a closed door; she would go months and not have a meal with Brooke and Rylee; she would leave the house with no one knowing where she was or when she would return; she rarely cooked a meal for Brooke and Rylee; during the last several years—from the beginning of 2009 through the Spring of 2011, she almost never helped them with their homework; she had severe insomnia for which she sought treatment; she would spend her days sleeping, reading vampire novels, watching the Tudors, watching Jonathan Rhys-Myers movies, buying stuff on the internet; following Jonathan Rhys-Meyers on the internet, etc. None of this testimony has ever been refuted. The submission of the Lizbeth Castellan statement is an indication that Vivian's attorneys were aware of this fact as such submission was clearly a desperate act, as Kirk had already made Brooke and Rylee breakfast and taken them to school by the time Lisbeth arrived at the house on Wednesday mornings.

⁹ This is consistent with Kirk's letter to Dr. Roitman on January 4, 2010, which contains a section entitled, "VIVIAN'S CONDITION HAS DETERIORATED MARKEDLY DURING THE LAST

2. **The Statements from People in the Community Are Substantially Consistent With The Affidavits Submitted By Kirk**

a. **Prior to the Fall of 2008**

Vivian attended, as did Kirk, gymnastic classes in 2006-7 and 2007-8 and swimming classes prior to the fall of 2008. *See* statements of Melissa Mojica, Brandi Carstensen, Lois Klouse, and Kelley Gray. The same is true with the following statements: Laurie Larson (mostly during this period); Gretchen Poindexter (mostly during this time period); Sue Broadbent (mostly during this time period), and; Tina Coleman (with some minor exceptions, these statements are relative to Vivian's conduct prior to the fall of 2008)

b. **Between the Fall of 2008 and September 6, 2011**

As noted above, Vivian continued to not be involved with Brooke and Rylee on a day to day basis. Vivian rarely did anything outside the home with Brooke and Rylee during this time period. The family did have the Harrison Family vacation to Ireland during this time period, where Vivian successfully schemed for Brooke, Rylee and Vivian to spend time with David Walsh at his home before Kirk arrived and for the three of them to spend time with David Walsh in Dublin after Kirk had left. The later filed statements which are contrary to these facts are simply wrong. One was submitted by Kellie Wendt, who is a relative of Heather Atkinson, and the other is Tina Coleman.

c. **From September 6, 2011 Forward**

Things changed on September 6, 2011. That is the date that Vivian sent Kirk an email providing she was going to start sharing in driving the girls to school and dance. Since that time, Vivian radically changed her behavior and since the middle of September 2011, until the parties separated, began sharing in making meals, helping the kids with their homework and working in Rylee's classroom. Therefore the following statements are substantially accurate: Azure Fecteau, Noel Kanaley, and Kelly Gray.

Tahnee and Whitney, through their affidavits, testified in detail as to what has been going on in the Harrison home for years. For years, Vivian was not doing what she has now convinced Brooke she was "always" doing.

EIGHTEEN MONTHS." (Kirk's reply re custody, filed 1.4.12, Exh. 9, p. 17)

Vivian alleges that Kirk knew in the summer of 2012 that the “children’s statements would mirror the multiple witness statements Vivian had provided to the Court, and would confirm her close bond with the children, so he later resisted having the results of their interview published by Dr. Paglini.” (Vivian’s opposition, p. 6, l. 18-20) First, Kirk does not deny that Vivian has a close bond with Brooke and Rylee. Vivian has not earned that close bond in the way that most parents earn that bond, but rather has acquired it through sleeping with them at night, instilling fear and insecurities in them, inhibiting their personal growth, and manipulating them for her own purposes or needs. As of the summer of 2012, Kirk was not as sensitized to the extent that Vivian has successfully recreated history with Brooke and Rylee. Kirk was not present when Dr. Paglini interviewed Brooke and Rylee, Dr. Paglini never gave Kirk any indication whatsoever of what Brooke or Rylee said, and therefore he had and has no knowledge as to what was said. However, the assertion that Vivian’s close bond with Brooke and Rylee is “through the care Vivian has provided to them their entire lives” is absurd. (Vivian’s opposition, p. 7, l. 2)

3. Vivian Attempts To Rehash The Same False Assertions Vivian Made To The Court Prior to This Court’s Order Regarding Temporary Custody on February 24, 2012

Vivian rehashes the same affidavits which were previously submitted and considered by the Court. These affidavits have the same limited value as when they were initially proffered, as noted herein above. The affidavits of Nyla Roberts, Kim Bailey and Annette Mayer have also been previously addressed in detail. *See* (Kirk’s reply re custody, filed 1.4.12, p. 75-78)

What Vivian is unethically attempting to do is to primarily take her involvement with Brooke and Rylee *after* September 6, 2011 and, to a significantly lesser extent, her sporadic public involvement with Brooke and Rylee prior to the fall of 2008, and present that involvement to the Court in such a way as to, have the Court erroneously conclude that it is an accurate portrayal of her involvement with the children from February of 2006 until September 6, 2011. In other words, Vivian is knowingly trying to mislead the Court, again. The Court was not fooled by this tactic the first time around. Except for perhaps relying on the passage of time or the volume of all the other cases the Court handles, it is inexplicable why Vivian would try to mislead the Court in the same manner a second time.

...

1 There are three statements which have not been addressed. Lisa Morris is currently teaching
2 Brooke and Rylee voice. The summary of her statement makes the point. She addresses Vivian being
3 involved with fund raising tasks at the school in 2008. She then talks about Vivian's involvement with
4 Brooke and Rylee in 2011 and 2012. Sandy Wachtel is a very nice lady. She has a daughter Brooke's
5 age. Though the summary of her statement is substantially accurate, it is misleading. Mrs. Wachtel did
6 not see Vivian picking up and dropping off the girls for dance until after September 6, 2011, unless she
7 saw Vivian do that on one of the very few of times that Vivian did drive the girls to or from dance from
8 February of 2006 until September 6, 2011. Vivian's position was that if Kirk could not take Brooke and
9 Rylee to and from dance, it was his responsibility to find someone else. That someone else would be
10 Tahnee, Whitney, or Joseph. If none of them were home, then Kirk had to check with the other people
11 in the dance car pool. Only if no one else could drive, would Vivian drive the girls. Under those
12 parameters, that rarely occurred.

13 The purported statement from Rosaleen Thomas is a sham. As Kirk noted in his affidavit,
14 Vivian would go many days and sometime weeks without calling Brooke and Rylee. There were times
15 Brooke and Rylee would call every number they knew to call in Ireland to no avail. A cursory review
16 of the photographs submitted by Kirk presents a clear picture of what was going on.

17 Noticeably absent from this restatement of the same points made prior to this Court's February
18 24, 2012, temporary custody ruling is anything that addresses the following:

- 19 * Vivian's seven years of drug abuse beginning in June of 2004 and continuing until September
20 of 2011 (Exh. 11 to Kirk's Reply re custody, filed 1.4.12)
- 21 * The six years she took an SRRI.
- 22 * The photographs with Vivian and David Walsh.
- 23 * The photographs of Vivian and "Hugo."
- 24 * The photograph of Vivian and Sergio Becerra.
- 25 * Vivian's love letter to Mr. Becerra wherein Vivian declares he keeps her awake at night
26 because she is so obsessed with him.
- 27 * All of plastic surgeries in Arizona and California.
- 28 * The myriad of cosmetic procedures and treatments over several years.
- * All of the cosmetically related doctors' appointments for several years, including at one point
a medical appointment for Vivian an average of every other day for the entire month of February
of 2011!
- * The five months she chose to be away from Brooke and Rylee, and that was just during 2010!

27 Next to all of these undeniable facts, all of which were supported by documentary evidence, Vivian's
28 repeated claims of "daily involvement in the children's lives" and "Vivian's total involvement with the

1 children's daily lives" looks pretty foolish and is revealed for what it is – a lie. (Vivian's opposition, p.
2 7, l. 9-10; 15)

3
4 **4. Vivian's Argument To Support Her Theme To Brooke That "Girls Are
Supposed To Be With Their Mommies" Is Ridiculous**

5 Vivian asserts that girls "do not want to discuss with their father (periods, bras, dating, make-up,
6 etc.) Kirk has taken Brooke to the store to buy feminine products on numerous occasions. Kirk has
7 taken Brooke to buy bras at Nordstrom Rack and other stores. Kirk has taken Brooke to buy make-up
8 at Nordstrom Rack, Target, Walmart, and CVS Pharmacy many many times. Brooke's number one
9 interest is make-up. Brooke watches videos concerning make-up more than anything else. Brooke and
10 Kirk have had many conversations about the different types of make-up and why a particular application
11 is better than another. Brooke has explained to Kirk why she prefers the solid cosmetics to the powders,
12 etc. Kirk has learned more about cosmetics and related issues, than he ever imagined he would.

13 Vivian's claims are convenient, and designed to be left unchallenged. The Court surely noticed
14 that most of Brooke's alleged complaints, as cited by Vivian, are related to "cramps" which Vivian
15 claims only she is equipped to discuss. Perhaps Vivian hopes that this Court will also find that those
16 feminine discomforts are only within the purview of mommies to handle? Kirk still has an open and
17 positive relationship with Brooke. That relationship is not one that is handicapped by the inability or
18 unwillingness to understand or handle any particular topic.

19 Vivian uses the same disingenuous tactics with respect to the plans related to makeup for the
20 homecoming dance and pictures related thereto. She suggests, that Kirk should know that "Brooke is
21 a feminine girl" and that Kirk should "understand Brooke's desire to be with someone who is skilled
22 and experienced in applying make-up, and who taught her how to apply make-up." Vivian misses the
23 point deliberately. Kirk would likely have had absolutely no objection if Vivian were to have actually
24 called or written him and *asked* about trading time or even just having the extra time to do this with
25 Brooke. Instead, Vivian willfully planned an event for Brooke and her friends during Kirk's custodial
26 time, without ever even discussing it with him, and leaving Brooke to be in the middle of the inevitably
27 resulting conflict. Vivian starts the ball rolling, feigns surprise at the result, and then criticizes Kirk for
28 the issue she created.

1 **E. The Incident With Brooke During the Lagoon Trip Is Far And Away The Most**
2 **Troubling Exchange Kirk Has Ever Had With Brooke And Brooke, Rylee and Kirk**
3 **Had A Great Time The Rest Of The Trip**

4 Without question, one day of the Lagoon trip was very difficult for Brooke, and was also very
5 difficult for Kirk. However, that was *one day* and that day is not emblematic of their entire relationship.
6 More importantly, there is an important backdrop to what occurred that day in the hotel room in Layton,
7 Utah on August 5, 2013.

8 There was a tradition of Kirk taking Brooke and Rylee to children's movies, probably once or
9 twice a month depending upon what was playing, since they were old enough to go. They always had
10 a good time. There came a point sometime after the Court's ruling on February 24, 2012, that Brooke
11 refused to go to the movies with Kirk and Rylee. Not knowing what else to do, and without meaning
12 to do so, Kirk effectively gave Brooke the power to "veto" the three of them going to the movies. When
13 Kirk would ask Brooke why she didn't want to go, she would simply reply she just did not want to go.
14 Kirk was aware that Vivian started to take Brooke and Rylee to the movies. Sometime later, Tahnee
15 or Whitney shared the following with Kirk, which had been discovered from a conversation with
16 Brooke: *Brooke apparently learned or saw that Kirk had "written down" that they had all gone to the*
17 *movies. Brooke then told Heather Atkinson what she had learned, and Heather Atkinson reportedly told*
18 *Brooke that the only reason your dad takes you to the movies is so he can write it down.* It was at that
19 point Brooke started to refuse to go to the movies. Rylee complained to Kirk on several occasions that
20 she was frustrated because she wanted to go to the movies and Brooke should not get to decide that
21 Rylee does not get to go to the movies.

22 Kirk picked Brooke and Rylee up from Vivian's house on Friday, August 2, 2013, after being
23 with Vivian for 14 days (preceded by 2 days with Kirk and another 21 day period with Vivian). That
24 evening, crying and distraught, Brooke told Kirk that because she is 14 years old and she can decide to
25 live full time with Vivian.¹⁰ Parroting Vivian's words, Brooke said, "Girls are supposed to be with
26 their mommies." Kirk indicated his surprise that she would be willing to leave Rylee. Brooke said that
27 she had not told Rylee yet and asked Kirk not to say anything to Rylee.
28

¹⁰ Kirk had previously thought this conversation was the next day on August 3, but it was on August 2.

1 Brooke, Rylee and Kirk started their trip to Utah the next day. They stayed at the Little America
2 Hotel in Salt Lake City that night like they do each year and had dinner in the hotel coffee shop that
3 night. They went swimming. When Rylee was in the shower after they returned from swimming, Kirk
4 told Brooke it was not within her power to "decide" where she lived, only that Brooke could express
5 her wishes, but it was for the Judge to decide. Kirk further explained that under the circumstances, he
6 did not think it would be best for Brooke and Rylee, if Brooke lived with her mother full time. Brooke
7 acknowledged it would hurt Rylee's feelings. Brooke seemed very relieved that it was not her decision
8 to leave Rylee.

9 After having the Sunday brunch at the hotel, Brooke, Rylee and Kirk drove to the Hilton Garden
10 Inn in Layton, Utah. That night Brooke, Rylee, and Kirk had dinner with Kirk's cousin. Their plan was
11 to spend the next two days at Lagoon and then travel to Park City just like they do every year. Both
12 Brooke and Rylee seemed excited about going to Lagoon the next day. Brooke had ridden the Catapult
13 Ride at Lagoon the year before by herself, when Rylee changed her mind at the last minute. Kirk asked
14 them if they were going to ride it together this year. They both said they had not make up their minds.

15 However, when they got up the next day, Monday, August 5, 2013, Brooke refused to go to
16 Lagoon and indicated she did not want to go to Lagoon the next day either. When Kirk asked why,
17 Brooke simply said she just didn't feel like it. Rylee, understandably, was upset saying that what
18 Brooke was doing was not fair to her, as she really wanted to go to Lagoon.

19 Kirk waited a couple of hours, hoping Brooke would change her mind. Brooke was content to
20 continue texting and watching videos. Kirk believes she was texting with Vivian, which can easily be
21 confirmed or rebutted. He told Brooke he could not understand why she didn't want to go, when they
22 have had so much fun there each year. Brooke responded that she did not like going to Lagoon anymore
23 because it was "boring". Rylee again chimed in that she wanted to go. Kirk said how can you say it is
24 boring when you rode the Catapult Ride last year? Brooke didn't answer.

25 A couple of more hours passed and Kirk told Brooke that he didn't understand why Brooke was
26 not caring about Rylee who really wanted to go to Lagoon. It was not until about that point that Brooke
27 said she wasn't feeling well and had cramps. Kirk then said, so we can all go tomorrow? Brooke
28 responded that she still did not want to go to Lagoon at all. At that point, Kirk decided that so long as

1 Brooke was getting everything she wanted, texting and watching videos on her telephone, there was
2 going to continue to be a stalemate, and Brooke had the power to "veto" the entire vacation, so he took
3 her telephone from her. In light of the texting Brooke was doing on her telephone, wrong or right, Kirk
4 assumed Vivian was influencing Brooke's refusal to go to Lagoon, as he knew that Brooke's
5 announcement three days before was parroting Vivian's words. He also knew that Brooke had been
6 excited about going to Lagoon when they talked about it the night before. Kirk told her that if she was
7 really having cramps and did not feel good, he thought she would have said that hours before, when she
8 first refused to go.

9 Kirk did express to Brooke that he was hurt by her behavior (in all candor, Kirk was obviously
10 reeling from Brooke telling him that she wanted to live full time with Vivian) and could not understand
11 why she was doing this to Rylee and him. This is the only time that Kirk has said things to Brooke that
12 he regrets, as noted in her email to Vivian. He did not say those things in an accusatory tone, but rather
13 from his perspective of being very hurt and unappreciated. Kirk fully realizes that he is the parent and
14 this type of exchange had never happened before, nor since.

15 Kirk knew he had a problem, he knew there had to have been a better way to handle it than he
16 had thus far, and didn't know what to do to resolve this situation. Kirk stepped out into the hallway
17 from the hotel room and telephoned Ed Kainen to get advice. He then telephoned Dr. Roitman to get
18 advice. He then telephoned Whitney to get advice. Whitney advised that Brooke is 14 years old now
19 and that Kirk should tell her that if she did not want to go to Lagoon the next day she could stay in the
20 hotel room, but Rylee and Kirk were going.

21 They had not eaten since the hotel breakfast that morning. Kirk told Brooke that he was taking
22 Rylee to dinner and Brooke could go with them or, if she preferred, she could stay in the hotel room.
23 Brooke said she didn't want to go. Kirk and Rylee went to Buffalo Wild Wings and brought back food
24 to the room for Brooke. Before they went to bed that night, Kirk told Brooke that he was taking Rylee
25 to Lagoon the next day, and he hoped she would go with them, but if she preferred, she could stay in
26 the room all day. He apologized for anything he had said that contributed to the difficult day, and
27 opened the door for Brooke to step away from the position in which she had immersed herself. He told

28 ...

1 her he loved her and gave her a kiss goodnight. As challenging as the day had been, it ended in a
2 positive way, and with a optimistic outlook for the next day.

3 Brooke, Rylee and Kirk all went to Lagoon the next day and they all had a great time. They all
4 went to Buffalo Wild Wings that night. They all had a really good time the rest of the vacation: they
5 rode the chairlift at Sundance; spent day at the Olympic Park in Park City riding the extreme zip line
6 multiple times, riding the alpine slide, doing the adult rope course together (Brooke and Rylee then did
7 the upper level) until it started to rain; spent that afternoon and evening buying school clothes at the
8 outlet mall in Park City, that night they went swimming together in the hotel pool; the next day they
9 drove to St. George and saw the play "Mulan" and later that evening saw "Mary Poppins" with friends;
10 spent the next day at the hotel swimming and going to a movie that evening, and drove home the next
11 day.

12 While August 5th, was a challenging day for both Kirk and Brooke, it was one day and nothing
13 more. It is in no way representative of the relationship with Kirk and Brooke, despite the efforts to
14 characterize it as such.

15
16 **F. Vivian Falsely Accuses Kirk Of Being Manipulative When "Kirk Acted As If He**
17 **Had Just Won The Lottery" When Told Rylee Would Not Need The Multiple**
Surgeries With The Device Implanted In Her Arm Secreting A Man-Made
Hormone Into Her Body For The Next Three Years

18 On Monday, September 16, 2013, Rylee had an appointment with Dr. Dewan. At that time Dr.
19 Dewan advised that it was now time to determine if Rylee should have the device surgically implanted
20 in her arm that will secrete the man-made hormone into her body. Dr. Dewan advised to have an x-ray
21 of Rylee's hand and then to schedule another appointment. Based upon prior antics of Vivian in failing
22 to advise Kirk of medical appointments, Kirk asked the front desk to send an email to him or telephone
23 him as soon as the next appointment was made. At 7:06 a.m. on Sunday morning, October 6, 2013, Kirk
24 received a text from Vivian, "Rylee-dr dewan--mon 1030." Kirk sent a text back, "Tomorrow." Vivian
25 responded, "Yes."

26 On Monday, October 7, 2013, after examining the most recent hand x-ray of Rylee hand, Dr.
27 Dewan advised Kirk and Vivian that Rylee is likely going to reach her normal expected height of 5' 10"
28 and the annual surgical implantation of the device in her arm to secrete the man-made hormone will not

1 be necessary. Kirk was indeed elated. This was the best news he had heard in years. Kirk wept in the
2 car after he left the office. Vivian now uses this very welcome and wonderful news, to initiate yet
3 another baseless assault upon Kirk. Vivian asserts that Kirk's reaction "to this news was manipulative
4 as "Kirk acted as if he had just won the lottery." (Vivian's opposition, p. 20, l. 7 & 9)

5 Dr. Dewan initially advised Kirk and Vivian that Rylee would likely be required to have a device
6 surgically implanted into her arm. Rylee's testosterone level was 32. Normal for a girl her age is below
7 10 -- around 7 or 8. Dr. Dewan, at the time, indicated the implantation of the device would be necessary
8 if Rylee's testosterone level did not drop significantly. Dr. Dewan handed a brochure to Vivian and
9 Kirk, which detailed what would be done. Dr. Dewan advised that a surgeon, not Dr. Dewan, would
10 surgically implant the device. The device would slowly secrete a man-made hormone into Rylee's body
11 for a year. After one year, a surgeon would remove that device and insert another. This surgery would
12 likely be done a third time, so Rylee would have a device in her arm secreting a man-made hormone into
13 her body for about three years. Dr. Dewan advised the cost of the device would be \$14,000.00 per year.
14 Dr. Dewan advised Kirk and Vivian that without the device, Rylee would prematurely start puberty,
15 likely start having a period when she was just 10 years old, and her maximum height would be 5' 5" tall.
16 Dr. Dewan further advised the implantation of the device would "put a pause on puberty" and Rylee
17 would likely reach a maximum height of 5' 6" to 5' 7" tall. (Kirk's motion re custody, filed 9.14.11, p.
18 16, l. 15-28, p. 17, 1-24); (Kirk's Aff. ¶221 & 224, attached to Kirk's motion re custody as Exh. 1)
19 (Kirk's Reply re Custody, filed 1.4.12, p. 16, l. 17-28; p. 17, l. 1-10)

20 The prospect of devices being implanted into Rylee's arm and secreting a man-made hormone
21 into Rylee's body concerned Kirk. Kirk consulted with Dr. Iain Buxton. Dr. Buxton is the Regents
22 Professor, Foundation Professor, and the Chairman of the Pharmacology Department at the University
23 of Nevada School of Medicine. Dr. Buxton advised Kirk that the risks inherent with the implantation
24 of the device and the secretion of the man-made hormone into Rylee's body over several years was not
25 worth the risk to Rylee's health. Thankfully, Rylee's body overcame the testosterone exposure caused
26 by Vivian's negligent conduct. Kirk was indeed genuinely elated for Rylee and relieved he did not have
27 to make that decision.

28 ...

1 Vivian falsely asserts, "Kirk continued to raise alarms with Rylee and all the other children (and
2 anyone who would hear his complaint) that because of Vivian her growth would be stunted, she would
3 suffer ill effects of an implant, etc.'" (p. 19, l. 23-26) This is again outrageous. Kirk has never told Rylee
4 any of this information. Never. It is inconceivable, that a parent would say these types of things to their
5 child. Again, Vivian and Vivian's attorneys get so caught up in their effort to assault Kirk's character,
6 they forget common sense. No parent would tell their child that their growth is going to be stunted or
7 that they were going to suffer from a device being implanted in their body.

8 As for Kirk's "elation", he was indeed happy, as this was something about which he has had
9 significant and continuous worry since the issue became a concern. To find out that the elevated
10 testosterone levels reduced without the need for Rylee to have surgery, was an event properly warranting
11 elation.¹¹

12 **G. Vivian Makes Misrepresentations Throughout the Opposition**

13 Vivian makes additional misrepresentations throughout the opposition. Time does not permit
14 addressing each and every one, but Kirk will attempt to address just a few.

15 On one occasion Kirk told Brooke that he was surprised she would leave Rylee. Brooke later
16 told Kirk she thought it was "mean" that he said that, he apologized to her and he has not said it since.
17 However, according to Vivian, "Kirk repeatedly tells" tells Brooke that she is being selfish by wanting
18 to do activities away from Rylee. (Vivian's opposition, p. 21, l. 12)

19 Vivian makes allegations A through F on page 26 of Vivian's opposing brief. Absolutely none
20 of those accusations are true. None. The allegation that Kirk would even broach the subject of the
21 possibility of Brooke leaving with Rylee is ludicrous. Kirk loves Brooke and Rylee with all his heart.
22 He would never do something so callous. These baseless allegations confirm yet again that Vivian and
23 her attorneys are not constrained by the truth or actual facts, nor do they feel compelled to offer any
24 evidence whatsoever to support their baseless allegations.

25 ...

26
27
28 ¹¹ Dr. Dewan's physician notes, dated August 2, 2011 clearly provide, "the elevated testosterone was
from moms craem. . ." (Kirk's motion re custody, filed 9.14. 11, Exh. 13)

1 If the Court believes for one second the representation that Vivian has a close bond with
2 Brooke and Rylee “formed through the care Vivian has provided to them their entire lives” then the
3 affidavits of Tahnee, Whitney and Kirk utterly failed to depict for the Court what was truly happening
4 in the Harrison home since 2006. (Vivian’s opposition, p. 7, l. 21)

5 Vivian represents to the Court that Brooke and Rylee really never spend any time with one
6 another, so it would be no big deal if Brooke left. (Vivian’s opposition, p. 21, l. 13-22) When Brooke
7 and Rylee are with Kirk, they spend almost all of their time together. They talk to each other every
8 morning. Brooke helps wake Rylee up in the morning and talks to her before she leaves for school.
9 They watch videos together. They often will do their homework together in the same room. Brooke
10 sometimes helps Rylee with her homework. Except for breakfast on school days, they eat all of their
11 meals together with Kirk. They ride to and from dance together. Most of the weekends, they do
12 everything together. There is a lot of laughing, smiling and talking that goes on between Brooke and
13 Rylee everyday they are with Kirk. Brooke and Rylee still sleep in the same bed together. Neither one
14 is comfortable going to bed without the other. The suggestion that separating the two children would
15 not impact the other is baseless under the facts of this case.

16 Vivian asserts, “Kirk also outlines in his motion how he uses name-calling to prevent Brooke
17 from spending time with Vivian.” (Vivian’s opposition, p. 21, l. 31) This is so bizarre. Vivian – not
18 Brooke and not Rylee – is causing Kirk to sit in a car outside her house for 20 to 34 minutes waiting for
19 Brooke to pick up the same items she picks up at his house when Vivian is waiting outside in the car
20 in less than 5 minutes. The reason for the difference in time is nothing more than Vivian choosing to
21 be inconsiderate of Kirk’s time and Kirk refusing to respond in kind. Kirk has indeed told Brooke that
22 it is disrespectful and inconsiderate to keep him waiting in the car for such long periods. For this,
23 Vivian accuses Kirk of “name-calling.” According to Vivian, “This situation is caused by the constant
24 back and forth from the parties’ homes caused by the current schedule, but more important, Kirk should
25 not be attempting to manipulate Brooke in this manner.” (Vivian’s opposition, p. 21, l. 28; p. 22, l. 1-2)
26 What is occurring has nothing to do with the present custody schedule. Brooke and Rylee consistently
27 get the same items from Kirk’s house in less than 5 minutes, when Vivian is waiting. What is occurring
28 has everything to do with Vivian exercising control over Brooke, in a manipulative way such as to cause

1 Kirk to wait for long periods of time. There is no question that Brooke is otherwise usually a very
2 considerate and thoughtful young lady. The common denominator in these issues seems to be Vivian.

3
4 **H. This Court Is Not Prohibited from Modifying or Eliminating the Teenage
Discretion Provision as Alleged by Vivian's Attorneys**

5 Vivian suggests that this Court must give deference to the Agreements of the parties even going
6 so far as to cite *Troxel* and suggest a violation of fundamental rights. Insofar as the actual agreement,
7 it is clear by Vivian's admissions and the glaring absence of any denial of violating the express
8 provisions of the agreement, that the parties are not really talking about enforcing the existing
9 agreement. Instead, Vivian wants to have what-she-imagines "teenage discretion" should be, as opposed
10 to the presently existing provision, and Kirk simply wanted the safeguards from immersing the children
11 in the litigation respected. Neither party stands any chance of walking away with what they really want.

12 Paramount in every decision the Court makes, including this one, must be the best interest of the
13 minor children. In fact, NRS 125.480(1) provides in part that the "sole consideration of the court is the
14 best interest of the child". When the conduct of one of the parties, renders *any* custodial provision
15 ineffective and the result is preventable conduct that is not in the best interest of the children, this Court
16 not only retains the power to change it, it has the power to do so *sua sponte*. NRS 125.510 (1) through
17 (3).

18
19 **I. Vivian's Claims Regarding the Miscellaneous Items, Including Childhood
Memorabilia, Are Factually Inaccurate**

20 A multitude of additional items were cited by Kirk to demonstrate Vivian's utter failure to
21 operate in good faith. Paragraph 6.2 of the parenting agreement, simply requires good faith conduct on
22 the part of each parent not to encourage or manipulate the child to seek to be with one parent more than
23 the other. Kirk not only established that Vivian's behavior gives every indication that such a
24 presumption, with respect to Vivian, is erroneous as regards the parenting agreement, but he was also
25 able to demonstrate a myriad of other failures to operate with any good faith in the period leading up
26 to the filing of his requests for relief.

27 Vivian generally denies even those items which are supported by incontrovertible evidence and
28 for which there can be no reasonable dispute. She likely relies on the fact that these are "side issues"

1 and that to brief each of them would take far too long. Given the fact that those items were illustrative,
2 and Kirk has not requested specific relief on those items, Vivian's assumption is correct. Kirk will not
3 offer any further on those matters at this time.

4 **III. CONCLUSION**

5 Kirk, to this day, despite Vivian's efforts to alienate Kirk from Brooke, enjoys a loving and
6 caring relationship with Brooke. However, Kirk is very concerned about Brooke. Kirk saw what
7 Vivian's manipulation of Tahnee did to Tahnee. At 28 years old, Tahnee is finally working through
8 issues which never would have occurred, but for Vivian's manipulation of her. Tahnee was Vivian's
9 "very best friend" before Brooke became Vivian's "very best friend." It is not healthy for children to
10 be exclusively in an environment, where their whole world is to please a parent. If Brooke is with
11 Vivian full time before she can establish her own identity, develop a sense of self, and gain some
12 independence, then Brooke will likely suffer, as Tahnee has unnecessarily suffered. Kirk implores the
13 Court that if the Court is inclined to give any consideration to continuing down the path of teenage
14 discretion as a vehicle to allow Vivian to further manipulate Brooke and Rylee, that the Court first
15 interview or take testimony from Tahnee and Whitney.

16 The fact remains that the concept of teenage discretion is only workable in circumstances where
17 the parents have a reasonable and functional relationship, which still does not exist in this case. That
18 facts cannot reasonably be in dispute. The protections that are theoretically built into the provision to
19 prevent abuse, are being wholly ignored and are objectively unenforceable. Within days of her 14th
20 birthday, after spending 21 uninterrupted days with Vivian, Brooke, who would have no way of
21 knowing about any provisions in the parenting plan, was suddenly insisting on the *free exercise of her*
22 *"teenage discretion rights."* After spending only 2 days with Kirk and then another 14 uninterrupted
23 days with Vivian (based on the vacation schedule), Brooke announced she wanted to live with Vivian
24 full time.

25 The Court should note that Vivian makes a myriad of detailed allegations concerning matters
26 about which Vivian could have no personal knowledge. By merely making the allegations, Vivian is
27 indicating to this Court that she is improperly communicating with Brooke. If she is doing it on all of
28 those issues, how can it ever be suggested she abides by the provisions in paragraph 6.2 – the specific

1 provision which is the subject of Kirk's Motion, and which Vivian never denies violating. This
2 provision has done nothing more than guarantee the children's continued enmeshment in the parties
3 ongoing dispute.

4 As indicated in his moving papers, Kirk has tried to be reasonable and accommodating, but it
5 has resulted in continued immersion of the children into their parents' custody dispute and further
6 encroachment into his custodial periods. Vivian does not care about the impact on Brooke, being
7 placed in emotional turmoil or being forced to choose between her parents in order to placate one of
8 them. As a result of Vivian immersing Brooke in this conflict (both by providing her with information
9 she never should have had, and by butchering the explanation of the provision), the Kirk and Vivian are
10 in near daily conflicts, that was otherwise much more limited. Kirk implores the Court, in the best
11 interests of Brooke and Rylee, to set aside this provision in its entirety.

12 DATED this 23rd day of October, 2013.

13 KAINEN LAW GROUP, PLLC

14
15 By: 

16 EDWARD L. KAINEN, ESQ.

17 Nevada Bar No. 5029

18 10091 Park Run Drive, Suite 110

19 Las Vegas, NV 89145

20 *Attorneys for Plaintiff*
21
22
23
24
25
26
27
28

AFFIDAVIT OF KIRK R. HARRISON
filed in Support of Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order
Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition
to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on
Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and
Sanctions

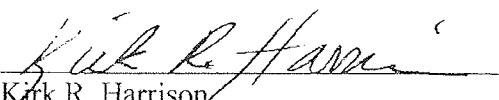
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

KIRK R. HARRISON, declares and says:

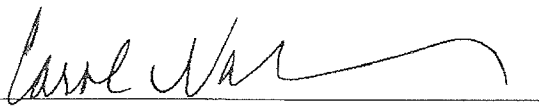
1. The matters stated in this Affidavit are based upon my personal knowledge (or upon information and belief if so stated). If called upon to testify, I could and would competently testify to the facts set forth herein.

2. Each of the factual averments contained in Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and Sanctions are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Kirk R. Harrison

Subscribed and sworn before me
this 23rd day of October, 2013.



Notary Public

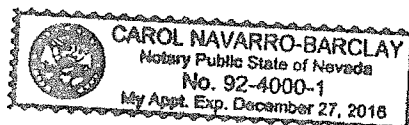


EXHIBIT 2

KAINEN
LAW GROUP
A Professional Limited Liability Company

■ ■

February 3, 2012

Via Facsimile - (702) 990-6456

Radford Smith, Esq.
Radford J. Smith, Chartered
64 North Pecos Road, Suite 700
Henderson, Nevada 89074

Via Facsimile - (775) 322-3649

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

Re: Kirk Harrison v. Vivian Harrison

Dear Rad and Gary:

The Harrison family has one Verizon account, which includes the cell phone for every member of their family. Kirk has always reviewed this bill and paid it every month. There were only two authorized individuals on the account – Kirk and Vivian. Vivian is fully aware of instances in the past where Kirk has contacted Verizon when there have been issues with the account. For example, Whitney obtained a new cell phone in November of 2011, when Kirk's cell phone was due for a replacement. Moreover, within the last 30 to 60 days, Kirk had previously ordered call detail from Verizon. Just like yesterday, Vivian opened the package and asked Kirk what it was and Kirk told her. In fact, yesterday, when Vivian was screaming at Kirk, she referenced the fact that he had done it before. Kirk acted properly on both occasions. Merely because Vivian is listed as "primary" does not give her exclusive access and control over this account.

Your false accusation that Kirk obtaining call detail on his own family's account was "hacking into her account" when he is one of two authorized individuals on the account is what is truly outrageous.

When Vivian was leaving, Vivian told Kirk she was going to cancel his phone. Kirk responded that he was authorized on the account and did not believe she could. Vivian said, "I am primary and I can." As soon as Vivian left, Kirk called Verizon and they confirmed Vivian could in fact cancel his cell phone, despite the fact that he was also authorized on the account. Kirk asked if there was anything he could do. He was told since he was authorized on the account he could transfer all of the phones in his name to a new account. There were three cell phones in Kirk's name: his, Vivian's and Joseph's. Despite knowing Vivian was in the process of cancelling his phone for doing something he was authorized to do and something she knew he had done before, Kirk took the high road and did not transfer Vivian's phone number to his new plan.

* * EDWARD KAINEN ANDREW L. KYNASTON

T 702.823.4900 F 702.823.4488

■ 10091 Park Run Drive, Suite 110 Las Vegas, NV 89145-8868 ■

■ Nevada Board Certified Family Law Specialist

◆ Fellow of the American Academy of Matrimonial Lawyers

www.KainenLawGroup.com

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 2

Kirk ordered the documents for him. Since Vivian is "primary" she can also get whatever documents she wants from Verizon on this account. With respect to the billings, you only furnished Kirk the total amount of your bill, which he paid. There was never a discussion about furnishing redacted billings. When you only furnished a total figure to Kirk and expected payment, which you received, how can you now expect redacted billings from us? By the way, we have not yet received even the equivalent information from you.

Vivian's behavior in front of Brooke and Rylee has been deplorable and she is clearly trying to alienate Kirk from Brooke and Rylee.

The much bigger issue is Vivian's pattern of misbehavior in front of Brooke and Rylee where she has continually displayed no sensitivity whatsoever for these little girls. After Kirk told Vivian what he requested from Verizon, Vivian began screaming that Kirk had told Rad he did not have access to the account. Kirk responded that he had never spoken with Rad Smith about the account. Vivian then repeatedly screamed that Kirk was a "liar" in front of Rylee and Joseph. Vivian was screaming so loudly that Rylee was placing her hands over her ears. This insensitive misbehavior in front of Brooke and Rylee has been going on for quite some time.

As we have already discussed, on March 13, 2011, Vivian was talking to Brooke and Rylee in the living room. She hollered to Kirk to come in the room as he needed to hear what she was telling Brooke and Rylee. As soon as Kirk came into the room Vivian told Brooke and Rylee that she was filing for divorce the day after Whitney's wedding, and that Brooke and Rylee are going to be asked with whom they want to live. Vivian then told them she was going to get the house. Vivian told Brooke and Rylee that she would get the house and Kirk would get the ranch, and that her lawyer told her that she would probably get part of the ranch as well. Vivian then told Brooke and Rylee that if she did not get the house, the Court will order it to be sold.

The incident Vivian incited on October 14, 2011, has been adequately briefed. However, you should know that Vivian had someone several years prior to the incident install a new central unit and new cameras. Only Vivian operated the video system. Only Vivian knew whether it was working or not.

On Sunday evening, November 20, 2011, in front of Brooke, Rylee and Joseph, Vivian started verbally attacking Kirk because he took Rylee to Subway at about 6:00 p.m. to get a sandwich for dinner. Vivian said Kirk knew that Brooke was cooking dinner at Theresa Giroux's. Kirk responded that he did not know she was cooking dinner. Again, Vivian started calling Kirk a "liar" in front of Brooke and Rylee. Vivian then said that all the people in the neighborhood filed

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 3

affidavits saying Kirk was a "liar." Again, *all in front of Brooke and Rylee*. Joseph tried to get Vivian to stop, but to no avail.

On Saturday morning, November 26, 2011, Kirk got the Christmas tree out of the storage shed and started to set it up just like he does every year. Vivian had just returned from meeting with Marvin Gawryn and had picked up Brooke and Rylee from the Atkinsons. When Vivian, Brooke and Rylee walked in, Kirk had set up the tree and was setting up other Christmas displays. In front of Rylee, Vivian said, "I don't want you to do this because you will just write it down and lie." Vivian then said, again in front of Rylee, "these are my decorations and you are not going to be here next year."

On January 9, 2012 at 3:06 p.m., Vivian sent the following text to Kirk: "Rylees bday party fri feb3 at 440-645 laser tag." This morning, Vivian and Rylee were sitting in a large chair in the living room. Kirk asked Vivian, "What time are we leaving for Rylee's birthday party today?" Vivian responded, "Are you going?" Kirk said, "Of course." To which Vivian said in front of Rylee, "Oh yuck!" Kirk then again asked what time they were leaving. Vivian said 4:00 o'clock. Rylee then said, "I thought it was at 3:30." Vivian continued in front of Rylee, "You are Satan and you are not invited." Vivian continued again, "The other parents don't want you driving so I have to drive." Kirk then asked if the party was at the same location as Stephanie Yoxen's birthday party. Vivian responded that Kirk should send her a text. Kirk sent the following text: "what is the location of rylee birthday party to which you now say I am not invited?" Vivian texted back: "Doesn't make since. . if u were once invited you should know. ." Vivian then sends another text: "Pls go through ur attorney it appears as though ur beginning to play games AGAIN." This is going on TODAY!

This kind of behavior needs to stop.

Compare the foregoing behavior with what you describe as attempts by Kirk to alienate Vivian and set forth on pages 45 through 47 of your Opposition re Custody, keeping in mind, as you well know, most of those quotes are taken out of context.

For several weeks, Vivian has had Brooke and Rylee spending more time at the Atkinson home than they do in their own home. Sometimes Vivian is also there and many times she is not. Kirk strongly believes Vivian is intentionally trying to minimize the time Kirk has with Brooke and Rylee. Kirk got an email from Vivian last night that she and the girls are going to be spending Valentine's Day dinner with someone else. This type of pre-emptive behavior by Vivian has become all too common.

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 4

Kirk has also informed me that it is apparent Vivian has been working Brooke and Rylee a lot. Kirk has noticed significant changes in Brooke's attitude towards him during the last several months. On Thursday afternoon, January 27, Kirk was sitting on the couch in the living room and asked Rylee to sit with him and snuggle. Rylee responded, "I'm not supposed to snuggle you anymore dad."

Kirk has not attempted to alienate Vivian.

You and Gary have an obvious strategy of telling the Court at every hearing that Kirk has tried to alienate both the adult and minor children. Although I am confident it will not change this course of action, you should probably know the truth.

Since you have read the affidavits of Kirk, Tahnee and Whitney, you are well aware that Tahnee and Whitney approached Kirk about Vivian's behavior, the damage it was doing to Brooke and Rylee, and the need for Kirk to do something about it. Also, when the older children were younger, it was they who complained to Kirk about their mother trying to take credit for their efforts -- not the other way around.

In connection with Brooke and Rylee, Kirk indicates he has not spoken to Brooke or Rylee about Vivian in a negative way nor has he broached the subject of the divorce. On one occasion, Brooke was upset about something Vivian had told her about the divorce and Kirk told her if she needed to talk to him she could. She didn't. You may recall Whitney's affidavit where she said Vivian was having conversations with Nyla Roberts and Michelle Walker about divorcing Kirk in front of Rylee.

The next time you and Gary go into this false diatribe about Kirk alienating these children, I am handing this letter to the judge.

Marvin Gawryn

Another issue much more important than Kirk accessing his own family's cell phone account, is Marvin Gawryn. This is a real problem.

On September 21, 2011, Mr. Gawryn agreed to his suspension as a licensed and family therapist in the State of Washington. As part of that process, Mr. Gawryn stipulated to the following facts:

- 2.2 Respondent [Mr. Gawryn] provided therapy services to partners Client A and Client B. approximately once per week from November 17, 2006 through March 8, 2007. Clients A and B were involved in a committed and intimate relationship. Clients A and B sought treatment from Respondent for relationship issues. Sessions with Respondent included treatment of the clients individually and together.
- 2.3 From March 14, 2007 through January 18, 2011, Respondent provided weekly therapy treatment to Client A.
- 2.4 In or about September 2010 through January 2011, Respondent **engaged in sexual intercourse** with Client A approximately **two (2) times weekly**.

(State of Washington, Department of Health – Agreed Order)

There is overwhelming circumstantial evidence that Mr. Gawryn has infected the process wherein you had Vivian tested and interviewed regarding NPD by coaching Vivian on the eve of her taking the MMPI and on the eve of each of her interviews with Drs. Thienhaus, Applebaum and Ronningstam. Tell me if you don't see a pattern with the following:

1. On August 6, 2011, Mr. Gawryn has a coaching consultation with Vivian for one and one-half hours.

On August 11, 2011, Vivian meets with Dr. Ole J. Thienhaus for the first time and he writes his report.
2. On August 13, 2011, Mr. Gawryn has a coaching consultation with Vivian for one and one-half hours.

On August 15, 2011, Vivian takes the MMPI wherein it was noted that Vivian "attempted to place herself in an overly positive light" and "approached the test items with a view toward presenting herself as being very serene in her approach to life."

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 6

3. On September 16, 2011, Mr. Gawryn has a coaching consultation with Vivian for two hours. Then on September 19, 2011, Mr. Gawryn has another coaching consultation with Vivian for another one hour.

On September 22, 2011, Vivian meets with Dr. Ole J. Thienhaus a second time and he writes a report.

4. On December 26, 2011, Mr. Gawryn has a coaching consultation with Vivian for one hour.

Vivian then flies to New York on December 27, 2012 and meets with Dr. Applebaum on December 28, 2012.

5. On January 4, 2012, Mr. Gawryn has a coaching consultation with Vivian for two hours.

Vivian then flies to Boston on January 5, 2012 and meets with Dr. Ronningstam on January 6, 2012.

After Mr. Gawryn started consulting with Vivian, Mr. Gawryn requested that Kirk meet with him, which Kirk did. Mr. Gawryn has repeatedly held himself out to Kirk as the counselor for the family, but has seemingly been an advocate for Vivian at every opportunity. When Kirk learned of Mr. Gawryn's suspension in the State of Washington and the reason for his suspension, Kirk telephoned Mr. Gawryn and made it very clear to him that he was to never meet with Brooke and Rylee again.

You still need to make it right with the Court regarding your baseless allegations that Kirk "manufactured allegations" etc.

It was very disappointing to see you continue your baseless assault upon Kirk to the Court when you both know the truth. Since the filing of the opposition, you have been provided a copy of Kirk's January 4, 2010 letter to Dr. Roitman. Therefore, there is no question that the NPD opinion originated with Dr. Roitman. A statement that Kirk had a conversation about narcissism or read a book about narcissism, at any time, is not a sufficient basis to make the allegations you made. You must have some evidentiary support for the allegation you made. You have none. You didn't allege Kirk read a book on narcissism or that Kirk had a conversation with Tahnee and Joseph wherein

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 7

Tahnee explained the behavior of a narcissist. You alleged he “manufactured allegation” “chose a diagnosis” “developed a theory” etc.

What is so frustrating is that you now know Kirk did not do any of those things and yet you continue to try to justify these horrendous allegations to the Court. During the hearing you pointed to paragraph 33 of Tahnee’s affidavit. Look at paragraph 106 of Kirk’s affidavit where he references the discussion with Tahnee and Joseph on March 8, 2010. This is the same discussion with Joseph and Kirk that Tahnee references in paragraph 33 of her affidavit. You will note the paragraphs in Tahnee’s affidavit are in chronological sequence. Paragraph 32 is regarding events on March 1, 2010 and Paragraph 34 is regarding events on April 5, 2010.

During the hearing, in your effort to continue this unsupportable position, you represented to the Court that Tom Standish must have told Kirk in 2005 to keep a record so as to build a case against Vivian, and that is why Kirk prepared the January 4, 2010, letter to Dr. Roitman. First, that never happened. Tom will attest to the same. Kirk talked to Tom only after Vivian abruptly left taking Brooke and Rylee without any discussion or explanation. Vivian and the girls were gone week after week, with Kirk not knowing where they were or when they would return. Brooke was just 6 years old and Rylee was just 2 years old. Kirk was, understandably, upset and frustrated and talked to Tom because he didn’t know what to do and was looking for help to find the girls. Tom told him there wasn’t a lot he could do. This was not a divorce planning consultation.

Second, during this time period, Kirk believed Vivian’s behavior was temporary. Although he did not know about Paula Squiteri at the time, he believed, just like Paula Squiteri believed, that Vivian’s behavior was a consequence of post partum depression. Kirk describes in detail why he thought Vivian’s behavior was temporary in paragraph 261 of this affidavit.

Third, unfortunately, for Vivian, the children, and Kirk, Vivian’s behavior did not improve and, in fact, worsened over time. After years of hoping and believing Vivian’s condition was temporary, only to see it get worse and worse, Kirk determined he had to get some professional help and started to put together a summary of everything he knew about Vivian. It is important to note the first contemporaneous entry in the January 4, 2010 letter documenting Vivian’s behavior was on **July 21, 2008**. If Tom gave the advice to Kirk in the summer of 2005 to build a case, which you now speculate, Kirk was very slow to respond.

We renew our demand that you unequivocally withdraw the baseless allegations you have made against Kirk. As officers of the Court, it is something you need to do.

Radford Smith, Esq.
Gary Silverman, Esq.
February 3, 2012
Page 8

Lets jointly go forward and do what is in the best interest of this family.

Finally, there really is no denying Vivian's misconduct wherein she has demonstrated a callous disregard for Rylee's health again and again. Similarly, there really is no denying Vivian's aberrant behavior in front of Tahnee and Whitney. The single issue is what is the cause of this unquestionably unacceptable behavior? Dr. Roitman has opined the cause of the problem is NPD. Based upon what Vivian has told them, with undisclosed assistance from Marvin Gawryn which was undoubtedly not shared with them, your experts have opined the problem is not NPD.

However, it is in everyone's best interest to determine the cause of the problem. As I said in Court, no one would be happier than Kirk if the cause of the problem is not NPD. Rather than continue to run this family into the emotional and financial ground, lets jointly do what is clearly in the best interest of this family, particularly Brooke and Rylee, and have an independent psychological evaluation performed. We can have this done by someone we both trust, give them all the information they need to make a fully informed decision, including interviewing Vivian, Kirk, Tahnee and Whitney as well as Dr. Roitman and one of your three experts, whom you can designate in your sole discretion. Whatever the diagnosis, lets commit to work together to do what is in the best interest of these children. Please.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: 

EDWARD L. KAINEN, ESQ.

ELK/cn

cc: Kirk Harrison
Tom Standish, Esq.

EXHIBIT 3

Kirk Harrison

From: Vivian Harrison [vivianlharrison@aol.com]
Sent: Friday, July 15, 2011 7:13 PM
To: Robert W. Lueck
Cc: Bob Dickerson; Marvin Gawryn; Melissa Attanasio, CFP; Tom Standish; Harrison, Kirk
Subject: Re: Harrison divorce

Sounds like YOU need to talk to me! Not mad at all relieved! I have my family back and doing what's best for my children and I get to share in there lives 24/7!

I'm blessed Mr and after witnessing first hand how family law mediators and lawyers operate opened my eyes to how truly jaded and unjust this system is! Ive been ask to keep logs on how bad my husband is and all his failings, mistakes and misgivings in an effort to make him look like an uncaring insensitive father and to discredit him and appear as a horrible person!

Would never DREAM of doing that to the father of my children. My children luv him and he is a descent human being and loves his children. He is a good father. Although we may not see things eye to eye I would never never never do anything to hurt one of the most important persons in my childrens lives for anything!!!!
Sent from my iPhone

On Jul 15, 2011, at 4:06 PM, "Bob Dickerson" <bob@dickersonlawgroup.com> wrote:

Bob,

In your e-mail below, you refer to Vivian Harrison as "Your [i.e., my] client". Her last e-mail is pretty clear. I have been fired. Thus, I obviously do not have a client to whom I can talk. Not much I can do. I will be following her instructions set out in her last e-mail to everyone who has had any involvement in her case, including Kirk Harrison and Tom Standish.

Bob

Robert P. Dickerson, Esq.

THE DICKERSON LAW GROUP

1745 Village Center Circle

Las Vegas, Nevada 89134

Telephone: (702) 385-3600

Facsimile: (702) 388-0210

E-Mail: bob@dickersonlawgroup.com

EXHIBIT 4

NNNN-NNNN-NNNY-NYNN
209012190006060001

Citi® Diamond Preferred® Rewards Card

Account Activity
Jul 09-Aug 07, 2009

Payment Due Date:

09/01/2009

Payment must be received by 5:00 PM
local time on the payment due date.

Minimum Amount Due:

\$20.00

Total New Balance:

\$405.75

Quick Reference

Total Credit Line

\$22,000

Available Credit Line

\$21,594

Cash Advance Limit

\$7,100

Available Cash Limit

\$7,100

Important Account Information

Join us in
our 5th birthday
celebration

After 5 years, ThankYou®
Network now offers millions
of rewards to millions of
members. To celebrate our
birthday and express our
ongoing commitment, we
invite you to enjoy even more
rewarding opportunities.

Visit thankyou.com
for limited-time special offers.

Thank You
Rewards Network

1LE006409

www.citi.com

Account Member
KIRK R HARRISON

Account Number
5410 6543 0866 5915

Customer Service
BOX 6000
THE LAKES, NV
89163-6000

How to Reach Us
1-800-633-7367

Total ThankYou Member Available
Point Balance As of 08/01/09:

130,938

Log on to www.thankyou.com/statement today to check your latest point balance, redeem
for great rewards, and earn more points.

At a Glance

Previous Balance	Amount Over Credit Line	Past Due	Finance Charges	Total New Balance
\$1,574.60	\$0.00	\$0.00	\$0.00	\$405.75

Payments, Credits and Adjustments

Sale	Post	Description	Amount
	07/21	PAYMENT THANK YOU	-1574.60

Standard Purchases

Sale	Post	Description	Amount
07/11	07/11	CAPRIOTTIS SANDWICHOPS BOULDER CITY NV	28.31
07/20	07/20	CITY OF BOULDER CITY P BOULDER CITY NV	34.00
07/31	07/31	DANCE MAGIC LLC SAINT GEORGE UT	323.96
08/04	08/04	DAYTON VALLEY COUNTR DAYTON NV	19.48

Categorized Purchase Activity

Category	Amount
Air Travel	0.00
Auto Rental	0.00
Entertainment	0.00
Health Care	0.00
Lodging	0.00
Miscellaneous	0.00
Organizations	0.00
Other Travel	47.79
Restaurants	34.00
Services	0.00
Vehicle Services	323.96

HARRISON V. HARRISON
CASE NUMBER 66157
CROSS-APPELLANT'S EXHIBITS J-L
OF THE DOCKETING STATEMENT

EXHIBIT “J”

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

7 Telephone: (702) 990-6448

8 Facsimile: (702) 990-6456

9 rsmith@radfordsmith.com

10 GARY R. SILVERMAN, ESQ.

11 SILVERMAN, DECARIA, & KATTLEMAN

12 Nevada State Bar No. 000409

13 6140 Plumas St. #200

14 Reno, NV 89519

15 Telephone: (775) 322-3223

16 Facsimile: (775) 322-3649

17 Email: silverman@silverman-decaria.com

18 Attorneys for Defendant/Counterclaimant

19 DISTRICT COURT

20 CLARK COUNTY, NEVADA

21 KIRK ROSS HARRISON,

22 Plaintiff/

23 Counterdefendant,

24 v.

25 VIVIAN MARIE LEE HARRISON,

26 Defendant/

27 Counterclaimant

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY DIVISION

28 ANSWER TO COMPLAINT FOR DIVORCE
AND COUNTERCLAIM FOR DIVORCE

29 COMES NOW, Defendant/Counterclaimant, VIVIAN MARIE LEE HARRISON, by and
30 through her attorneys RADFORD J. SMITH, ESQ., of the law offices of RADFORD J. SMITH,
31 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
4 ANSWER TO COMPLAINT FOR DIVORCE

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

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

5 6. That Plaintiff/Counterdefendant should be ordered to pay child support for the minor
6 children, pursuant to NRS 125B.070 *et. seq.*, until such time as each child, respectively, reaches the age
7 of eighteen (18) years, graduates from high school, or otherwise emancipates, whichever occurs later,
8 but in any event no later than the age of nineteen (19) years.
9

10 7. That Plaintiff/Counterdefendant should be ordered to provide medical and dental
11 insurance for the minor children, with the parties equally dividing all deductibles and other expenses not
12 reimbursed by insurance, until such time as each child, respectively, reaches the age of eighteen (18)
13 years, graduates from high school, or otherwise emancipates, whichever occurs later, but in any event no
14 later than the age of nineteen (19) years.
15

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

18 9. That there are community debts and/or obligations of the parties to be equitably divided
19 by this Court, the full extent of which has not been determined at this time.
20

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

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

25 12. That Defendant/Counterclaimant is entitled to receive, and Plaintiff/Counterdefendant is
26 capable of paying, alimony and/or spousal support in a reasonable amount and for a reasonable period.
27
28

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 WHEREFORE, Defendant/Counterclaimant prays judgment as follows:

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

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

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

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

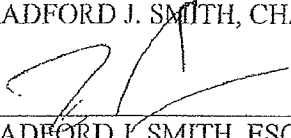
22 6. That Plaintiff/Counterdefendant should be ordered to provide medical and dental
23 insurance for the minor children, with the parties equally dividing all deductibles and other expenses not
24 reimbursed by insurance, until such time as each child, respectively, reaches the age of eighteen (18)
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 11. For an award of alimony and/or spousal support in a reasonable amount and for a
- 8 reasonable duration;
- 9 12. For an award of Defendant/Counterclaimant's attorney's fees and costs incurred herein;
- 10 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION


STATE OF NEVADA }
COUNTY OF CLARK } ss:

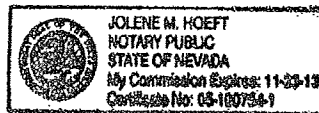
VIVIAN MARIE LEE HARRISON, having been duly sworn, deposes and says;

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 27 day of November, 2011.


NOTARY PUBLIC in and for
the State of Nevada



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

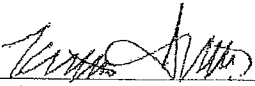
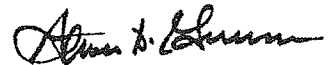

An employee of Radford J. Smith, Chartered

EXHIBIT “K”



CLERK OF THE COURT

1 **MOTN**
2 EDWARD L. KAINEN, ESQ.
3 Nevada Bar No. 5029
4 KAINEN LAW GROUP, PLLC
5 10091 Park Run Drive, Suite 110
6 Las Vegas, Nevada 89145
7 Telephone (702) 823-4900
8 Facsimile (702) 823-4488
9 Administration@KainenLawGroup.com

6 THOMAS STANDISH, ESQ.
7 Nevada Bar No. 1424
8 JOLLEY URGAL WIRTH WOODBURY & STANDISH
9 3800 Howard Hughes Parkway, 16th Fl.
10 Las Vegas, Nevada 89169
11 Telephone (702) 699-7500
12 Facsimile (702) 699-7555
13 tjs@juwww.com

14 Co-counsel for Plaintiff

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 KIRK ROSS HARRISON,

18 Plaintiff,

19 vs.

20 VIVIAN MARIE LEE HARRISON,

21 Defendant.

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

Date of Hearing: 10/30/2013
Time of Hearing: 9:00 am

ORAL ARGUMENT REQUESTED:
YES XX NO

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

23 **PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES**
24 **AND FOR OTHER EQUITABLE RELIEF**

25 COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys,
26 THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URGAL, WIRTH, WOODBURY &
27 STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby
28 ...

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4188
www.KainenLawGroup.com

1 moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS
2 125C.101(1) to modify the Order Resolving Parent/Child Issues, entered July 11, 2012.

3 This Motion is made and based upon the papers and pleadings on file herein, the Points
4 and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

5 DATED this 1st day of October, 2013.

6 KAINEN LAW GROUP, PLC

7
8 By: 

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

14 **NOTICE OF MOTION**

15 TO: VIVIAN MARIE HARRISON, Defendant; and

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

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
18 hearing before the above-entitled Court on the 30 day of October, 2013, at the hour of
19 9:00 a.m., or as soon thereafter as counsel may be heard.

20 DATED this 1st day of October, 2013.

21 KAINEN LAW GROUP, PLLC

22 By: 

23 EDWARD L. KAINEN, ESQ.
24 Nevada Bar No. 5029
25 10091 Park Run Drive, Suite 110
26 Las Vegas, Nevada 89145
27 Attorney for Plaintiff
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion is perhaps the most important motion this Court will be asked to decide in this matter, largely as a result of the impact of this issue upon the lives of Brooke and Rylee as well as hopefully preempting the conflict associated with the parties' interaction for many years. For the reasons which will be set forth herein, it is, without question, in the best interests of Brooke and Rylee to have the "teenage discretion" provision (Paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues) struck in its entirety. As a result of Vivian's bad faith, it has become readily apparent this provision will be detrimental to the children's lives and unduly subject them to needless emotional manipulation and distress.

Such a provision is suspect under any circumstance as it encourages instability and uncertainty in parent/child relationships.¹ Children always need consistent love, care and certainty. This is especially true for children who have had to live through the uncertainty and instability of a contested custody proceeding. In this case, where the mother has a well documented history of callously manipulating her children, this provision was destined to fail. (Affidavits of Tahnee and Whitney, Exh. 2 & 3, respectively, to Kirk's motion for temporary custody, filed 9.14.11; Paragraph 46 of Kirk's Affidavit, Exh. 5 to Kirk's Opposition and Countermotion re: Attorneys Fees, filed 5.28.13) As will be shown below, in blatantly violating prohibitions regarding communication with the children on this topic, Vivian has again demonstrated no hesitation whatsoever to callously manipulate these children to advance her self created vindictive competition with Kirk.

Paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues provides:

6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, **such child** shall have "**teenage discretion**" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.

¹ As noted in Kirk's Opposition and Countermotion re attorneys' fees, Dr. Roitman strongly advised Kirk to settle the custody portion of this case or risk long term emotional harm to Brooke and Rylee. Kirk underestimated Vivian's willingness to inflict emotional anguish upon Brooke and Rylee, and to separate Brooke and Rylee in her zeal to win the vindictive competition she has created with Kirk.

6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting and/or **making adjustments to their weekly schedule**, from time to time, to spend additional time with either parent or at either parent's home.

6.2. Such adjustments **shall not be prompted or suggested by either parent**, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they **shall each encourage the children to follow the regular schedule** to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. **Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.**

6.4. In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a). (Emphasis added)

II. STATEMENT OF FACTS

A. In Blatant Disregard and Violation of the Explicit Terms of the "Teenage Discretion" Provision, Vivian Has Convinced Brooke That She Can and Must Make a Choice Between Her Parents, and That Choice Impacts Rylee.

As a consequence of Vivian's emotional and physical absence from February of 2006 until September of 2011, Brooke and Rylee are especially close. Vivian instilled fear in Rylee and caused Rylee to be dependent upon Brooke, by manipulating Rylee each night. (Motion re Custody, filed 9.14.11, p. 30, l. 10-28; p. 31, l. 1-7.) When they were younger, if Rylee got in trouble for doing something wrong, Brooke would cry and be much more upset than Rylee. As previously noted in the litigation, when Brooke was upset about Vivian leaving on yet another trip for an extended period of time, Brooke noted that Rylee "has really never had a mom." (Kirk's Motion re Custody, filed 9.14.11, p. 14, l. 22) As a consequence of this fact, Brooke became a pseudo "mother" to Rylee. Brooke and Rylee have always slept in the same bed and continue to do so. Kirk cannot imagine a better older sister than Brooke has always been to Rylee. Brooke has consistently been an attentive, loving, and caring older sister to Rylee.

Brooke's 14th birthday was on June 26, 2013. Kirk had never even broached the subject of the "teenage discretion" provision with Brooke. In fact, subparagraph 6.2 prohibits a parent from

1 prompting or suggesting the child spend more time with them. Vivian had uninterrupted custody of
2 Brooke and Rylee from June 26, 2013 through July 16, 2013. Despite the prohibition, Vivian did not
3 waste a moment of time in informing Brooke about her "rights" under the provision. The very day
4 Brooke was returned to Kirk, on July 17, 2013, Brooke told both Kirk and her older sister, Whitney, that
5 *"since I am now 14 years old, I am independent, and can decide where I live."*

6 Because of the way the summer vacation schedule fell, Kirk only had custody of Brooke
7 and Rylee for those two days -- July 17 & 18, 2013 -- before Vivian again had Brooke and Rylee from
8 July 19, 2013 until August 1, 2013. In fact, because of the summer vacation schedule, Vivian had
9 custody for all but two of 38 days during that period.

10 Right after Brooke's return, on August 3, 2013, crying and emotionally distraught,
11 Brooke announced to Kirk that she was going to live with Vivian full time.² Brooke told Kirk that she
12 had not yet told Rylee that she wanted to live with Vivian full time, which would mean she would live
13 without Rylee for one-half the time. Kirk asked Brooke why she wanted to live with Vivian full-time.
14 Brooke initially responded that "girls are supposed to live with their mommies." This is a phrase Kirk
15 has heard before from Brooke, which was previously attributed to Vivian and Heather Atkinson. Kirk
16 asked Brooke if he had done anything to cause her to not want to live with him. The only incident to
17 which Brooke referred, occurred in front of Vivian, and undoubtedly with the prior prompting of Vivian
18 -- Brooke had asked Kirk to leave a dance class during parent observation and Kirk did not leave; Kirk
19 had previously attended numerous dance classes during parent observation -- he was supposed to be
20 there.

21 Kirk told Brooke he could not understand why she did not want to live with him as he
22 had always been there for Brooke and Rylee. Obviously parroting Vivian, Brooke responded that
23 Vivian had only left she and Rylee to help children in India, and that Kirk was never home when
24

25
26 ² The insidiousness of the "teenage discretion" provision is highlighted by the very position Kirk finds himself. In
27 order to protect his children, Kirk, of necessity, must refer to conversations with them. Vivian will, undoubtedly, tell Brooke
28 of these references in an effort to place Kirk in a poor light, such as, "See, you have to be careful what you say to your Dad,
because he will tell others what you say." This is why subparagraph 6.2, while containing language restricting
communication with the children, affords no real protection from Vivian's abusive manipulation, and it places Kirk in the
untenable position of making assertions which will provide Vivian fodder to further alienate Brooke from him.

1 Tahnee, Whitney and Joseph were younger.³ Despite Kirk facilitating communication with Vivian
2 during his custody periods, Vivian now actively interferes with the regular communication that existed
3 between Kirk and the children during her custody periods.⁴

4 The following day, Kirk finally broached the topic of teenage discretion with Brooke and
5 told her that it is not within her power to decide to live full-time with Vivian and it will just happen.
6 He indicated that Brooke can certainly express her wishes, but only the Judge can decide where she lives
7 full-time. Kirk told Brooke that under the circumstances, he did not believe it was best for she and
8 Rylee that she lives with her mother full-time. Brooke acknowledged it would hurt Rylee's feelings,
9 if Brooke told her she did not want to live with her for one-half the time. As if a weight was lifted,
10 Brooke seemed very relieved that she did not have to carry the burden of deciding where she was to live.

11 Later during the Utah/Lagoon vacation, following a conversation with Vivian, Brooke
12 asked Kirk if they could cut the family vacation to California short or not go altogether. Kirk asked
13 Brooke what she wanted to do if they stayed home during that time. Brooke said to spend an evening
14 or a lunch with Vivian.

15 **B. The Very First Time Brooke Requested Additional Time With Vivian During**
16 **Kirk's Custodial Period, Vivian Intentionally Violated the Stated Time Parameters**
17 **of the Visit.**

18 Vivian has convinced Brooke that if she wanted dance shoes, Vivian would have to be
19 the one to take her to get them and erroneously told Brooke and Rylee that Kirk has never taken Brooke
20 and Rylee to buy dance shoes and dance clothes.⁵ Despite having Brooke and Rylee as recently as

21 ³ This criticism is ironic, in that not only does the evidence contradict this assertion, the time period to which Brooke
22 was referring was prior to Brooke's birth.

23 ⁴ Vivian has the girls call her when they are with Kirk after they go to bed each night. There have been times when
24 Kirk has reminded the girls to call Vivian. However, more recently Brooke rarely calls or even returns Kirk's texts or
25 voicemail messages. Prior to Vivian's vacation in July 2013, Rylee would consistently return Kirk's texts and call him
whenever requested via text. Now, Rylee does neither. When Kirk has asked Brooke and Rylee why they don't call or text
him, they just shrug their shoulders. At one point, Kirk indicated that someone must be saying something to cause them to
not text or call. Brooke responded that "*you don't have any proof.*"

26 ⁵ In response to Brooke's and Rylee's statements that they desperately needed clothes for dance classes, Kirk just
27 bought Brooke and Rylee over \$350.00 of clothes at Scheel's in Salt Lake City during their Utah/Lagoon trip earlier that
28 month. Prior to that, during May and June of this year, Kirk, in response to requests from Brooke, bought clothes for dance
classes for Brooke at Target. On past occasions in the past, Kirk has taken Brooke and Rylee to buy dance shoes and dance
clothes (leotards and tights) at the very same store Vivian likely took Brooke on this occasion.

1 August 12th and 13th, when Vivian could have taken Brooke and Rylee to buy dance shoes, Vivian
2 convinced Brooke that she had to take Brooke to buy dance shoes before Vivian was to get them again
3 on August 26, 2013. Accordingly, Brooke told Kirk that she and Vivian “*planned* to go get dance
4 shoes” on Saturday, August 24, 2013, during Kirk’s custodial period with Brooke and Rylee.

5 Kirk told Brooke that he’d be happy to take her to get dance shoes as he had done before.
6 To Kirk’s surprise, both Brooke and Rylee both immediately parroted Vivian’s blatantly false statement
7 that Kirk had “never taken them to get dance shoes and dance clothes.” Despite Kirk identifying the
8 two stores where he had purchased dance shoes and dance clothes (leotards and tights) for them in the
9 past and the different times he had taken them this year to buy clothes for dance classes, they adamantly
10 denied he ever had. Deciding that it was silly to have this argument, Kirk asked Brooke how long she
11 needed to be with Vivian to get the shoes. Brooke indicated two hours or less. Kirk then told Brooke
12 he would send a confirming email to Vivian concerning the two hours, as Brooke, Rylee and Kirk had
13 plans to go into Henderson and do some shopping for other items. Kirk took Brooke to Vivian’s house
14 at 2:50 p.m. Vivian did not return Brooke to Kirk’s house until over five (5) hours later, at 8:00 p.m.
15 Needless to say, Brooke, Rylee and Kirk were unable to do the shopping they had planned during Kirk’s
16 custodial period with Brooke and Rylee. Attached as **Exhibit “1”** are the emails between Kirk and
17 Vivian, evidencing what occurred.

18 **C. As a Consequence of the Existence of the “Teenage Discretion” Provision, Vivian**
19 **Has Convinced Brooke She is Totally In Control Of Not Only Her Time, But Kirk’s**
20 **As Well.**

21 There are times during his custodial period when the children indicate a need to obtain
22 items from the other parent’s home. However, there has been a recurring problem when Kirk takes
23 Brooke to Vivian’s house to pick up items. This normally occurs on the transition days when Kirk picks
24 the girls up from school, so it was not much of an issue this summer. Brooke, not Rylee, will typically
25 leave Kirk sitting in the car waiting for her for anywhere from 20 to 35 minutes, when it should take her
26 less than 5 minutes and, certainly, no more than 10 minutes to obtain the items and return. In contrast,
27 when the children come to Kirk’s house to obtain items, Kirk always encourages Brooke and Rylee to
28 be respectful and considerate of the fact that Vivian is waiting in her car, and they always take less than
10 minutes and usually less than 5 minutes to get their stuff at his house.

1 Sometime after 8:00 p.m. on Sunday night, August 25, 2013, the night before the first
2 day of school, Brooke told Kirk that she needed to go to Vivian's house to pick up some things. Rylee
3 said she needed to get a pair of shorts. Kirk talked to both girls about being considerate and taking less
4 than 10 minutes to return to the car, and they both agreed that even if they couldn't find something they
5 wanted, that they would return to the car in no more than 15 minutes. After 15 minutes, Kirk could see
6 Vivian and Brooke standing inside the house visiting and continuing to talk. After 21 minutes, Brooke
7 and Rylee returned. Rylee made it clear that she was ready to return much earlier.

8 During the drive home, Kirk told Brooke she needed to be more considerate in the future.
9 Brooke initially responded that if Kirk did not like waiting, then he should just drop them off and then
10 come get them when they are ready. When Kirk told Brooke that it would be impractical to make two
11 trips back and forth between the houses, Brooke responded by telling Kirk that she will take 2 hours
12 next time. Kirk told Brooke that if she wasn't willing to be considerate, that he would not take her. It
13 was then that Brooke told **Kirk that he "had to take" her to her mother's house anytime she wanted**
14 **and she had the "right" to stay for as long as she wanted.** Kirk respectfully submits that Brooke did
15 not come up with this on her own. This conduct continues regularly. On September 25, Brooke went
16 into Vivian's house to just get a few items and didn't return to the car for 34 minutes. Vivian has
17 wrongfully empowered Brooke, in specific opposition to the terms of the parenting agreement and sadly,
18 Brooke is not mature enough to understand the manipulation.

19 Most recently, Kirk was informed by Brooke, that Vivian had planned an event this
20 coming Saturday, at Vivian's house for Brooke and three of her girlfriends to get ready for the
21 Homecoming Dance. The event will begin at noon, where Brooke and two of her girl friends will
22 prepare for the dance, Brooke will do all of their makeup, get dressed and take pictures and meet the
23 three boys that are going with them as part of the group to go to the dance. Incredulously, this is all
24 during Kirk's custody time with the children. Kirk was not approached about this by Vivian, Vivian
25 did not request any change to the schedule, nor has the matter ever been discussed between them.
26 Instead, Kirk was simply *informed* about the plans at Vivian's home by Brooke.

27 ...

28 ...

1 The situation caused by the existence of the “teenage discretion” provision, combined
2 with Vivian’s inability to abide by the limitation of the same and her overt manipulation of Brooke, is
3 untenable and not in the best interests of Brooke and Rylee.

4 **III. ARGUMENT**

5
6 **A. The Best Interests of Brooke and Rylee Require This Court To Strike and Invalidate the “Teenage Discretion” Provision.**

7 Kirk has done everything possible to provide Brooke and Rylee a consistent caring family
8 environment when they are with him. Brooke, Rylee and Kirk do as much as possible together. Under
9 Subparagraph 6.1, and Vivian’s prompting and manipulation of Brooke, in an effort to please Vivian,
10 Brooke will indicate a desire to spend time with Vivian and away from Rylee and Kirk on a weekly
11 basis. This will cause uncertainty and unnecessary emotional issues and stress for Rylee. She will have
12 a very strong sense of being left behind. Kirk will, undoubtedly, be blamed for this predicament, and
13 therefore Vivian’s unwillingness to abide by the parenting plan will adversely affect Kirk’s relationship
14 with both Brooke and Rylee. In addition, how can Brooke living full time with Vivian possibly be
15 argued as something positive for Brooke or the 10 year old sister who will be left behind.

16 The Court, obviously, would not allow a scenario where a callous parent could
17 manipulate minor children to modify a custody arrangement. Theoretically, subparagraph 6.2 is
18 supposed to provide a safeguard from that occurring. However, it is only theoretical, as it will be
19 impossible for Kirk to prove the content of the communication that the sought after adjustments are
20 originating with Vivian, who is prompting and suggesting Brooke not to follow the regular schedule.

21 The “teenage discretion” is already becoming an absolute nightmare for this family. This
22 provision must be stricken and Vivian must be sent a clear message from this Court that absent some
23 future significant event, the custody arrangement in place will not be changed. Otherwise, Vivian, in
24 the interest of competition and vindictiveness (certainly not in the interest of compassion, consideration,
25 or love for Brooke and Rylee), will continue to callously manipulate the children to their detriment. The
26 continued existence of Paragraph 6 will insure weekly emotional conflict and uncertainty in this family.
27 It is imperative, that there not be a vehicle that invites regular manipulation of the children.

28 ...

As the Court is aware, and by even a cursory review of the older children's affidavits, there is an especially well documented detailed history of Vivian's manipulation of her children. As shown by what has occurred since Brooke's 14th birthday, Vivian has no respect for that portion of this Court's order contained in Subparagraph 6.2. The Court may recall that Vivian's attorneys had Vivian evaluated and an MMPI report prepared. The findings in that report are relevant here. Dr. Margolis, in her MMPI report, found Vivian reported personality characteristics such as . . . proneness to rule infractions, and high-risk behavior, that may make her vulnerable to clashes with authority at times." (Exhibit "M" to Vivian's Reply Re Her Countermotions re Custody) It is respectfully submitted that these personality characteristics combined with Vivian's sense of entitlement (Criterion 5 of DSM-IV) and arrogant attitude and behavior (Criterion 9 of DSM-IV), explains why Vivian would, without a moment's hesitation, so callously manipulate Brooke to leave her 10 year old sister. In light of Vivian's lack of empathy (Criterion 7 of DSM-IV), one can only imagine the extent Vivian will exploit Brooke and Rylee (Criterion 6 of DSM-IV) in the vindictive competition she has created with Kirk. As noted above, Vivian's manipulation of the older children is well documented and the evidence of the recent conduct related to Brooke, which is already wreaking havoc, is only in its infancy.

After what they have had to endure for several years, Brooke and Rylee desperately need a family environment that is consistent, caring, loving, and certain. It is unimaginable that adults would knowingly and intentionally take any part in willingly creating an unstable, emotionally painful, and uncertain living environment for these children. Incredulously, however, that is just what Vivian has done with respect to the "teenage discretion" provision. Kirk respectfully begs the Court to not permit this to occur.

B. Despite the Very Close Relationship Between Brooke and Rylee, Vivian Has Trained Brooke to Please Vivian, And Vivian Will Convince Brooke to Leave Rylee On A Weekly Basis And Then For One Half The Time.

The Court may legitimately question Kirk's assertions of the closeness and bond between Brooke and Rylee, when Brooke has indicated a willingness to leave her little sister for one half of the time. If the Court could interview Tahnee the answer would be readily apparent. Tahnee is the oldest child. Studies have indicated that birth order is a powerful determining factor of a child's personality. (The Birth Order Book: Why You Are the Way You Are (Revell, 2009) The first born often times has

1 a very strong desire to please the parents. Until she went away to college, Tahnee's whole life was
2 about pleasing Vivian. This unhealthy environment inhibited Tahnee's own personal growth,
3 development of a strong self-identity, and maturity – the focus was always upon pleasing Vivian. As
4 a consequence, Tahnee has suffered from depression, self-doubt and insecurities significantly more than
5 she otherwise should have.

6 Brooke is ten years younger than Joseph, and therefore, for lack of a better description,
7 is the second first born. It is of utmost importance to Brooke for her to please Vivian. Vivian, in all too
8 subtle ways, creates a world where the first and foremost priority is to please Vivian.⁶ It is a tremendous
9 burden for the child to bear. Of necessity, it inhibits the development of the child's self identity,
10 personal growth, confidence, and independence as she is trained to need Vivian's constant approval.
11 In the current scenario, Brooke is regularly seeking Vivian's approval, even at the expense of Rylee.

12 Kirk submits, and the record supports, that Brooke knows that Kirk has always been there
13 for her and will always be there for her. Brooke also knows that Vivian has not been there for her –
14 being emotionally absent and physically away for many years. Brooke is therefore highly motivated
15 to please Vivian for fear of losing her again. Vivian told Tahnee, often times in front of the other
16 children, that Tahnee was her "very best friend." Vivian now tells Brooke, within earshot of Rylee, that
17 Brooke is her "very best friend."

18 Vivian's Machiavellian style of parenting often is not in the best interests of Brooke and
19 Rylee. Vivian simply lacks any empathy for these children. Just as Vivian blindly pursued Jonathon
20 Rhys Meyers and Sergio Becerra to the emotional and physical exclusion of Brooke and Rylee, Vivian
21 is now blindly pursuing the vindictive competition she feels with Kirk to the emotional detriment of
22 Brooke and Rylee. The ill conceived "teenage discretion" provision is being used by Vivian to
23 emotionally manipulate and harm Brooke and Rylee - in fact, the unwillingness of Vivian to abide by
24 the terms, and the relative inability to enforce material terms, encourages the abuse.

25 ...

26
27 ⁶ The middle child is often the most independent. This was true with Whitney. Vivian discovered she could not
28 manipulate Whitney and emotionally discarded Whitney at a very young age. The Court may recall that Vivian wanted to
send Whitney away when she was just 12 years old simply because Vivian did not like the way Whitney looked at her.

1 The competition isn't something imaginary. For Brooke's 13th birthday, Kirk gave
2 Brooke a new cell phone cover from Target, which cost \$29.00. For the same birthday, Vivian gave
3 Brooke a professional Cannon camera, which cost in excess of \$1,000.00. A responsible parent wants
4 to instill moral values and personal responsibility in their children. Sadly, in stark contrast, and just like
5 the "teenage discretion" provision, Vivian is motivated to win a perceived popularity contest with Kirk.

6 As a consequence of Vivian's lack of empathy for Brooke and Rylee, she will continue
7 to emotionally run them into the ground to win this vindictive competition she has created. Under
8 Subparagraph 6.1 there will continue to be weekly issues. This cannot be acceptable to this Court.
9 Under Subparagraph 6.2, parents are "prohibited" from suggesting or prompting the children (in this
10 case Brooke) to spend less time with the other parent. It is absolutely evident that Vivian has done a
11 lot more than merely suggesting and prompting Brooke. The reality is this provision affords no
12 protection whatsoever. The complaining parent will be placed in the untenable position of challenging
13 their own child, who is being manipulated by the other parent. Further, there is virtually no way to
14 enforce the prohibitions on misconduct. This "teenage discretion" provision, as applied to the
15 circumstances of this case, is an insidious provision which severely compromises the ability of the
16 children to be insulated from parental misconduct.

17 **C. This Court Has Ample Authority To Revoke This "Teenage Discretion" Provision,**
18 **Which Is Contrary To The Policy of the State Of Nevada and In Violation of the**
19 **Nevada Revised Statutes.**

20 There is ample authority for this Court modify its prior order and strike, revoke, nullify,
21 and/or delete the "teenage discretion" provision – Paragraph 6. Under NRS 125.510(1)(b), this Court
22 may "modify or vacate" its order regarding custody. And generally under NRS 125.230(1), this Court
23 has the authority to enter such orders "as it may deem proper for the custody . . . of any minor child or
24 children of the parties. The Court's sole consideration in such a circumstance, "is the best interest of the
25 child." NRS 125.480(1).

26 ...

27 ...

28 ...

1 This "teenage discretion" provision is in contravention of the clearly stated policy of the
2 State of Nevada and NRS 125.460, which provides as follows:

3 The Legislature declares that **it is the policy of this State:**

- 4 1. To ensure that minor children have frequent associations and a
5 continuing relationship with both parents after the parents have become
6 separated or have dissolved their marriage, and
7 2. **To encourage such parents to share the rights and responsibilities**
8 **of child rearing. (Emphasis added)**

9 This "teenage discretion" provision clearly violates this statute as it has created, in Vivian's mind, a
10 vehicle to pursue a vindictive competition with Kirk, wherein she has convinced Brooke that she should
11 live with her full time – leaving Rylee one-half the time – and until then, leaving Rylee on a weekly
12 basis. This provision not only does not "encourage" parents, it does the opposite – it encourages a
13 parent, Vivian, to not share the rights and responsibilities of child rearing.

14 Importantly, this "teenage discretion" provision also violates NRS 125C.010(1)(a) as the
15 right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights
16 of the parties can be properly enforced and that the best interest of the child is achieved." For the
17 reasons previously noted, under this "teenage discretion" provision, the rights of the parties cannot be
18 properly enforced and this "teenage discretion" provision totally disregards the best interests of Brooke
19 and Rylee. This provisions creates uncertainty, emotional issues, disrupts the family, causes
20 inconsistency, needlessly instills fear, and facilitates immersing children in their parents' conflict.

21 Finally, under *Rivero v. Rivero*, 216 P.3d 213 (Nev. 2009), parties are free to contract
22 and the Court will enforce those agreements, provided *they are not unconscionable, illegal or in*
23 *violation of public policy. Id* at 227. Once a party moves to modify an agreement, however, the Court
24 "must apply Nevada child custody law, including NRS Chapter 125C and case law." *Id*. Kirk has
25 requested modification of the custody order to nullify this provision for teenage discretion at this time
26 and therefore, the Court must look to Nevada law, rather than the parties' agreement. NRS
27 125C.010(1)(a) specifically provides that visitation must be defined with sufficient particularity. By
28 its very nature, a teenage discretion provision such as this does not provide any particularity and is
therefore improper under the statute. Furthermore, a teenage discretion such as the one at issue is in
violation of public policy for several reasons. First, it arguably delegates parenting rights and decisions

1 to the minor child and needlessly involves them in the divorce. Second, it does not allow either party
2 to have a clear understanding of their rights to time (an important enough consideration so as to merit
3 statutory language under NRS 125C.010(1)(a) requiring sufficient particularity). Additionally it is
4 important to note that even if Kirk were not seeking to nullify this teenage discretion provision, the
5 Court can only enforce agreements which are not unconscionable, illegal or in violation of public policy.
6 As this provision for teenage discretion violates NRS 125C.010(1)(a) and NRS 125.460 and public
7 policy, the Court should not enforce the provision in any event.

8 Kirk respectfully urges the Court to avoid the unnecessary emotional gauntlet for these children
9 that Vivian, otherwise, has demonstrated a heartless eagerness to subject them. A truly caring mother
10 would not manipulate her 14 year old daughter to separate her from her 10 year old sister on a weekly
11 basis and, ultimately, for one half the time.

12 **D. Vivian Has Demonstrated Again and Again Throughout This Litigation That She**
13 **Cannot Be Trusted To Abide By the Orders of this Court or Do The Right Thing**
14 **By Her Own Children.**

15 Subparagraph 6.2 presumes good faith conduct on the part of each parent not to
16 encourage or manipulate the child to seek to be with one parent more than the other. Vivian's behavior
17 throughout this litigation gives every indication that presumption, with respect to Vivian, is erroneous.
18 In addition, to the many examples of misconduct previously well documented before this Court, there
19 are many more of more recent vintage.

- 20 1. Vivian intentionally circumvented this Court's order to successfully take two of Kirk's
21 custody days with the children and attempted to steal a third day. Vivian unilaterally
22 changed the dates of the "sewing camp" (even though the "sewing camp" never changed
23 dates) and by doing so, Vivian "took" two days from Kirk with the girls – July 31 and
24 August 1 – and tried to take a third.
- 25 2. Vivian, upset with the parties daughter, Whitney, without Whitney's knowledge or
26 consent, made over \$1,200 in charges on a credit card account for which Whitney was
27 responsible for payment.
- 28 3. Vivian has refused to give Tahnee and Whitney their birth certificates, and their
childhood memorabilia, including childhood awards, school grades, class and individual
school photographs, projects, crafts, etc. Both Tahnee and Whitney have requested their
original birth certificates from Vivian. Vivian has either not responded or told them they
are lost. Whitney has requested the storage bins containing all of her personal childhood
memorabilia that Whitney organized. To date, Vivian has failed to provide the personal
property, which indisputably belongs to Tahnee and Whitney. Both Tahnee and
Whitney want their original birth certificates and their personal childhood memorabilia.
Unless this Court orders that Vivian give these girls their property, they will never see

any of their very sentimental possessions. Unless Vivian is faced with a significant penalty for not providing these personal items to Tahnee and Whitney, it is expected that Vivian will erroneously claim that all of this is lost and cannot be found.

4. Whitney's wedding dress and other clothing were left in the marital residence. As part of her Physician Assistant training, Whitney was working in Southern Nevada during March of this year. Whitney attempted to get her wedding dress and other items of personal clothing when she was here in March. However, Vivian was "not available" and refused to let Whitney get her own wedding dress and clothes, if Vivian was not present. Vivian agreed Whitney could obtain her wedding dress and clothes when Whitney returned in July as Vivian would then be available. However, in July, Vivian rolled Whitney's wedding dress up in a ball with just a couple of other items of Whitney's clothes in a plastic bag and set it outside the front door. All of this begs the question as to why Vivian had to be present. Apparently, Vivian had to be present to not provide the majority of Whitney's clothes to her. Whitney would very much like to obtain the rest of her clothes.
5. Vivian has refused to give Kirk his copies of the bound books that Rylee wrote for her fourth grade class and for GATE. While in Kirk's custody, Rylee gave Kirk a form to purchase additional bound copies of the book that Rylee wrote for school. Rylee received a bound copy without charge. Since the money had to be paid within just a few short days, Kirk ordered two bound copies -- one for Vivian and one for Kirk. Kirk has never received a copy of this book. Rylee also wrote a book for GATE. Rylee received a free bound copy. Although Kirk never saw the form, there was also an opportunity to purchase additional bound copies of this book written by Rylee. Kirk never received a copy of either book. Kirk has sent several emails to Vivian in an effort to obtain bound copies of these books, which were written by Rylee. Vivian has never responded. Unless this Court orders Vivian to provide these books, Kirk will be relegated to attempting to enlist the assistance of Rylee's school and the GATE teacher in an effort to obtain his bound copies of Rylee's books from Vivian.
6. Despite Kirk's name still being on the title to the marital residence, Vivian, without Kirk's knowledge or consent, hired an unlicensed handyman to perform significant structural work at the marital residence, who caused damages to the property and neighboring properties estimated to be in excess of \$150,000.00. But for Vivian's attorneys ongoing delay, of well over 7 months, in revealing their objections to the Marital Settlement Agreement, Kirk would not be in this precarious position.
7. Vivian has filed a frivolous lawsuit against Dr. Roitman in Washoe County, despite the lack of any legally cognizable ground to do so -- Dr. Roitman did not owe Vivian a tort duty.
8. Vivian and Kirk agreed to a division of personal property located at the marital residence and identified on the personal property list prepared by Joyce Newman. Pursuant to that agreement, Kirk was to receive the old stairmaster. When Kirk vacated the marital residence he forgot to take the old stairmaster. As soon as Kirk realized his error, he notified Vivian and requested that he be allowed to come pick up the old stairmaster. Vivian has refused.

IV. CONCLUSION

The concept of teenage discretion is only workable in circumstances where the parents have a reasonable and functional relationship, which does not exist in this case. The protections that

1 are theoretically built into the provision to prevent abuse, are already being ignored and are objectively
2 unenforceable. Within days of her 14th birthday, after spending 21 uninterrupted days with Vivian,
3 Brooke, who would have no way of knowing about any provisions in the parenting plan, was suddenly
4 insisting on the *free exercise of her "teenage discretion rights."* And, after spending another 14
5 uninterrupted days with Vivian, announced she wanted to live with Vivian full time, which would mean
6 leaving her 10 year old sister for one-half the time.

7 Kirk has tried to be reasonable and accommodating, but it has resulted in continued
8 immersion of the children into their parents' custody dispute and further encroachment into his custodial
9 periods. Vivian does not care about the impact on Brooke, who is placed in emotional turmoil and now
10 forced to choose between her parents on a daily basis in order to placate one of them - even on the most
11 basic of issues as when to return to the car. Vivian, consumed by competition at every interaction, has
12 objectively tried to create problems by not being able to exercise even a modicum of common courtesy
13 in minor situations (e.g. keeping the girls talking in the house for 20 to 35 minutes while Kirk waits in
14 the car outside her house). As a result of Vivian immersing Brooke in this conflict (both by providing
15 her with information she never should have had, and by butchering the explanation of the provision),
16 the parties are in near daily conflicts, that was otherwise much more limited. Kirk implores the Court,
17 in the best interests of Brooke and Rylee, to set aside this provision in its entirety.

18 DATED this 1st day of October, 2013.

19 KAINEN LAW GROUP, PLLC

20
21 By: 

22 EDWARD L. KAINEN, ESQ.
23 Nevada Bar No. 5029
24 10091 Park Run Drive, Suite 110
25 Las Vegas, NV 89145
26 Attorneys for Plaintiff
27
28

AFFIDAVIT OF KIRK R. HARRISON
Filed in Support of Plaintiff's Motion to Modify Order Regarding Teenage Discretion
and for Other Equitable Relief

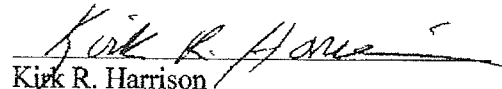
STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

KIRK R. HARRISON, declares and says:

1. The matters stated in this Affidavit are based upon my personal knowledge or upon information and belief. If called upon to testify, I could and would competently testify to the facts set forth herein.


2. Each of the factual averments contained in Plaintiff's Motion To Modify Order Resolving Parent/Child Issues and Other Equitable Relief are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Kirk R. Harrison

State of Nevada
County of Clark

Subscribed and sworn before me
this 27th day of September, 2013.



Notary Public

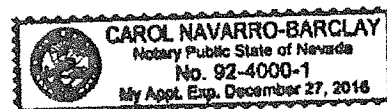


EXHIBIT “1”

From: Vivian Harrison [mailto:vivianlharrison@aol.com]
Sent: Saturday, August 24, 2013 9:51 PM
To: Kirk Harrison
Subject: Re: dance shoes

I have given you no assurance or understanding about anything. Brooke took exactly the time she felt she needed and that is totally, completely acceptable.

Sent from my iPhone

On Aug 24, 2013, at 8:02 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:

I took Brooke to your house directly from her school dance rehearsal at Dance Etc., with the understanding you would return her in two hours or less. That is the amount of time Brooke requested. Brooke was at your house at 2:50 p.m. You just dropped her off at 8:00 p.m. This is unacceptable.

From: Vivian Harrison [mailto:vivianlharrison@aol.com]
Sent: Saturday, August 24, 2013 6:40 PM
To: Kirk Harrison
Subject: Re: dance shoes

Lol.....we know the truth, do you know what yr the store ur referring to closed in BC??!! Funny Rylee Brooke & I have no recollection of the one time u went to trader joe store to by an outfit. if u did go once, ha ha congrats!!!! ur such a good dad!!!!u don't even remember the name of the store. Too funny.,,,

Sent from my iPhone

On Aug 24, 2013, at 5:00 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:

You have no idea what you are talking about. I bought Brooke a pair of ballet shoes at the store in Boulder City before they closed. The next year I bought them both dance shoes and clothes at the store near Trader Joe's. Rylee had a growth spurt and sometime later went to the same store and bought Rylee two new leotards and Brooke a pair of shoes. You are the one that is recreating the past by attempting to minimize my role in their lives with your lies.

From: Vivian Harrison [mailto:vivianlharrison@aol.com]
Sent: Saturday, August 24, 2013 3:08 PM

To: Kirk Harrison
Subject: Re: dance shoes

No you never have. Brooke & Rylee both know you haven't and have confirmed with me that you haven't. Stop recreating past. You were not involved.

Sent from my iPhone

On Aug 24, 2013, at 2:07 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:

I have bought shoes and dance clothes there in the past. I assumed you had as well.

From: Vivian Harrison [<mailto:vivianlharrison@aol.com>]
Sent: Saturday, August 24, 2013 1:42 PM
To: Kirk Harrison
Subject: Re: dance shoes

You & I have never bought shoes there in the past.

Sent from my iPhone

On Aug 24, 2013, at 1:01 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:

Vivian,

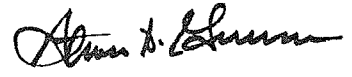
Brooke has told me that you and she have made plans to go buy dance shoes for her this afternoon. I will take Brooke to your house shortly after 2:30 p.m. I am assuming you are going to the dance store in the Trader Joe's shopping center at Sunset and Green Valley Parkway, where we have purchased dance shoes and clothing in the past. Brooke said that she expects to be back in two hours or less.

Kirk

EXHIBIT “L”

1 **OPP**

2 RADFORD J. SMITH, ESQ.
3 RADFORD J. SMITH, CHARTERED
4 Nevada State Bar No. 002791
5 64 N. Pecos Rd., Suite 700
6 Henderson, NV 89074
7 T: (702) 990-6448
8 F: (702) 990-6456
9 Email: rsmith@radfordsmith.com


CLERK OF THE COURT

6 GARY R. SILVERMAN, ESQ.
7 SILVERMAN, DECARIA, & KATTLEMAN
8 Nevada State Bar No. 000409
9 6140 Plumas St. #200
10 Reno, NV 89519
11 T: (775) 322-3223
12 F: (775) 322-3649
13 Email: silverman@silverman-decaria.com

14 Attorneys for Defendant

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

14 KIRK ROSS HARRISON,

15 Plaintiff,

16 v.

17 VIVIAN MARIE LEE HARRISON,

18 Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

FAMILY DIVISION

21 **DEFENDANT'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER**
22 **RESOLVING PARENT-CHILD ISSUES [TO DELETE "TEENAGE DISCRETION"**
23 **PROVISION] AND OTHER EQUITABLE RELIEF;**

24 **DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO**
25 **CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR**
26 **CHILDREN, AND FOR ATTORNEY'S FEES AND SANCTIONS**

26 DATE OF HEARING: October 30, 2013

27 TIME OF HEARING: ~~9:00 a.m.~~ 10 : 00 A . M .

28 Defendant VIVIAN MARIE LEE HARRISON ("Vivian") opposes Plaintiff's Motion to Modify
the Stipulated Parenting Plan, and requests the motion be denied in its entirety; she countermoves to

1 Resolve Parent/Child Issues, for a prompt interview of the children under EDCR 5.13, for the setting of a
2 hearing on the issue of custody, and for sanctions under EDCR 7.60. This Opposition and these
3 Countermotions are based upon all pleadings and papers on file herein, the evidence attached hereto, and
4 any oral argument or evidence adduced at the time of hearing.
5

6 I.

7 INTRODUCTION

8 From the commencement of this action in 2011, both of the parties' minor children, Brooke, born
9 June 26, 1999 (age 14), and Rylee, born January 24, 2003 (age 10), have expressed their preference to live
10 with Vivian. That preference arises from their close bond with Vivian. In March 2012, when the Court
11 directed the parties share joint physical custody, the children still spent the majority of their time in
12 Vivian's care.¹ After the Court's interim order, Brooke adamantly objected to any plan in which she
13 would be required to spend equal time with Kirk. Vivian weighed Brooke's concerns, and instead of
14 proceeding with an action for her primary care, negotiated a provision designed to address Brooke's
15 problems with Kirk. See, Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2013
16 (hereinafter "Parenting Plan"), pages 6-7, paragraph 6.
17

18 Under that provision, Brooke and Rylee can discuss their desires with a mutually agreed upon
19 therapist, and the therapist and the parties can discuss any issues relating to the children (including their
20 choice to spend more time with either parent) with a Parenting Coordinator ("PC"). The parties' counsel
21 drafted the provision to place *less* pressure on the children to make any choice between parents by
22 allowing the children a voice, after age 14, to spend more time with one parent without undermining the
23 joint custodial plan. The fundamental goal of the provision was to avoid litigation, and seek resolutions
24 through therapy and a Parenting Coordinator. This provision was an *essential* part of Vivian's agreement
25
26
27

28 ¹ See, Letter February 4, 2012 letter from Radford Smith, Esq., to Edward Kainen, Esq., attached hereto as Exhibit "A," at page 3.

1 to resolve custody in June 2012. The purpose of the provision is to prevent conflict, but if it arises, to
2 manage it.

3
4 Kirk undermined the “teenage discretion” provision from its commencement. He waited over
5 fourteen months from the parenting agreement to identify any objection to Vivian’s choice of therapists
6 and Parenting Coordinator, or to propose any alternative professionals. By his tactical delay, Kirk
7 prevented either the children or the parties from implementing the counseling and negotiation designed to
8 help them with issues between parents, and monitor and discuss any behaviors harmful to the children.
9 Kirk’s has designed his motion to further delay that process because Kirk knows the pressure to spend
10 more time with Vivian is building.
11

12 Can Kirk believe his present motion has merit? He argues that a provision recognizing teenage
13 discretion violates public policy even though Nevada law *requires* the court to weigh such discretion
14 when determining the best interest of a child.² Kirk’s refusal to name or approve a therapist or PC for 14
15 months, his attempt to reduce the power of the Parenting Coordinator to nothing³, and his current meritless
16 Motion are not good faith attempts to protect the children, but are instead designed to prevent the children
17 from having any mechanism to express their continued desire to spend more time with Vivian. It is a fair
18 inference Kirk believed that if he could torpedo the entire process, he could prevent the inevitable
19 conversation between the children and therapist/Parenting Coordinator about custodial time. It is
20 submitted Kirk entered the Parenting Plan in bad faith, and refused to name a therapist or Parenting
21 Coordinator to block its effect and enforcement. Vivian must now come directly to the Court for relief.
22
23
24
25

26 ² NRS 125.480(4)(a)

27
28 ³ In his objection, filed months after Vivian provided his counsel with a draft parenting coordinator order, Kirk provides a proposed parenting coordinator order that reduces the PC to a toothless mediator whose only role is to make non-binding recommendations. Such a construct only adds a layer of cost to the disputes of the parties if the PC has no power to resolve those disputes. *See*, Plaintiff’s Opposition to Motion for Entry of Parenting Coordinator, filed July 19, 2013.

1 Kirk's motion admits that his relationship with Brooke is strained and conflicted, and that she
2 desires to live with Vivian. His relationship is worse than he admits (which is why he wants to prevent
3 her from having any input into her timeshare), and Vivian submits that continuing to force Brooke to
4 endure the type of pressure and ridicule Kirk heaps on her increasingly damages her. Kirk's actions and
5 words show he lacks insight into the emotional and physical needs of the children in their present
6 developmental stages, and his motion evidences adequate cause for hearing on the issue of custody and
7 timeshare. Vivian requests that the Court deny Kirk's motion, order an interview of the children, and set
8 an evidentiary hearing on the issue of custody.
9
10

11 II.

12 STATEMENT OF FACTS

13 Kirk blames Vivian for his problems with Brooke, but acknowledges there is open conflict with
14 her in his home. He argues that she has improperly influenced or alienated Brooke, and that influence is
15 the source of the problem. He attributes Vivian's actions to "competition." Motion, page 3, line 20. He
16 takes no responsibility for his relationship with Brooke, and oddly insists that if the Court would deny her
17 any voice in the time she spends with either parent, she would suffer less stress. Kirk's present motion
18 seeks to eliminate the "teenage discretion" provision negotiated by the parties, and placed into the
19 Parenting Plan.
20
21

22 The genesis of the teenage discretion provision was Kirk's troubled relationship with Brooke. On
23 June 1, 2012, counsel for Vivian explained her request for the provision:

24 *Teenage Discretion:* As we have discussed over the last several weeks, part of Vivian's
25 reluctance to enter into a final agreement without the input from Dr. Paglini was based
26 upon what appears to be Brooke's deteriorating relationship with Kirk. Brooke has
27 regularly indicated to Vivian that she desires spend more time with Vivian. Vivian has
28 compromised in large part based upon the desire of the other members of the family to
see this matter close. She still has significant concerns about Kirk's relationship with and
care of Brooke, but she has listened to the advice that the resolution of the matter would
lead to an improvement of that relationship.

1
2 What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk
3 fears. At a certain point all Courts begin to place substantial weight on the desire of a
4 teenage child regarding her care – we cannot affect that factor by any agreement.
Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises.
Based upon what has occurred in litigation to date, this is an extremely important goal.

5
6 Moreover, the concerns raised in your letter will be addressed through the system that the
7 agreement puts in place - counseling and a parenting coordinator. Your client will have a
8 year to address the problems in his relationship with Brooke. The provision does not
9 place the responsibility of choosing on Brooke, it simply gives each child discretion after
10 14 to spend more time with one parent or the other, a request that will likely be granted to
11 them in any event by the Court. Again, the provision is designed to avoid litigation.

12 *See*, Letter dated June 1, 2012 from Radford Smith, Esq. to Thomas Standish, Esq., **Exhibit "B"** hereto.

13 **1. Brooke and Rylee's Longstanding Desire to Live Primarily with Vivian**

14 From the commencement of this case, Brooke and Rylee expressed their desire to spend a greater
15 amount of time with Vivian than with Kirk. This was contrary to Kirk's preposterous claim that Vivian
16 was absent from the children's lives for six years, so Kirk first asked that the Court ignore any statements
17 by Brooke or Rylee from their eventual interview. *See*, Plaintiff's Motion, filed September 14, 2011, page
18 34, lines 24-28 and page 35, lines 1-9. Vivian, in order to avoid protracted litigation over Kirk's claims
19 that would be shown false by the interview of the children, repeatedly requested the interview. Vivian's
20 Opposition to Kirk's Motion for Joint Legal and Primary Physical Custody, filed October 27, 2011, at
21 page 10, lines 6-18, at page 45, lines 1-4; and at page 50, lines 25-28; Transcript of hearing of December
22 5, 2011, page 8. Because the children would readily attest to all of the various and daily activities that
23 Vivian engaged in with them, Kirk resisted any interview of the children. Transcript of the hearing of
24 December 5, 2011, pages 15-16. Despite Kirk's attempts to avoid the children's input, the Court,
25 consistent with its duty under law (NRS 125.480), ordered interviews of both children:

26
27 COURT: Given the ages with [Rylee] just turning age 9 and Brooke at age 12 going on 13,
28 certainly Brooke is at the age – she's right at that borderline age where she is – she could
be considered of sufficient age and capacity to express a preference. I don't view that at
[Rylee]'s age.

1 So that's one of the subfactors that I have to look at, looking at the physical,
2 developmental, emotional needs of the children and the nature of their relationship with
3 both parents. It may be some form of pre-focus assessment to the extent that I need the
4 involvement of an evaluator—again, not for the purposes of a custody evaluation, that's
5 ultimately my decision, but there may be some assistance in providing insight really as it
6 relates to those three subfactors NRS 125. 480 and whether – and who provides that
7 service.

8 If it's someone on our provider list, I view it as something that expands more beyond just a
9 simple FMC interview of Brooke, especially if [Rylee] is going to be involved – not
10 necessarily for expressing a preference—but for purposes of evaluation her physical,
11 developmental -- and that's been discussed throughout the papers and some of the
12 conditions and treatment that she's going through, as well as the nature of her relationship
13 with both parents.

14 See Written Transcript of the hearing on February 1, 2012, page 8, lines 13- 24 and page 9, lines 1-10

15 You know, perhaps, to the extent that [Tahnee and Whitney] were witness to anything that
16 occurred, that's certainly something an evaluator can delve into, but the three factors that,
17 in my opinion, really are more of a focal point for any outsource provider to provide me
18 assistance on relating to just Brooke and [Rylee] are the nature of relationship of the child
19 with each parent, the physical, developmental, emotional needs of the child, and then as it
20 relates to Brooke, the wishes of the child who's of sufficient age and capacity to express a
21 preference.

22 Written Transcript of the hearing on February 1, 2012, page 12, lines 6-15.

23 Kirk understood that children's statements would mirror the multiple witness statements Vivian
24 had provided to the Court, and would confirm her close bond with the children, so he later resisted having
25 the results of their interview published by Dr. Paglini. He did so to continue, as he did in the present
26 Motion, to suggest that Vivian abandoned the children for six years, physically harmed them by sleeping
27 with them, lied to them, refused to do anything for them, etc. There were two neutral witnesses in the
28 home, and Kirk's actions consistently sought to suppress their testimony.

29 **2. The Historical and Developmental Basis of Vivian's Close Bond with Brooke and Rylee:**

30 Kirk claims that the children are unusually close, and want Vivian's approval, because she
31 "abandoned" them for six years, between 2005 and September 2011. He argues, in sum, that the children
32 should not be given a voice in their care because Vivian has improperly influenced them. By so arguing,

1 he attempts to undermine the true reason the children have continually desired to be in her care – their
2 close bond formed through the care Vivian has provided to them their entire lives.

3
4 **A. Kirk's Claim that Vivian ever "Abandoned" the Children is False and
Unsupported by the Evidence in this Case.**

5 Kirk claims in nearly every filing in this case that Vivian "abandoned" the children, failed to feed
6 them, did not participate in their events, failed to help them with homework, and regularly left them with
7 others over a six-year period. Vivian provided a quantum of evidence both broad and deep (including
8 multiple witness affidavits, bank account records of purchases, etc.) of her continued daily involvement in
9 the children's lives. Vivian summarily addresses that evidence below.

10
11 With her first Opposition and Countermotion, filed October 27, 2011, Vivian provided sworn
12 Declarations/Affidavits of Michele Walker, Nyla Roberts, Kim Bailey, Annette Mayer, Heather Atkinson,
13 and Lizbeth Castelan – all of whom attest to Vivian's attentiveness and selflessness as a mother. In
14 addition to demonstrating Vivian's total involvement with the children's daily lives, those sworn
15 statements attested to their personal knowledge of countless events Vivian attended with the children –
16 baptisms, vacations to Wyoming and Disneyland, sewing school, pageants, shopping trips, extensive
17 school involvement, PAC meetings and events, book fairs, school activities (plays, programs,
18 parent/teacher conferences etc.), cake decorating classes, birthday parties, and haunted houses to name a
19 few. As the Court may recall, Ms. Atkinson and Ms. Walker were the parents of children that Rylee and
20 Brooke played with nearly daily; they had adequate opportunity to witness Vivian's regular care and
21 interaction with the children. Vivian even provided an affidavit from the parties' housekeeper, Elizabeth
22 Castellan, who testified that when she was at the home weekly that it was Vivian that cared for the
23 children, and did the bulk of the household chores.

24
25 In her opposition, Vivian attached a detailed statement of many charges on credit cards evidencing
26 Vivian's regular purchase of clothing, dance supplies and other items for the children, during the time

1 Kirk claims she abandoned them. Ironically, in his initial motion, he argued that Vivian would not take
2 them to buy dance shoes – a fact belied by the statement in his present motion that the girls could not
3 remember a single instance when anyone but Vivian had purchased their dance shoes. (Motion, page 7).
4 With her Reply to Kirk's Opposition, filed January 27, 2013 and Supplement thereto, Vivian supplied
5 numerous additional declarations of witnesses attesting to various activities in which Vivian had
6 participated with Brooke and Rylee. A brief highlight from some of those statements is as follows:
7

- 8 • Declaration of Kellie Wendt: 2005-2012: Vivian attended games, dance recitals, rehearsals,
9 and birthday parties, traveled to Disneyland, and took the girls Trick-or-Treating. Vivian is
10 "present" and involved.
- 11 • Declaration of Melissa Mojica (gymnastics teacher), 2006-2008: Vivian brought Rylee to
12 gymnastics and stayed to watch. Vivian was "involved and enthusiastic."
- 13 • Declaration of Brandi Carstensen (gymnastics teacher and fellow parent), 2006-2009: Vivian
14 did majority of driving and waiting for holiday event across town; Vivian assisted and
15 volunteered at school. "Deeply involved in [the children's] wants and was very attuned to their
16 needs."
- 17 • Declaration of Noel Kanaley (Rylee's room parent) 2010-2011: Vivian was co-parent in
18 Rylee's classroom. Vivian responded to every parent request, contributed to and participated
19 in classroom parties and events. Vivian is "intimately knowledgeable about their activities,
20 hopes and desires."
- 21 • Declaration of Lois Klouse (Brooke's 5th Grade teacher) 2008: Vivian alone was "concerned
22 for their advancement in swimming, who initiated the call and then arranged for private swim
23 lessons"; Vivian was "engaged and absorbed in the children. She knew their habits and needs
24 and she knew how to deal with them in constructive ways. She was interested in them. She
25 was genuinely interested in their activities."
- 26 • Declaration of Kelley Gray, (fellow parent): "Vivian was engaged and absorbed in Rylee's
27 life"; Vivian participated in Rylee's activities.
- 28 • Declaration of Laurie Larson, (neighbor and friend)⁴ "I emphatically state that I never
understood I was signing a document which inferred I was 'in support of' primary custody and
exclusive possession of their residence for Kirk Harrison . . . I do not claim that Vivian never
drove the children to school or activities." Vivian is a "caring, involved and supportive
mother."

⁴ Kirk had submitted a declaration of Ms. Larsen with his pleadings indicating that she was aware that Kirk had driven the children to school. Apparently he was less than candid with her about the purpose of the statement.

- 1 • Declaration of Azure Fectau (Rylee's 3rd grade teacher) 2011-2012: Vivian has participated in
2 a variety of school events and is "an interested, caring and energetic volunteer."
- 3 • Declaration of Gretchen Poindexter 2008: "Vivian was focused on Rylee and her swimming
4 efforts" 2010 -2011 – "I recall seeing Vivian drop off and pick up from school from time to
5 time[.] I have seen her assisting at the school. It appears to me that Vivian and Rylee have a
6 very strong mother-daughter relationship."
- 7 • Declaration of Sue Broadbent 2008-2009: "I am certain I routinely saw Rylee and her mother
8 and my grandchildren at soccer games in those years."
- 9 • Declaration of Tina Coleman 2007-2010: Vivian was actively involved in children's school.
- 10 • Declaration of Rosaleen Thomas 2010: "During her summer visit in Ireland . . . Vivian
11 regularly spoke to the girls, and I said hello to them several times on Skype. She was very
12 excited about their coming to Ireland; she was researching/planning what they were going to
13 do when they came. One place in particular which was earmarked for a visit was the
14 leprechaun museum in Dublin."
- 15 • Declaration of Lisa Morris, 2011-2012: "When Brooke Harrison was at King Elementary her
16 mother Vivian helped with fund raising and other tasks in 2008 when she was a member of
17 PAC. She was energetic, full of good ideas, always willing to donate her time and efforts. . . I
18 have also witnessed Vivian attending the girls 2011 dance recitals and the 2012 parent
19 observation dance classes in Boulder City, NV."
- 20 • Declaration of Sandy Wachtel, 2007-2011: "Since 2007, I have seen Mrs. Harrison at the dance
21 studios, recitals, rehearsals and parent observation dates. I have seen her pick up and drop off,
22 along with Mr. Harrison. I have seen mother and daughter Brooke interact there and at a few
23 social events (including a birthday party this summer (2011)). It appears to me they have a
24 solid, loving relationship; they like and love each other."

25 Further, Vivian attached as Exhibit "BB" to her Reply filed January 27, 2011 a list of just some of
26 the activities that Vivian participated in with the children between 2004 and the filing of the Reply.
27 Vivian listed the activities the parties shared; however, the vast majority of the activities she did with the
28 children, she did without Kirk's parental assistance – including special activities and trips, school projects
she did with the girls, her school-related volunteer work, the children's music lessons, dance classes,
birthday parties, doctor appointments, holiday celebrations, and the miscellaneous other day-to-day "stuff"
the children needed (haircuts, clothes shopping, etc.). She attached as Exhibit "CC" to that filing a list of

1 major vacations and other trips that Vivian planned and booked for the family – including many for which
2 Kirk chose not to accompany the family.

3
4 Kirk falsely alleged that Vivian did not interact with the children even when she was on vacation
5 with them. For example, he argued in his Reply filed January 4, 2012, at page 70, lines 2-5, Vivian
6 “really does nothing with Brooke and Rylee” on the family vacations at Disneyland – *even when he was*
7 *not present*. Vivian submits that any person who has been to Disneyland understands the impossibility of
8 taking young children to Disneyland and doing nothing. He also claims that Vivian “did nothing” with the
9 children when she took them on sewing trips. He ignored the sworn testimony of Kim Bailey (who was
10 actually was present on the trips and who he claimed to admire), who stated in her declaration:
11

12 I do not believe Vivian neglected Brooke on that trip or any other I have been on with her.
13 In fact, Vivian attended every scheduled event during the sewing school including
14 Teacher’s Night and the fashion show. I also remember activities after school which in
15 participated in with the girls such as shopping and dinners.

16 Attached hereto as **Exhibit “C”** is a chart in which Vivian has identified activities and tasks that
17 she has performed for the children since the parties’ separation in March 2012. That list includes
18 coordination of dance, piano and voice lessons, religious training, sports involvement, scheduling doctor’s
19 appointments, school participation, and many other activities.

20 Perhaps his most nefarious argument contained in Kirk’s pleadings was his false claim that he was
21 solely responsible for helping the Brooke and Rylee with their homework. Specifically, he claimed, “For
22 all the years Vivian couldn’t be bothered, Kirk has helped Brooke and Rylee with their homework, when
23 they needed help.” (Kirk’s Reply filed January 4, 2012, page 38) Kirk’s insulting claim, however, was
24 directly contrary to *his own* statements in his January, 2010 letter to Dr. Roitman in which he wrote, “And
25 as written previously, she has always done a good job spending time with the children with their
26 homework and reading before bedtime.” (Kirk’s Reply, filed January 4, 2012, Exhibit 9, page 15.) Kirk
27 did not qualify this to limit it only to the older children, nor did he allege anywhere that Vivian was not
28

1 helping the younger children. Perhaps even more telling, Kirk removed this admission from his "diary"
2 when he filed his Motion and Reply on September 14, 2011, *inserting the exact opposite allegation*. Kirk
3 just could not keep his stories straight.
4

5 Moreover, Kirk has never disputed that Vivian put Brooke and Rylee (as she did with the older
6 children) to bed each night. During that time, Vivian has always read to and with all of the children. The
7 children's grades in Reading are now and have almost always (if not always) been A's, and they have
8 repeatedly been commended on their reading skills, as shown in their report cards. Brooke and Rylee
9 learned to read before starting Kindergarten, and Vivian's nightly reading with them surely contributed to
10 that. The children have each won awards for the amount and level of their reading.
11

12 As shown by her list attached hereto as **Exhibit "C"**, Vivian has continued to ensure the children's
13 academic success. The children come to Vivian when they need help with special projects, when they are
14 feeling ill, when they need things for dance, when they have special occasions (dance shoes, prom dresses,
15 etc.). One shining example is Rylee's completion of the "Great American Recital," a fifth grade honor that
16 requires the child to recite from memory the Gettysburg Address, Star Spangled Banner, List of presidents
17 in order, US states and capitals in alphabetical order, the Preamble to the US Constitution and write the
18 Star Spangled Banner. As part of this very special award to the child, she receives a special chair at
19 school. Vivian, of course, purchased that chair for Rylee in the pink that Rylee chose.
20
21

22 All of the activities that are listed in Vivian's **Exhibit "C"** are activities for which she has always
23 been primarily responsible for Brooke and Rylee both before and after the parties' separation. Indeed,
24 Vivian has been primarily responsible for these type of activities for *all* of the children. Attached hereto
25 as **Exhibit "D"** is the list of all of the various activities in which Vivian engaged in, signed the children up
26 for, supported, provided equipment and transportation, attended events and games and recitals, etc., all
27 during the time that Kirk was building his legal career while working 10 to 12 hour days at his Las Vegas
28

1 office. Kirk's claim that Vivian has ever abandoned or neglected any of the parties' children is delusional
2 and unsupported by the vast scope of evidence she presented, and continues to present, in this case.

3 History cannot be re-written, but Kirk still attempts to convince Brooke and Rylee that Vivian
4 abandoned them, and that he raised them. One of his disputes with the children that led to his Motion was
5 their refusal to adopt his false claim that he raised them. The issue of Vivian's involvement, that goes to
6 the core of the children's motivation to be with Vivian, can be resolved by a simple interview of Brooke
7 and Rylee.
8

9
10 **B. There is No Evidence Supporting Kirk's Claim that Vivian has a "History of
Callously Manipulating" of the Parties' Children.**

11 In support of his core argument underlying his present motion, Kirk claims, "In this case, where
12 the mother has a well documented history of callously manipulating the children, this [teenage discretion]
13 provision was destined to fail." (Motion, filed October 1, 2013, page 3, line 14). For this false allegation,
14 he cites the affidavits of Tahnee and Whitney that he initially prepared in March 2011, and filed with his
15 initial Motion September 14, 2011. This argument exposes one of the most telling falsehoods underlying
16 Kirk's repeated claims in this case and his present motion. Neither Tahnee or Whitney mentions *anything*
17 about their childhood with Vivian. Attached as **Exhibit "E"** hereto are summaries of those affidavits.
18 Neither discusses any events that occurred before 2005. The affidavits are short on fact, and long on
19 opinion. The facts they do reference in large part were designed to support the various elements of Kirk's
20 NPD claim, such as Vivian's spending habits, having cosmetic surgery, number and type of Vivian's
21 underwear (this was, strangely, part of Tahnee's affidavit), and any number of irrelevant or misstated
22 claims that were rebutted by Vivian in her affidavits, the affidavits of others, and her filings. Most
23 important, nothing in their affidavits supports Kirk's reliance on them as "a well documented history of
24 callously manipulating the children."
25
26
27
28

1 The best evidence of the adult children's feelings about Vivian growing up was contained in a
2 letter Tahnee wrote to Vivian after an incident in which Tahnee yelled "F---k you" at Vivian (in the
3 presence of Brooke and the then infant Rylee) and Vivian slapped her. In a letter of apology /
4 reconciliation that Tahnee wrote to Vivian, she stated:

6 Although I believe you were totally wrong in what you did yesterday. I'm also willing to
7 confess that I was wrong too. Can't we both just admit that we were wrong, or is it my
8 fault as always? I know that you think that I disrespect you and don't appreciate what you
9 do for me, but I think, deep down, you know that's not true. If you do believe it to be true,
10 then I think you don't know me as well as you might have thought. Perhaps I just haven't
11 gone about showing it as much as I should. You deserve better. I realize now your life
must be awful. You go about your day taking care of all of your children as if it were your
only responsibility. You never even think twice about doing something for yourself.
Every waking hour is spent tending to our wants and needs. I know this, Mom.

12 I'm aware of your sacrifices, and that's exactly why I used it against you. You hurt me
13 where it hurts the most. My entire life I've been trying to live up to your expectations.
14 I've always wanted to please you and make you proud of me. I honestly held your
15 opinion in the *highest* regard. In the past few months, however, I felt our approval of me
dwindling away. I failed you and myself. I can't stress enough how much my last
semester of high school became an absolute embarrassment for me.

16 [Emphasis in original]. Vivian submits that this spontaneous, heart-felt letter best evidences how Tahnee
17 and the older children felt about Vivian before Kirk manipulated and shaped their memories as part of this
18 divorce action.
19

20 **C. The Children's Desire to Spend Time with Vivian is Consistent with their Close**
21 **Bond with Vivian, and their Developmental Stage.**

22 Contrary to Kirk's claims, Brooke and Rylee's desire to spend time with Vivian is a natural
23 consequence of the close bond each has with Vivian, and their developmental stage. These pubescent and
24 teenage females have issues, concerns, fears and desires that they understandably do not want to discuss
25 with their father (periods, brassieres, dating, make-up, etc.) Kirk does not understand those boundaries,
26 nor does he respect the girls' privacy. Examples abound.
27
28

1 When Brooke first experienced her period earlier this year, she was suffering cramps and nausea.
2 This occurred at a time she was also suffering from other illness. Vivian scheduled a doctor's
3 appointment, and advised Kirk of the appointment. Brooke advised Vivian of extremely personal
4 questions she, Brooke, had for the doctor about her body's functions. Kirk came to the appointment, and
5 refused to leave the examination room when the nurse indicated that only one parent could be present.
6 Vivian took Kirk aside and advised him that Brooke had something personal to discuss with the doctor,
7 and that she too would leave the room if Kirk would leave. Kirk announced that he was Brooke's father,
8 and he was entitled to be present in the examination room. The doctor ultimately acceded to Kirk's
9 demands and allowed both parties to be present. As a result, Brooke was too embarrassed to ask the
10 doctors the questions she wanted to ask.
11

12
13 When Brooke had a special "hip-hop" dance presentation that involved somewhat suggestive
14 dance moves, Brooke did not want Kirk to attend for fear that he would disapprove.⁵ When Brooke asked
15 him not to attend, he immediately suggested, and suggests in his present motion, that this was caused by
16 Vivian. Again, Kirk is oblivious to the needs and fears of a 14 year old girl. (The merits of a father's
17 involvement are not debated--the point is only the inability to understand Brooke's feelings and his
18 reactive suspicion Vivian was behind the request.)
19

20 Kirk also fails to recognize and understand Brooke's desire to be with Vivian during activities she
21 has almost exclusively engaged in with Vivian in the past. His Motion cites only two instances of
22 Brooke's exercise of the teenage discretion provision in the nearly three months since she has turned 14.
23 The first was on August 24, 2013 when Brooke wanted to be with Vivian when shopping for dance clothes
24 and shoes on a Saturday she was scheduled to be in Kirk's care. Vivian did not, as Kirk suggests at page 6
25 of his Motion, "convince" Brooke that she should go with Vivian to buy dance shoes – this had been their
26
27

28 ⁵ This is not different from when Tahnee did not want him to attend the swimsuit portion of her beauty pageants. He did not, to Vivian's knowledge, blame Vivian for that.

1 practice for the entire time Brooke and Rylee have been in dance. Brooke told Vivian that she wanted
2 Vivian to take her shopping. This did not come as a surprise; Vivian cannot remember a single instance
3 where Kirk bought dance clothes or shoes for the children while Vivian and Kirk were together.
4

5 Kirk admits that he argued with the girls when they told him that they could not remember him
6 buying dance shoes or clothes for them in the past. Motion, page 7.⁶ Because Kirk's involvement in
7 dance has been limited to driving the children, he does not understand that the children do not equate the
8 purchasing of leotards at Target with the purchase of dance clothes and shoes, which they purchase from a
9 specialty store. Kirk has attempted to create a new reality whereby he was involved in the purchase of
10 dance clothes for the children -- he was not, and he was not justified in chiding Brooke for spending time
11 shopping with Vivian.
12

13 Further, Kirk presents Brooke's desire to be at Vivian's home to dress and do make-up with her
14 friends for their first Homecoming Dance as an act of alienation by Vivian. It is telling that Kirk does not
15 understand Brooke's desire to be with someone who is skilled and experienced in applying make-up, and
16 who taught *her* how to apply make-up. Also, Kirk leaves out important facts. Brooke and her friends
17 planned to go from one mother's home to another when preparing for the dance. Brooke and one of the
18 friend's mother's told Vivian about the plan. The plan involved the girls traveling to three different
19 homes for different events (hair and make-up at Vivian's home, other events at two other homes).
20
21

22 Moreover, Brooke is a very feminine girl who has discussed her interest in being a make-up artist.
23 Kirk's response to her is that she is too intelligent to be a make-up artist, and should consider law or
24 medicine. While a 14 year old may change her idea about a career many times, dismissing her stated
25

26 ⁶ In his emails attached to his Motion as Exhibit "1," he states (in an email to Vivian dated August 24, 2013 at 5:00 p.m.) that
27 he had purchased a pair of ballet shoes for Brooke "at the store in Boulder City before they closed" (he could not identify the
28 name of the store or when it closed). The store to which he referred is Danceworks, that closed in 2007. Vivian has no
recollection of Kirk ever purchasing any shoes at that store. In comparison, Vivian regularly purchased dance supplies and
clothing there from the time the parties' adult daughters Tahnee and Whitney were involved in dance, to the time of its closure.

1 desire as frivolous puts an end to communication. Vivian has not done this, and will love and support
2 Brooke if she eventually chooses to be a make-up artist, surgeon, or a circus clown. Vivian understands
3 that Brooke is now in a different developmental stage in her life, and criticism and behavioral demands
4 must give way to patience and encouragement. Kirk does not share that view.
5

6 In August, 2013, Vivian travelled with the children first to a Disney Cruise, then to Disneyworld,
7 and then to Huntsville, Alabama to their annual trip to sewing camp. Kirk planned to travel with the
8 children upon their return to an amusement park near Salt Lake City, Utah, for eight days. Brooke (who
9 was then experiencing cramps) was tired, and wanted to rest at the hotel the first day of the trip. Brooke's
10 statement of Kirk's actions was set forth in an email that Brooke sent from her iPad to Vivian on that date:
11

12 Dad took my phone away and he is being so mean to me. There is no other way to contact
13 you except email. I'm sorry Rylee is next to me in one bed watching her iPad and dad
14 comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to
15 stay in the hotel room because apparently we're staying here for another 8 days. He rips
16 my phone out of my hands takes off the charger and headphones and he asks me why i'm
17 listening to people who are telling me that he is a bad person (he is referring to you) I tell
18 him there isn't and he says its not good to lie. Then he states that I am lying about being
19 hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts
20 going on about he raised me since I was 7 and how he took me to school. Then he asked
21 why I don't love him and I said he doesnt respect privacy, he barges in, doesn't support
22 me in anything I do, Then he asks what he doesn't support me in, and I say dance and he
23 says he drives me to and from and he pays tuition. Then, I say that he doesn't support me
24 in Makeup Artistry and then he says that he's bought me makeup and that what else can
25 he do to support me. And then I say that he always says he'd rather me be a lawyer or a
26 doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show
27 is done and she closes her iPad because dad stated earlier that she MUST stop after that
28 episode. So she turns it off and dad not respecting Rylee starts saying how if he died
today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate
him. Then he starts calling me selfish and how I don't want to do anything with the
family and I say we aren't a family. Then I start to ignore him while he starts blaming
everything on "the person that is telling me all about the bad stuff isn't doing the right
thing and how its affecting our relationship. He walks back to his bed and says that he is
sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm
around her and turns away from me. Then I ask dad for my phone because I want to talk
to you and he says no and then I say he is not letting me talk to you. Thats all that
happened. I miss you mommy. I want to come home and be with you and Rylee without
her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

1 Exhibit "F" attached. Brooke's email outlines several of Kirk's behaviors that are part of a larger pattern
2 that has damaged his relationship with Brooke.

3 1) *Kirk's Disparagement of Vivian:* Nothing is more divisive to children than one parent
4 speaking poorly about the other parent whom they love. Brooke describes Kirk's thinly veiled assertion
5 that Vivian is telling her that Kirk "is a bad person" and asks why she is "listening" to Vivian. When she
6 denies that Vivian has said that (Vivian has not disparaged Kirk to the children), Kirk suggests that she is
7 lying.⁷

8
9 Vivian is particularly concerned about this issue. Before and during this case, Kirk stated to
10 others, including the parties' adult children and Vivian's real estate lawyer (Mr. Woodbury), that Vivian
11 was both a drug addict and suffered from mental illness. In an act of enormous insensitivity, he solicited
12 the adult daughters to provide affidavits in his efforts to limit Vivian to supervised visitation. As
13 evidenced by his recent filings, he continues to assert that Vivian suffers from mental disorder. In his
14 present motion, he again asserts DSM-IV findings without an expert report or opinion. Kirk will never
15 fairly present Vivian to Brooke or Rylee, or refrain from directly, or indirectly suggesting that she suffers
16 from some disorder. It is difficult to imagine that if Kirk believes Vivian is mentally ill, he does not say
17 so around the house. We already see this in his thinly veiled reference to her as someone who has led the
18 girls astray, and who they should not trust.

19
20 Moreover, Kirk's filings in this case, including his present motion, evidence his repeated efforts to
21 both directly and indirectly convince the children, both adult and minor, that Vivian does not care about
22 them, and that she is "crazy." Kirk continues to try to plant seeds with the younger children to lose
23 confidence in Vivian, and to think poorly of her. He disguises his statements as being "supportive" and
24

25
26
27 ⁷ Kirk's assertion that the children are lying adds them to a long list of anyone who has taken a position contrary to Kirk's.
28 Littered throughout Kirk's filings are claims that Vivian, her friends, neighbors, coaches, counselors, experts, and attorneys are
"perjurers", "liars" and "co-conspirators." He specifically told Brooke that she was lying when she explained to Kirk that
(contrary to his repeated assertion in this case), Vivian was not in the children's bed when Rylee fell out of bed and hurt herself.
See, Affidavit of Vivian, filed October 27, 2013, page 77, paragraph 209.

1 either does not see it, or does not think anyone else will see it, as harmful or abusive. There are numerous
2 examples of this in Kirk's filings, including the present motion. The following are just a few examples
3 from Kirk's initial affidavit filed in this case (attached to his September 14, 2011 Motion).
4

5 ¶68 "I told Brooke Mom is going through a rough time right now."

6 ¶97 Conversation with Brooke reminding her of all the times Vivian was going to be gone,
7 discussing his "concerns" with what Vivian has done in the past.

8 ¶116 "Brooke told me tonight that Vivian talked to her about she and Rylee going to
9 Ireland this summer. . . I told Brooke that she could go for a week or two if I went as well."

10 ¶151 "Later when I was consoling her I asked Brooke how she thought Rylee was dealing
11 with all of this..."

12 ¶156 "I believe Brooke knows that until very recently I would have quickly dismissed
13 anything at all said that negatively reflected on Vivian. At some point, it is more important
14 that your children have an environment where they feel comfortable speaking openly about
15 things that bother them, than to continue to wrongly protect the image of someone that
16 continues to do harm to your children."

17 ¶166 "I told Brooke that just like she, Rylee and I had done all year, that we would do the
18 laundry tomorrow."

19 It appears he planted these same seeds with the older children that he is now using to influence
20 them.

21 ¶28 "I would talk to each of the children separately in an effort to solve the then pending
22 problem."

23 ¶41 "I told Tahnee how bizarre it is for a mother to say such things to and about her own
24 children, let alone even think such things. Tahnee and I both agreed how this highlights
25 just how incredibly insecure Vivian has become and that Vivian feels she is in competition
26 with her own children and feel threatened by them."

27 ¶50 "I told [Tahnee] that in her mother's condition, if we got a divorce and Vivian had
28 partial custody, I would be fearful for Brooke and Rylee."

¶53 "I told Tahnee that I had done all I could concerning Vivian, and all I could do was be
the best father I could and that all of us needed to do our best in looking out for one
another."

1 ¶56 "I told Tahnee that Vivian does not really think Chloe is a better dancer than her.
2 Vivian is simply incredibly insecure and needs to tell others that they are not so hot. I told
3 Tahnee about when Vivian last year told me that nobody wants to be with me."

4 ¶69 "I telephoned Whitney and expressed concern about this to Whitney saying you are
5 going to be on national television with someone who is not dealing with a full deck right
6 now and it could prove very embarrassing."

7 ¶75 "I told Tahnce that Vivian's need for attention is frightening."

8 ¶106 "That night Tahnee, Joseph, and I talked about some of the issues with Vivian,
9 including the incident at Brooke's ball game with Bill B. and her meeting a man on the
10 airplane, giving him a ride to his hotel and having drinks with him in a bar, then
11 discovering he was Cam W.'s boss. We also talked about her lack of attention to Brooke
12 and Rylee."

13 In her affidavit filed with her initial motion, Vivian addressed Kirk's history of alienation of the
14 children. *See* Affidavit of Vivian Harrison, attached to Opposition filed October 27, 2013, paragraphs 78
15 through 90. (That excerpt is attached hereto as **Exhibit "G"** hereto). In sum, Kirk undermined Vivian's
16 authority, did not support her in disputes with the children, perpetuated falsehoods to them, and openly
17 disparaged her to the children. His actions toward the adult children are now repeated with Brooke and
18 Rylee.

19 Kirk's behaviors designed to disparage Vivian in the eyes of the children (including the adult
20 children) have taken many forms. Kirk's repeated claim that Vivian "poisoned" Rylee has been a central
21 theme throughout his case. Even after Dr. Dewan indicated that he was more concerned with Rylee's
22 weight as a factor in her early onset of puberty than he was with any alleged exposure to testosterone
23 cream, Kirk continued to raise alarms with Rylee and all the other children (and anyone who would hear
24 his complaint) that because of Vivian her growth would be stunted, she would suffer ill effects of an
25 implant, etc. In her Opposition to Kirk's Motion, Vivian provided sound medical data that evidenced in
26 recent years more children were entering early pubescent development, and that the trigger was identified
27 as everything from excess weight, to the use of anti-bacterial soaps. Nevertheless, Kirk rode his
28

1 bandwagon that Vivian “poisoned” Rylee to the point that Dr. Dewan wrote a letter stating that he did not
2 make any finding that Rylee’s puberty was caused by exposure to testosterone. See Letter of Dr. Dewan
3 dated July 6, 2013, attached hereto as **Exhibit “H”**. In his most recent statement, dated October 14, 2013,
4 and attached hereto as **Exhibit “I,”** Dr. Dewan confirms that he projects that Rylee will reach her normal
5 height of approximately five-foot ten.
6

7 Even the way Kirk reacted to this news was manipulative. The alternative that Dr. Dewan proposed
8 was that Rylee would be from 5’4” to 5’7”, normal heights by any standard. When Dr. Dewan advised the
9 parties of his findings regarding Rylee’s height, Kirk acted as if he had just won the lottery. Rylee barely
10 reacted, other than a puzzled look on her face. Kirk seems unable to comprehend that the message he was
11 giving to a young girl who is naturally concerned with other’s perception of her body is that she is okay
12 when she is 5’10”, but less than okay if she is shorter. This is particularly important in light of the height
13 of her adult sisters (5’11” and 5’8).
14

15 2) *Kirk’s Constant Assertion that Children are Lying:* No person – coach, teacher, friend’s
16 parent – who knows the girls will suggest they are dishonest sneaks or manipulators as Kirk suggests in
17 his motion. The evidence will show they are honest, intelligent and forthright girls. But, Kirk suggests
18 Brooke is lying about things he states Vivian said about him, claims that Brooke is lying about her
19 cramps, advises both Brooke and Rylee that they are lying when they do not agree that he has purchased
20 dance clothing and shoes for them, and with his proposition that he raised them “since [Brooke] was 7.”
21 Kirk’s assertion that the children are lying places significant unnecessary pressure on them, and appears to
22 the children as disapproval and a lack of caring. The emotional conflict caused by Kirk demanding that
23 they re-write their history together is debilitating. It is this kind of behavior by Kirk that Vivian sought to
24 address through a therapist and PC, but Kirk has undermined that process. Brooke is now suffering under
25 Kirk’s constant barrage of criticism and disapproval.
26
27
28

1 3) *Kirk's Use of Guilt to Manipulate the Children:* Brooke states that in her email that Kirk,
2 after he suggested she was lying, turned to Rylee and stated, "if he died today [Brooke] wouldn't shed a
3 tear and how [Brooke doesn't] want to be with him anymore and why [Brooke hates] him." Any
4 experience as a parent or sibling permits us to understand how incredibly manipulative and damaging this
5 type of statement is to a child, and to that child's relationship with her sibling. Rylee reacted in a way that
6 can be expected; she turned away from Brooke when Brooke tried to hug her. Kirk manipulated Rylee
7 into believing that Brooke was uncaring, and insensitive.
8

9 Indeed, one of the core forms of manipulation that Kirk has used to discourage Brooke from
10 spending time with Vivian, or living with Vivian as she desires, is that she would be "abandoning" her
11 sister. Kirk repeatedly tells her, and has solicited the parties' adult daughters to advise her, that she is
12 being selfish and uncaring toward her sister by wanting to engage in activities away from her. The irony
13 in this is that because Brooke and Rylee attend different schools (Brooke is in high school, Rylee in
14 elementary school), are in different dance programs, and engage in different activities, they spend little
15 time together under the current schedule. This is not unusual – siblings of different ages, particularly
16 when the older sibling becomes a teenager, have different interests. In approximately a year Brooke will
17 be driving. She will soon be dating, and have more interest in her peers than her parents or siblings.
18 Again, this is part of the natural developmental stage that Brooke is in. Kirk's insistence that she must
19 feel guilty about seeking her own independence is damaging to her.
20
21
22

23 Kirk also outlines in his motion how he uses name-calling to prevent Brooke from spending time
24 with Vivian. Kirk states that Brooke takes too much time to retrieve items left at Vivian's home. Kirk
25 then greets Brooke on her return to the car with allegations that she is rude, inconsiderate and selfish.
26 (Motion, page 8). When she reasonably suggests that he leave her there (the parties' homes are minutes
27 apart) and return, or have Vivian drive her back, he refuses. This situation is caused by the constant back
28

1 and forth from the parties' homes caused by the current schedule, but more important, Kirk should not be
2 attempting to manipulate Brooke in this manner.

3
4 The above are only samples of various events, words and actions that has led to Brooke's now
5 adamant desire to live with Vivian. Kirk is responsible for the breakdown in his relationship with Brooke,
6 not Vivian. When negotiating the parenting plan, Brooke insisted that did not want to live with Vivian.
7 Vivian could have sought primary custody, but believed that resolution, therapy and a Parenting
8 Coordinator was the best way to allow Kirk to address his problems through the process, and was in the
9 best interest of the children. Remarkably, Kirk has tactically undermined that process, and now seeks to
10 destroy it.
11

12 III.

13 THE COURT SHOULD DENY KIRK'S MOTION TO MODIFY, AND CONFIRM THE 14 PARTIES' TEENAGE DISCRETION PROVISION TO BE CONSISTENT WITH NEVADA LAW

15 A district court retains jurisdiction throughout a child's minority "[a]t any time to modify or vacate
16 its order" pertaining to custody. NRS 125.510(1). Either party, or the Court, may seek to modify or
17 terminate joint custody of a child if it is shown the modification is in the best interest of the minor child.
18 NRS 125.510(2).
19

20 The standards for a change of custody apply to a request to modify visitation. *Wallace v. Wallace*,
21 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996)("A court decision regarding visitation is a custody
22 determination.") *See also, Rennels v. Rennels*, 127 Nev. Adv.Op. 49, 257 P.3d 396 (2011)(once initial
23 visitation order entered, standard for parent to modify grandmother's visitation is the *Ellis*⁸ standard).
24

25 A district court must give deference to the agreements entered by the parties when presented a
26 motion to modify custody. In *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009), the Court said:
27
28

⁸ *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007)

1 We conclude that the terms of the parties' custody agreement will control except
2 when the parties move the court to modify the custody arrangement. In custody
3 modification cases, the court must use the terms and definitions provided under
Nevada law.

4 Parties are free to contract, and the courts will enforce their contracts if they are not
5 unconscionable, illegal, or in violation of public policy. Therefore, parties are free to
6 agree to child custody arrangements and those agreements are enforceable if they are
7 not unconscionable, illegal, or in violation of public policy. However, when
8 modifying child custody, the district courts must apply Nevada child custody law,
9 including Therefore, once parties move the court to modify an existing child custody
10 agreement, the court must use the terms and definitions provided under Nevada law,
and the parties' definitions no longer control. In this case, Ms. Rivero moved the
district court to modify the decree. Therefore, the district court properly disregarded
the parties' definition of joint physical custody.

11 Kirk seems to argue that the Court should consider terms of the parties' agreement when a party
12 seeks to enforce it, but that the Court may modify the agreement freely provided such modification meets
13 the statutory or case law standards for modification. (Motion, page 13, lines 19-28). This ignores the
14 plain language of the *Rivero* decision. Under *Rivero*, a district should give *deference* to a parenting
15 agreement *except* where the parties have used "terms and definitions" that are contrary to Nevada law. In
16 *Rivero*, 125 Nev. 410, 2 the court ignored the definition of physical custody in the parties agreement
17 because it was contrary to the law's new definition in the *Rivero* case.

19 Here the parties have not placed any new terms or definitions into their agreement. Instead, their
20 experienced counsel negotiated, and the parties agreed upon, a provision designed to meet the needs of the
21 children. The Court should give deference to that agreement.

23 The deference to parents' custody agreements arises from the fundamental notion parents act in the
24 best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054 (2009) . Nevada law
25 adopts this notion in NRS 125.490 by its presumption, affecting the burden of proof, "that joint custody
26 would be in the best interest of a minor child if the parents have agreed to an award of joint custody[.]"
27
28

1 Kirk suggests even if the deference to parents' custody agreements outlined in *Rivero* applies here,
2 the "teenage discretion" provision in the parties' agreement violates public policy. He cites NRS 125.460:

3 The legislature declares that it is the policy of this state:

4
5 1. To ensure that minor children have frequent associations and a continuing
6 relationship with both parents after the parents have become separated or have
7 dissolved their marriage; and,

8 2. To encourage such parents to share the rights and responsibilities of child rearing.

9 Kirk argues that giving a child discretion undermines the policy of "frequent associations and a
10 continuing relationship" for that child--a denigration of the statute (NRS 125.480) that a mature child's
11 opinion *must* be heard. Where the parties have joint physical custody, the district Court *must* render
12 findings under the factors in NRS 125.480 when modifying a custody order. As referenced above, those
13 factors include "the wishes of the child if the child is of sufficient age and capacity to form an intelligent
14 preference as to his or her custody" and the "physical, developmental and emotional needs of the child."
15 The analysis of those issues cannot be accomplished unless the Court recognizes the age of a child, and
16 the effect of a child's desire to spend more time with one parent on the child's emotional well being. The
17 Legislature commands the spontaneous choices of an intelligent child must be given weight, and the scale
18 on which that weight is measured is her emotional and developmental well-being.

19
20 The recognition of the importance of giving teenage children a voice in their custody is universal.
21 Virtually every state's law recognizes a teenager's discretion as a factor in custody matters.⁹

22
23 Granting a voice to teenagers in the desires of a teenage child has strong support in studies and
24 guides addressing the custody of teenage children. In 2008, the American Bar Association published the
25

26
27
28 ⁹ Attached is an analysis of factors under each states law published in the *Family Law Quarterly*, Volume 46, Number 4, Winter
2013, pages 525-527. The analysis demonstrates that every state except Massachusetts recognize the "child's wishes" as a
factor in determining custody.

1 second edition of, "A Judge's Guide: Making Child-Centered Decisions in Custody Cases."¹⁶ That
2 guideline constitutes a comprehensive overview of literature underlying issues surrounding the judicial
3 administration and review of child custody cases. The guide is structured by separate analyses of the
4 developmental ages of children. One of the developmental periods in the guide is adolescents between the
5 ages of 14 and 18. That section addresses the importance of permitting the adolescent to be part of the
6 process of determining custody.
7

8 The parties' teenage discretion provision is a model for provisions of its kind. It permits the child
9 certain discretion that promotes a healthy sense of independence without modifying custody, protects the
10 child by providing a third party that can assess whether the child is exercising that discretion for good
11 reason, and provides an alternative dispute mechanism, through discussion of a PC, for the child. The
12 provision is not unconstitutional, is consistent with Nevada law and nearly all other states, and promotes,
13 not undermines, each parent's frequent associations with children.
14

15 IV.

16 THE COURT SHOULD DIRECT AN INTERVIEW OF THE MINOR CHILDREN, AND 17 RESERVE A DATE FOR EVIDENTIARY HEARING ON THE ISSUE OF CUSTODY 18

19 As the basis of his motion, Kirk has quoted the children without corroboration, and has suggested
20 that the children should have no voice in their custodial care. Kirk has described and admitted the
21 breakdown in his relationship with Brooke. Brooke has repeatedly stated her preference to live with
22 Vivian, and her disputes with her father are degenerating and escalating. Kirk has undermined the process
23 defined by the parties to shore up his relationship.
24

25 The children are of sufficient age and maturity to form and intelligent preference as to their
26 custody. They are model children. They receive exceptionally good grades in school, and no coach.
27

28 ¹⁶ The guideline is a joint project of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children
and the Law. Relevant excerpts from the guide are attached hereto as Exhibit "J". The Guide is found at
http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf and is 299 pages.

1 teacher, counselor, instructor, minister or other person who comes in contact with the girls would state
2 they are other than "good kids and model citizens." Both children are engaged in dance, and Rylee is
3 involved in sports.
4

5 The children have an extremely strong bond with Vivian – *in part* due to gender, and in part from
6 her history of being the one parent who, throughout all their lives, gave them the type of care they wanted.
7 Now, the activities they want to share with or in which they want to be overseen-by Vivian are the essence
8 of their developmental stages of puberty and adolescence: A doctor's appointment addressing first period,
9 the hip-hop dance demonstration, the purchase of dance clothing, advanced dance classes, the preparation
10 (make up) for first Homecoming dance. Time with Vivian avoids placing the children in a position where
11 they are pressured, and feel guilty or embarrassed.
12

13 Sadly, Kirk now undermines Vivian's general role as a parent, and her special role as the female
14 parent, at this time of the girls' lives:
15

16 A. He purposely uses guilt as a method of punishing Brooke's need for an independent
17 choice;

18 B. He solicited phone calls from adult children to Brooke to guilt her into staying in Kirk's
19 care, and embarrassed her in front of the adult children;
20

21 C. He refuses to allow, or undermines, additional contact or time with Vivian.

22 D. He suggests to Rylee her sister is abandoning her, a false claim the serves no purpose
23 but to cause anguish in Brooke and Rylee;

24 E. He interferes with the children's contact with Vivian; and,

25 F. He suggested repeatedly to Brooke that Vivian is doing something wrong.
26

27 The parties' parenting agreement provides the children an independent third party to discuss their
28 thoughts, emotions and desires regarding any change, and to deal with the behavior of both parents in this

1 high-conflict divorce. But, Kirk tactically undermined that goal when he repeatedly refused to allow the
2 children to be interviewed, avoided the publication of the results of that interview, and failed for fourteen
3 months to name a therapist.
4

5 Kirk knows the children will tell the therapist they want to live with their mother because that is
6 where they feel they will be most comfortable and happy. As in any totalitarian regime, a third party to
7 whom the truth can be told is a threat--no free press is allowed. If there is a neutral third party to whom
8 the children can speak, then Kirk's behavior will be addressed and his control eroded. And, as in such
9 regimes, the creation of an external threat is necessary to justify strict controls. In this case the false
10 external threat Kirk created is, sadly, the girl's mother.
11

12 Is the fact the girls want to spend more time with Vivian coincidence or conspiracy? Are there
13 facts, e.g., age, gender, history of care and demeanor, which *in themselves* reasonably make the girls want
14 to spend time with one parent more than the other, or is there a scheme by Vivian to alienate the girls from
15 Kirk due to her perception of parenting as "competition" as Kirk contends? Vivian asks the Court FMC
16 determine if the girls' wishes are genuine or artificial, spontaneous or coached, and start them on the road
17 to peace in their family.
18

19 Vivian moves first for an interview of Brooke and Rylee to ferret out Kirk's factual assertions
20 underlying his motion. Brooke has continuously and adamantly stated she wants to reside primarily with
21 Vivian, and Kirk has defeated his own goals because he failed to give the therapist/coordinator system to
22 which he agreed any chance for dialogue, counseling and compromise with his daughters. Vivian asserts
23 that the facts set forth herein constitute adequate cause for hearing on the custody of the children.¹¹
24 Vivian requests that the Court find adequate cause for hearing, and review the status or necessity of an
25
26
27

28 ¹¹ In *Rooney v. Rooney*, 109 Nev. 540; 853 P.2d 123 (1993) the court held that a district court may deny a motion to modify custody where the moving party failed to show "adequate cause." Adequate cause exists where the facts alleged in the affidavits are relevant to the grounds for modification, and the evidence is not merely cumulative or impeaching.

1 evidentiary hearing on custody after the return of the children's interviews through the Family Mediation
2 Center.

3
4 V.

5 **KIRK HAS AGAIN UNNECESSARILY MULTIPLIED THE PROCEEDINGS IN THIS CASE**

6 Though styled as a motion to modify the "teenage discretion" provision only, Kirk raised issues
7 and sought relief that have nothing to do with the underlying motion. That has been his consistent
8 behavior throughout this litigation.

9
10 At page 14 of his Motiom, Kirk lists alleged wrongs committed by Vivian that he claims are
11 violations of Court orders or failure to "do the right thing by her own children." He does not appear to be
12 seeking any specific relief, but appears to address these issues as part of his contention that Vivian has no
13 regard for the rights or needs of the children. Vivian responds, in brief:

14 a. Kirk's contention that Vivian "took" days from him is false. Vivian's calendaring of
15 dates was consistent with the Stipulated Parenting Plan;

16
17 b. Whitney owes money to Vivian for credit card use, not the alternative;

18 c. Vivian does not have Tahnee or Whitney's original birth certificates, and those
19 certificates can be easily procured from the Dept. of Health and Human Services.

20 d. Vivian has not wrongfully withheld memorabilia owned by Tahnee or Whitney, and
21 this allegation has nothing to do with the present motion;

22
23 d. Nothing in the agreement regarding property allowed Kirk to clean out the bedroom
24 furniture in the children's rooms. The agreement was the Kirk would leave all property other than
25 designated. It is questionable this property belongs to the daughters, and the Court lacks jurisdiction to
26 address any dispute regarding the property of the adult children (like UGMA accounts);
27
28

1 e. The exchange of information from school would fall under the joint legal custody
2 provisions, and arguably Kirk would be entitled to a copy of the GATE Book. Vivian has not withheld
3 any copy Kirk ordered. She is attempting to find out what happened to the books Kirk indicates he
4 ordered;
5

6 f. There is no violation of any Court order associated with any litigation in which Vivian is
7 involved. Whatever litigation Vivian has initiated through separate, experienced and respected counsel
8 cannot reasonably be seen to effect the children. This is yet another example of Kirk using irrelevant
9 claims to disparage Vivian.
10

11 g. If the old Stairmaster was Kirk's by oral agreement at a hearing, he entitled to it. Vivian
12 hopes to exchange that property with the mass of items he wrongfully removed from the home at the time
13 he vacated. Again, this has nothing to do with the present motion.
14

15 What is relevant to the present motion is that Kirk continues to attempt to alienate the adult
16 daughters by promoting this fantasy that Vivian has committed some wrong against them. Kirk's
17 willingness to engage in this type of behavior bodes poorly for his divisive actions affecting the
18 relationship of Brooke and Rylee.
19

20 VI.

21 CONCLUSION

22 Kirk's Motion is how he must now manage conflict in his home--he thwarted the therapist and PC.
23 He takes no responsibility for the conflict; he blames Vivian. No law and a few tortured facts, *if any*,
24 support Kirk's Motion. After the way that he conducted himself in this action, his claim that Vivian sees
25 this case as a "competition," is his sad testimony he cannot see the effect his own behavior, and an
26 admission he may lack any reasonable sum of self-awareness. He, not Vivian, leveled vile personal
27 claims against the other parent, repeated the claims to the adult children, and then recruited them in a war
28

agaist their mother. He, not Vivian, sought supervised visitation. He attacked every individual who had the felt need and decency to support Vivian and the children in defense of his all-out assault.

What was Vivian's course? During a year of litigation she steadily and consistently sought the same negotiated resolution: joint physical custody. She put her concerns regarding Kirk aside, and developed a system of "teenage discretion" that would allow him an opportunity to work with the girls. She gave him access to the girls, a therapist, and a PC for a year before Brooke turned 14, hoping to avoid conflict and permit the girls and their dad to mend and improve their relationship.

Kirk's response? Tactics, manipulation, litigation, rancor and bitterness.

Vivian now must request the Court address Kirk's poor relationship with Brooke, and the damage he causes when he demeans and manipulates Brooke and Rylee to eliminate Brooke's voice for the increased independence she must have as part of her natural development.

Kirk turned his back on peace in the family; instead, he fomented conflict. Now, to resolve the conflict Vivian must request the Court:

1. Deny Kirk's motion in its entirety;
2. Direct an interview of the children through the Family Mediation Center;
3. Find adequate cause for hearing on the issue of custody;
4. Award attorney's fees to Vivian under EDCR 7.60, and the factors set forth in *Brunzell*.

Dated this 17 day of October, 2013

RADFORD J. SMITH, CHARTERED

~~CONFIDENTIAL~~ RADFORD J. SMITH, ESQ.

Nevada State Bar No. 2791

Attorney for Defendant

CERTIFICATE OF MAILING

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

"DEFENDANT'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT-CHILD ISSUES [TO DELETE "TEENAGE DISCRETION" PROVISION] AND OTHER EQUITABLE RELIEF;

DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND FOR ATTORNEY'S FEES AND SANCTIONS"

on this 17 day of October, 2013, 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.
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Attorney for Plaintiff

Edward L. Kainen, Esq.
10091 Park Run Dr., Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff

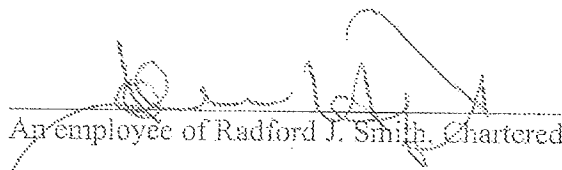

An employee of Radford J. Smith, Chartered

EXHIBIT "A"

February 4, 2012

VIA FACSIMILE

Edward Kainen, Esq.

Re: Harrison v. Harrison

Dear Ed:

I find it remarkable that you have time to write a long, detailed letter, but you cannot provide responses to basic discovery that you promised me weeks ago. You have not offered any explanation as to why you have not responded to the discovery. I can only assume that you do not want to provide the information because it could be damaging to your client's position.

Further, I requested in my letter of February 2 that you provide me a copy of the phone records your client received yesterday. Those records were requested as part of our discovery. Please let me know whether your client is willing to provide those records.

Moreover, you have not responded to my letter of January 27 seeking your explanation regarding your intent to reveal Vivian's confidential medical records to lay witnesses, including Ms. Roberts. If I do not hear from you, I will be forced to seek a protective order. I cannot understand why you refuse to address this matter. Your only explanation to me at this point is that the use of the records is some sort of "set up." That does not provide adequate explanation for revealing confidential information.

In addition, I have not received a copy of the records from Marvyn Gawryn that you received on the date of his scheduled deposition. Since I do not have the records, it is difficult for me to comment on your claims, other than I think your theory that Gawryn coached her regarding tests is nonsense. It seems to me that the person in the best position to address your allegations would be Mr. Gawryn, so I do not understand why you cancelled his deposition. Before you make allegations about his interactions with Vivian, you should give him the opportunity to address those allegations.

I wanted to confirm that your deposition of Dr. Margolis is a COR deposition. I presume that you do not intend to have her appear for the deposition. I note that the deposition is set at a time that I could not be present, but again I am assuming that your notice is intended to seek records, not take the deposition of Dr. Margolis. I trust you will contact my office first before setting depositions that I have to attend, and I will give you the same courtesy.

In regard to the allegations contained in the letter, I note again that Vivian made special efforts to preserve your client's phone number, which, of course, is contrary to your client's contention that she intended to cancel his number. Please explain to me why she would go to the trouble of contacting me to write a letter to you telling you how your client could preserve his number if she intended to cancel it.

Edward Kainen, Esq.

February 4, 2012

Page 2

In regard to your allegations regarding the production of billing statements, at the mediation with Mr. Jimmerson both Gary and I provided Jim with redacted billing statements and it is our understanding that those were provided to you. In any event, I am willing to exchange redacted statements with you if you are willing to provide all of Kirk's redacted statements.

I disagree with your statement that the Court did not expect you to provide billings, and in any event you already agreed to provide them to me by January 23 (approximately two weeks after they were due under the document requests served on your office). In our case, I believe the Court indicated that I could provide the information this week, but that he wanted the brief filed by close of business on Friday. Again, if you would like to exchange those documents, let me know.

In regard to Kirk's allegations regarding Vivian's behavior, your recitation of allegations in the letter, with the corresponding threat to show the letter to the judge, suggests to me that you have prepared the letter for that purpose - to show it to the judge. Such a submission would be a violation of our rules. It appears that Kirk is simply looking for a way to get more allegations before the Court. Vivian does not agree with your client's recitation of the events, and indicates to me that he has misstated the facts. In any event, we can all agree that either party showing disrespect to the other in front of any of the children, either your or old, is damaging to this family. I wholeheartedly disagree with your assessment of Kirk's statements and actions outlined on pages 45 through 47 of Vivian's Opposition and Counter-motion. I do not believe the quotes were taken out of context, and I believe they demonstrated Kirk's willingness to belittle and marginalize Vivian to the children.

Vivian indicates that both Kirk and Vivian were present when the current video system was involved, and that she has done nothing with the equipment since it was installed. She was not in charge of the system, and she hoped and believed that the system had caught the events of October 14 on video.

In regard to your request that we now have a fifth psychologist or psychiatrist get involved in this matter, it is absolutely unnecessary and will not resolve anything. We have tried in good faith to demonstrate to your client that Vivian is not suffering from any psychological disorder, and some of the best minds in the world have agreed. We have hired what we believe are the finest experts in the this area to address Kirk's claim, and we gave them all of Kirk's allegations so that he could understand that they were considering his positions. So you are clear, I am sending under separate cover the letters verifying that all of the pleadings and all of Vivian's medical records were provided to Dr. Applebaum and Dr. Ronningstam. The doctors reviewed the pleadings and the records and found that Vivian had no personality disorder of any kind. Let me suggest to you the obvious - the reason they did not find one is because none exists.

I am at a loss to understand why you do not proceed with an analysis by Dr. Roitman. I am curious whether you have provided him the pleadings that have been filed in this case, or the medical records, and I have no idea why you have not had Dr. Roitman interview Vivian.

The argument challenging our experts reports appears to be based upon your claim that the information provided to them by Vivian was inaccurate. I would be in a better position to know

Edward Kainen, Esq.

February 4, 2012

Page 3

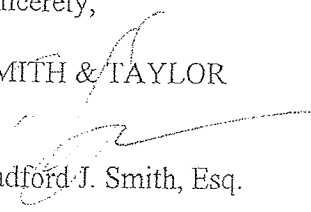
how to respond to your requests if you would provide me an outline of that information contained in their reports that Kirk believes is false or incorrect.

In regard to your claim that Vivian has taken the children to the Atkinson's home for some nefarious reason, please allow for the possibility that the children simply want to spend time with her, and that your client has made it increasingly uncomfortable for her to be in the home. He has locked doors, gotten into her email, kept a running diary

Kirk's allegations all speak to the care of Brooke and Rylee, and address facts that the girls themselves can clear up. I suggest we have them interviewed immediately by Dr. Paglini so the results of that interview are available for the Court on the 10th. This might be the best way to resolve some of the outstanding issues.

Sincerely,

SMITH & TAYLOR


Radford J. Smith, Esq.

RJS:

cc. Vivian Harrison (via email)
Mary Anne Decaria, Esq.
Thomas Standish, Esq.

Send Result Report



MFP

TASKalfa 500ci

Firmware Version 2H7_2F00.012.012 2011.07.14

06/01/2012 15:47
[2H7_1000.023.001] [2H7_1100.002.003] [2H7_7000.012.012]

Job No.: 030960

Total Time: 0°00'52"

Page: 003

Complete

Document:

doc20120601154639

RADFORD J. SMITH, CHARTERED

A Professional Corporation

THIS FACSIMILE IS CONFIDENTIAL.

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address below via U.S. Postal Service.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (702) 990-8448

FACSIMILE TRANSMITTAL SHEET

TO:

Thomas Standish, Esq.

FROM:

Jolene

For Radford J. Smith, Esq.

COMPANY:

Jolley, Urga, Wirth, Woodbury &

DATE:

JUNE 1, 2012

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECH
001	06/01/12 15:47	6997555	0°00'52"	FAX	OK	200x100 Normal/On

EXHIBIT “B”

RADFORD J. SMITH, CHARTERED
A Professional Corporation

THIS FACSIMILE IS CONFIDENTIAL.

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address below via U.S. Postal Service.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (702) 990-6448

FACSIMILE TRANSMITTAL SHEET

TO:	Thomas Standish, Esq.	FROM:	Jolene For Radford J. Smith, Esq.
COMPANY:	Jolley, Urga, Wirth, Woodbury & Standish	DATE:	JUNE 1, 2012
PHONE NUMBER:	699-7500	FAX NUMBER:	699-7555
RE:	Harrison v. Harrison	CASE NUMBER:	D-11-443611-D
		TOTAL NO. OF PAGES INCLUDING COVER:	3

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

DOCUMENT(S) ATTACHED: CORRESPONDENCE FROM RADFORD J. SMITH, ESQ., DATED
TODAY 6/1/12

June 1, 2012

VIA FACSIMILE

Thomas Standish, Esq.

Re: Harrison v. Harrison

Dear Tom:

Thank you for your letter of May 31, 2012. I have had an opportunity to review the letter with Vivian. As I understand Kirk's position, he is requesting three modifications to the proposed MSA I forwarded to you on Friday, May 25, 2012:

- 1) He seeks to eliminate the "teenage discretion" language set forth in paragraph 6 of the draft parenting plan;
- 2) He seeks an additional 10 day period of care during the summer vacation months; and,
- 3) He seeks to change his time to have the girls in his care from Monday and Tuesday to Wednesday and Thursday of each week.

Let me address each of those requests individually:

- 1) *Teenage Discretion*: As we have discussed over the last several weeks, part of Vivian's reluctance to enter into a final agreement without the input from Dr. Paglini was based upon what appears to be Brooke's deteriorating relationship with Kirk. Brooke has regularly indicated to Vivian that she desires spend more time with Vivian. Vivian has compromised in large part based upon the desire of the other members of the family to see this matter close. She still has significant concerns about Kirk's relationship with and care of Brooke, but she has listened to the advice that the resolution of the matter would lead to an improvement of that relationship.

What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care -- we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.

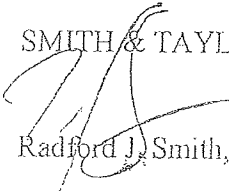
Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. The provision does not place the responsibility of choosing on Brooke, it simply gives each child discretion after 14 to spend more time with one parent or the other, a request that will likely be granted to them in any event by the Court. Again, the provision is designed to avoid litigation.

- 2) *Summer vacation:* The girls have attended sewing camp with Vivian in the past. Brooke has gone to the camp for four years since she was eight years old, and Rylee attended last year at eight years old. It is an activity both girls enjoy, and sewing is considered a life skill. In order for the children to go to this camp, Vivian must accompany them, and she must enroll in the program. The camp is filled with days of instruction and sewing. Kirk is welcome to attend the camp. If the children do not want to attend the camp in the future, this issue is moot. Vivian does not feel it is in the best interest of the children at this time to expand the summer visitation periods, particularly in light of Brooke's current difficulty in her relationship with Kirk.
- 3) *Days of the Week:* Vivian too desires to have the children on Wednesday and Thursday of each week. She permitted Kirk to choose between an alternating week schedule and a five/two - two/five schedule, and she feels she should be able to choose which weekdays she has the children. Moreover, it is not our experience that mediations occur more often on Monday and Tuesday, and because there are so few there does not appear to be a substantial need to change the proposed plan. Vivian would be willing to work with Kirk to arrange exchanges in those instances that Kirk has a mediation that is going to last into the evening after the children are out of school.

Please call with questions.

Sincerely,

SMITH & TAYLOR



Radford J. Smith, Esq.

RJS:

cc: Gary Silverman, Esq.
Vivian Harrison

EXHIBIT "C"

VIVIAN'S ACTIVITIES WITH THE CHILDREN SINCE THE ENTRY OF THE PARENTING PLAN

Activities – (signed up scheduled & purchased equipment & provided necessary supplies)

Rylee and Brooke:

- Intensive Dance classes (ballet, Pointe, jazz, Character, Tap, Lyrical, Irish, Hip Hop, Musical theatre, Choreography) – private lessons as needed
- Piano Lessons – Rylee (scheduled during Vivian's visitation days)
- Voice Lessons – Rylee (scheduled during Vivian's visitation days)

Rylee only:

- Activity Days LDS Church (weekly) – Mondays (for Rylee's age group)
- Gymnastics – Rylee (scheduled during Vivian's visitation days)
- Sports
 - o Basketball
 - o Softball

MEDICAL

Make all Doctor appointments and try to schedule during Vivian's days

- Dr. Dewan Pediatric endocrinologist – every 3 months (5 since January)
- Dr. Malliner optometrist – every year (Brooke contracts)
- Lab draws – Rylee every 6 months
- Dr. Noorda orthodontist – 5 appointments since February
- Dr. Bybee dentist – every 6 months (3 since January)
- Dr. Gaal – Otolaryngology – Brooke – 1 apt
- Dr. McKnight – (7 appointments since November 2012 allergist)
- Dr. Smith GP – as needed¹
- Dr. Jonathan Camp (2 apts – pediatric orthopedic surgeon)
- Dr. Rosemary Hyun (Pediatrician – 1 apt)
- Dr. Handler (dermatologist) – Rylee
- Dr. Christine Covetti (dermatologist) – Brooke
- Yearly flu shots
- Brooke-Contact lenses

SCHOOL

- Brooke signed up for Summer BYU Health Class for High School Credit
- Rylee- Nevada Citizenship – 3 countries, diagrams and projects

¹ Kirk's first appointment with Dr. Smith was a few days prior to filing the current Opposition and Countermotion.

- Great American Recital – Vivian and Rylee practiced daily for 2 months during summer (the Great American Recital includes – Reciting from memory, Gettysburg Address, Star Spangled Banner, List of Presidents first and Last names in order, US States & Capitals in alphabetical order, Preamble of the US Constitution, write pledge of allegiance.)
 - o Because Vivian and Rylee practiced the above throughout the summer, Rylee was able to recite from memory all of the above in the 1st day of the school.
- Monthly book reports and 4 projects associated with that report (teacher ask Rylee if she could use hers as sample)
- Brooke --assisted in at least 6 different school projects last school year – provided Math Tutor (the projects included writing essays, preparing reports, etc.)
- Attended ALL Open Houses alone (girls were not in attendance with their Dad) and Parent teacher Conferences
- Bought backpacks & majority of back to school supplies

MISC

- Homecoming dress & shoes
- 8th Grade Graduation Dress & Shoes
- All hair appointments
- Nail appointments (holiday & special events – at least 7 times per year)
- Help Brooke & Rylee with hair and make-up ALL dance recitals, music & voice recitals, homecoming, graduation, etc.
- Set up Photography Session for head shots for Dance Resume and provided props (6 hour shoot at residence)
- Helped girls complete mandatory dance resume for Dance School
- Broadway Season Ticket Holders – Smith Center
- Family Disney Cruise & Disney World Vacation
- Beach Spring Brea
- Ski Trip planned Winter Break
- Week sewing Camp
- Taught Brooke to ride a bike
- Surfing

VOLUNTEER

- Rylee Classroom Parent -- every other week
- Volunteer at School every week
- Parent Advisory Committee
- Field Trip Chaperone
- Dance Recital & Meeting
- Assisted at softball practice when needed

EXHIBIT "D"

LIST OF THINGS VIVIAN HELPED THE CHILDREN WITH

- She taught all of the children to read, and she has read extensively with and to all of the children. All of the children have reading awards for number of pages or minutes read during a specific school year. Before the children could read independently, Vivian read all of those pages with the children;
- The children have received mountains of awards based on academics. She was the parent who helped the children with the vast bulk of their homework, but she certainly agrees the children worked very hard at their schoolwork. Kirk may not understand, however, that children do not always run naturally toward schoolwork after school, and there were many times where Vivian had to push all five children to study and complete their assignments and projects;
- Vivian supplemented the children's education by tutoring them during the summers utilizing the Abeka program;
- All of the children have taken swimming lessons. Some started with the "Mommy and Me" program at six months old, but all of them took Red Cross swimming lessons or private swim lessons. (Vivian's mother did not know how to swim, and Vivian was afraid of the children drowning);
- All five children have played soccer, and Vivian coached Joseph's soccer team;
- All five children have played on softball/baseball teams;
- The four oldest children have all played organized basketball;
- The older three children were "every sport, every season" (golf, basketball, volleyball, swim, baseball / softball), and all of them lettered in sports in high school;
- All the children have taken dance lessons (Joseph was the first boy in his dance school);
- Vivian sat through almost all of the full practices of all of the children. Even when they were in high school, Vivian sat through many of the practices, sometimes as the only parent in the stands (with Brooke in a baby seat);
- The older children were in karate when they were five, and Tahnee and Whitney achieved their junior black belts. Vivian believes that Joseph may have also, or was very close to it;
- All five children have taken piano lessons, while Brooke and Rylee have also taken violin, guitar and drums;
- The older children have received art instruction through the Parks and Recreation Department;

- Vivian took the children on many vacations to Disneyland alone (at least once per year and sometimes twice). Kirk and Vivian once took a vacation without the children to Paris, but Vivian asked Kirk if they could come back early because she couldn't stand to be away from the children and was worried about them. That is the only time she can ever recall being away from the older girls or Joseph during their childhood;
- Joseph played baseball for approximately six years when he was younger.
- All the children have taken golf lessons, and Joseph is pursuing a career in professional golf.
- All the children have been good students. Some have had different struggles and different strengths. Tahnee and Whitney are graduates of the prestigious and difficult International Baccalaureate program at Green Valley High School. Joseph struggled a little, but he was an excellent math student and an incredible golfer. Brooke and Rylee are both excellent students.
- There were days that Vivian was in the car driving the children to places 5 or 6 hours. The parties used to joke that Brooke grew up in a car seat.
- Tahnee and Whitney were both in the Miss Teen Nevada pageant and others. Tahnee was Miss Teen Nevada.

See Vivian's Opposition to Kirk's Motion for Joint Legal and Primary Physical Custody, et al. filed on October 27, 2011, pages 22-24

EXHIBIT "E"

Paragraph
Number

Tahnee's Affidavit

- 1 Daughter of Kirk and Vivian
- 2 Affidavit is based upon my personal knowledge
Graduated from college end of fall 2008, lived at home since January 2011. Prior to that lived at home each summer,
- 3 Thanksgiving, Christmas and Spring Break
- 4 Summer of 2005, Vivian took Brooke and Rylee somewhere for several weeks
- 5 After Summer of 2005 Vivian started to act differently
- 6 2006, Kirk retires, Vivian started to withdraw
- 7 June 2008 - car ride - Vivian started belittling Whitney's intelligence and criticizing her weight
January 30, 2009 - Vivian wanted to invite some other girl for a dinner with Harrisons and another family. Kirk said it won't
be appropriate, Vivian said she was leaving him
- 9 February 27, 2009 - Vivian threw coffee mug at Kirk
- 10 March 12, 2009 - Vivian said Kirk did not cook enough. Tahnee says that's not true
- 11 March 16, 2009 - Joseph's birthday party
- 12 When Kindles first came out, Vivian got one and became more isolated
- 13 August 29, 2009 - Tahnee saw Brooke on internet at an Ashley Tisdale fan chat room
- 14 September 2009 - Vivian told Tahnee she wanted to spend three to four months in Europe
- 15 September 12, 2009 - Vivian invited five or six 16 year old girls over to watch a movie in the home theater
- 16 Vivian's fixation with the show "Tudors" (around October 7, 2009)
- 17 October 12, 2009 - Jonathon Rhys-Meyers
- 18 October 13, 2009 - Justin Timberlake
October 16, 2009 - about how Vivian talks in front of Brooke and Rylee about divorcing Kirk, Tahnee mentions how she
believes Vivian has deteriorated in the past one year due to her Phentermine use,
- 20 October 20, 2009 - Kirk is trying to build an apartment at the ranch for Brooke and Rylee
- 21 November 13, 2009 - Vivian googled Jonathon Rhys-Meyers and expressed displeasure regarding his girlfriend
- 22 In New York - Whitney's fiancée's mother stayed in the same hotel room
- 23 December 4, 2009 - psychic
- 24 December 13, 2009 - Vivian got a procedure done on her face
December 13, 2009 - during dinner with Kirk, Tahnee mentions that Jonathan Rhys-Meyers is involved in organization in
Ireland and the organization does philanthropic work in India

26 December 23, 2009 - Vivian spent \$875 on jacket and \$500 each on two pairs of jeans
27 December 25, 2009 - Vivian bought a pair of books for \$800
28 December 31, 2009 - Vivian got upset because Kirk took Brooke and Rylee to see the movie "Avatar"
29 February 3, 2010 - Vivian buys Christian Louboutin shoes and a dress \$1,395
30 Vivian goes to a basketball game in high heels and a leather coat
March 1, 2010 - Vivian talked about having fat injected into her butt, Tahnee talks about reading books regarding narcissistic
31 mothers
32 March 8, 2009 - Vivian started sleeping with Brooke and Rylee again
33 April 5, 2010 - Salt Lake City, Utah to attend a Muse concert
34 April 16, 2010 - Driving home from Salt Lake, stopped at Mexican restaurant, Vivian gets upset with Whitney
35 Brooke to her orthodontist appointment, later she was busy on facebook
36 October 3, 2010 - Vivian's relationship status on facebook is "single"
37 March 19, 2011 - Vivian removed Tahnee from her facebook
38 Tahnee says Vivian is self-absorbed, has uncontrolled fits of rage, etc.
39 Tahnee says that Kirk takes good care of Brooke and Rylee on a daily basis
49 Kirk should have primary custody

Paragraph
Number

Whitney's Affidavit

- 1 Daughter of Kirk and Vivian
- 2 Affidavit is based upon my personal knowledge
- 3 Graduated from college in spring 2009, lived at home after graduation until September 2010, spent summer during the college at home and come home for Thanksgiving and Christmas
- 4 2005 - Vivian abruptly took Brooke and Rylee somewhere for several weeks
- 5 during this time, Vivian started acting differently
- 6 After Kirk retired in 2006, Vivian started withdrawing from other members
- 7 June 2008 - Car incident - belittling Whitney's intelligence, attacked Tahnee
- 8 Summer and Fall of 2008 - in Australia, Kirk's roommate and Kirk came down. When Whitney called Vivian, she said Kirk did not tell her "where the money is" and "to make sure the sharks can do their job"
- 9 July 31, 2009 - Drove Kirk's car to St. George to see a play - Vivian read Kindle
- 10 Middle of September 2009 - Vivian read all the time
- 11 October 2009 - Kirk spent 4 days at Ranch, Brooke and Rylee did not eat dinner until 10:00 p.m.
- 12 October 16, 2009 Tahnee and Whitney's discussion with Kirk re: Vivian talking about divorcing him, her adversarial behavior etc.
- 13 Summer of 2009 - Vivian said she's going to Europe
- 14 Summer of 2009 - Vivian's fascination with Jonathan Rhys-Myers
- 15 November 2009 - Whitney's fiancée comes for Thanksgiving Dinner
- 16 October/November 2009 - Vivian starts having numerous treatments on her face, and started spending more and more time in her office reading
- 17 December 13, 2010 - Dinner with Kirk and Tahnee - Vivian wants to go to India because of Jonathan Rhys Meyers
- 18 Vivian sleeps with Brooke and Rylee
- 19 December 2009 - Vivian buys a pair of books \$800
- 20 January 6, 2010 - Kirk said Vivian wanted Whitney to change her wedding date due to Vivian's elective plastic surgery
- 21 January 24, 2010 - Rylee's 7th Birthday - Vivian did not help in preparing for the party
- 22 Vivian went to California to have plastic surgery
- 23 April 5, 2010 - Salt Lake City. Utah Muse concert
- 24 April 2009 - Vivian told Whitney that she is going to divorce Kirk
- 25 March 2011 - Vivian said Whitney has gained weight
- 26 Vivian most of her time in home office with door closed
- 27 Kirk should be granted total custody

EXHIBIT "F"

Sent from my iPhone

Begin forwarded message:

From: emmabharrison@aol.com
Date: August 5, 2013, 2:08:53 PM PDT
To: vivianlharrison@aol.com
Subject: Dad

Dear mom,

Dad took my phone away and he is being so mean to me. There is no other way to contact you except email. I'm sorry 😞 Rylee is next to me in one bed watching her iPad and dad comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to stay in the hotel room because apparently we're staying here for another 8 days. He rips my phone out of my hands takes off the charger and headphones and he asks me why i'm listening to people who are telling me that he is a bad person (he is referring to you) I tell him there isn't and he says its not good to lie. Then he states that I am lying about being hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts going on about he raised me since I was 7 and how he took me to school. Then he asked why I don't love him and I said he doesn't respect privacy, he barges in, doesn't support me in anything I do, Then he asks what he doesn't support me in, and I say dance and he says he drives me to and from and he pays tuition. Then, I say that he doesn't support me in Makeup Artistry and then he says that he's bought me makeup and that what else can he do to support me. And then I say that he always says he'd rather me be a lawyer or a doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show is done and she closes her iPad because dad stated earlier that she MUST stop after that episode. So she turns it off and dad not respecting Rylee starts saying how if he died today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate him. Then he starts calling me selfish and how I don't want to do anything with the family and I say we aren't a family. Then I start to ignore him while he starts blaming everything on "the person that is telling me all about the bad stuff isn't doing the right thing and how its affecting our relationship. He walks back to his bed and says that he is sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm around her and turns away from me. Then I ask dad for my phone because I want to talk to you and he says no and then I say he is not letting me talk to you. Thats all that happened. I miss you mommy. I want to come home and be with you and Rylee without her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

Love,

Brookie 😞 😞

EXHIBIT "G"

Harrison v. Harrison

Excerpt from the Affidavit of Vivian Harrison, Filed October 27, 2011

78. Kirk claims that I have taken credit for the accomplishments of the children. Frankly, is absurd and ridiculous. I'm not sure from his explanation how he thinks that I took such credit. I certainly never said, "I earned that trophy", or "I'm Miss Teen Nevada", or "I hit that home run," "I won that State Championship," or "That Jr. Black Belt is mine", or "I took that math exam," etc. Did I see to it that they were signed up, had the proper equipment, and went to practice on a consistent basis? Yes, but their achievements are their own. I have been proud of my children's accomplishments like all parents, and if Kirk and others have heard me speak about my children's accomplishments, it's because in that area there is a lot I can talk about.

79. There have been times when I have discussed my role in the children's accomplishments with them. Our daughter Tahnee has a temper, and when angry can make very hurtful comments. For example, she has said, "I'm smarter than you," "have more talent than you", "am more athletic than you", "I went to a better college than you," "I'm going to be more successful than you," "You do nothing, you don't even work", "Its dad's money", etc. (all themes that I believe have been kept alive by Kirk since they are mentioned throughout his motion). I had conversations with Tahnee when she was in high school, after she said something along the lines of the foregoing quotes, reiterating the fact to Tahnee that she was able to achieve so much was because I supported her efforts. Tahnee would then allege I was trying to take credit. The problem wasn't that I wanted to take credit, the problem was that Tahnee was of the belief that she did not need to show any gratitude, and even worse, she could taunt me by telling me that I had no role in her achievements. Do I think she was grateful? Yes, I do. Do I

think she said things in the heat of arguments that suggested she wasn't grateful? Yes, I do. Rather than assuring her that I played any role in her success, it is clear (indeed, he even admits it) that Kirk instead fostered the notion, and continues to foster the notion, that I only did anything for Tahnee (or any of the other children for that matter) because I wanted to take credit for it.

80. One of the consistent problems in our marriage has been Kirk's lack of respect for me when dealing with the children. There are numerous times in his affidavits that he demonstrates this. When I would attempt to discipline the children by loss of privileges, he often undermined it. Kirk has on many occasions referred to me as a "freeloader" and he told me in front of the children "you don't work." He has even convinced the older children that I don't deserve "his money," a theme the two oldest girls have seemed to latched onto based upon their continual reference to things I buy (of course neither of them has ever suggested to me that I've spent too much on them). So the Court can see that Kirk's suggestion that I only buy things for myself is plain wrong, I have attached as Exhibit A-3 a list of purchases I have made on behalf of the children in the period from 2005 to 2011.

81. There are other themes besides the "your freeloading mother is spending too much of my money" and "she has stolen credit for all your achievements" mantra that he has used to try to alienate the children. Kirk's most recent invention is that I have favored Tahnee while growing up. I have never "favored" any child and I love them all immeasurably. Each child had his or her own individual needs and talents and interests, which I did my best to address. Whitney spent more time with her friends, because Whitney's personality is very gregarious and social. She loves to be around people; she is very social and has lots of friends. Tahnee's personality is quite different. She is much more introverted and enjoys spending time

alone. Tahnee loves to stay at home and read, draw and work on the computer. Being around people is exhausting for Tahnee and she has described herself as having social anxiety. I supported Whitney's decision to participate in extra-curricular activities and attend the LDS church. I supported all of the children in everything they did. Sibling rivalry and relationships are always complicated, and I did my best to help all of them.

82. Kirk makes much of the notion that Whitney, at age 13, expressed that she wanted to live with friends (she never actually did live with anyone else). Whitney had good friends who were LDS, and she wanted to go to church regularly. She looked at LDS families and compared them to Kirk and me, and she thought we fell short of her ideal. Again, she was 13 years old. Whitney remained in our home, and was very involved in church activities, student body office, and other leadership positions at school. Rather than allowing this to just die, Kirk brings this issue up over and over again. At no time do I recall ever expressing to Whitney that she should move out of our house.

83. Kirk's repetition of problems that occurred while the children were in high school is on full display in his motion. He repeats again the incident where I smacked Tahnee and told her to get out of the house. Kirk, of course, has selectively used or distorted facts. First, he claims Tahnee was sixteen. In reality she was almost 18, and in her senior year of high school. After arguing for a significant period in which Tahnee continued to belittle my parenting of our younger children, she punctuated her argument with a "F__k you," and I smacked her mouth. I am not proud of that fact, but it was a single incident. Contrary to Kirk's contention, that is the only time I ever recall smacking Tahnee in the mouth. I fully understand teenagers need to become independent and thus separate themselves from their parents. I also understand that this struggle for independence may lead to disagreements. I do not believe, however, that a

teenager's desire to gain independence grants them license to be rude, defiant and ignore their responsibilities

84. Both Kirk and Tahnee have failed to tell the whole story underlying that incident, and by doing so, have misrepresented it. Tahnee and I began having difficulties when she started high school. Our family was forced out of our Boulder City home because of a lawsuit Kirk was in with our neighbor, and we were renting a home in Green Valley. Tahnee and Whitney transferred to Green Valley High School and were accepted into the International Baccalaureate Program. Both girls made the golf team and Whitney also made the basketball team and served as an officer in the student government. During Tahnee's junior year she inexplicably appeared to be shutting down and exhibiting signs of depression. She became more isolated, quit her dance and piano classes, refused to practice golf, study for her preparatory ACT Kaplan practice exams and received multiple failing notices. *See Exhibit A-4, attached hereto.* She had also begun to talk back and became openly defiant in front of Brooke who then was only three years old. I took Tahnee to Sue Beglinger, a family counselor, and then to a psychiatrist, Dr. Elizabeth Tully to prescribe medication. I was seriously concerned about Tahnee's failing notices, and I wanted to help her overcome her problem. Kirk's only input to this process was to criticize me for trying to "control" Tahnee. I was extremely thankful when the psychiatrist provided a medical note that allowed Tahnee additional time to turn in all late assignments, and Tahnee was eventually able to pull up her grades. Nevertheless, this was a very stressful time for the family.

85. We finally moved into a new home in Boulder City, and our fifth child Rylee was born in January 2003. My conflicts with Tahnee became more frequent and started to escalate. I asked Kirk to assist me in parenting the older children for months, but Kirk replied that I had "messed up the kids", and now I wanted him to "fix it." Instead of Kirk becoming supportive, he

began to undermine my authority by belittling me openly in front of the children. He started saying things like, "You know how your Mom is" and, "just walk away and wait until I get home." After a while, whenever I asked Tahnee to do anything she did not want to do she said, "No, I'll talk to Dad."

86. The day that I asked her to leave, we had been arguing for hours. When I went into a different room with the little girls, then three and a baby, she would follow and say more. The conversation became heated. I was tired, and I was angry that she continued to come after me even with the little girls there. I said things that I shouldn't have – the worst of which was mentioning the problems she had undergone earlier that school year. I know that hurt Tahnee, and she felt like I was abandoning her by telling her to leave. I simply wanted to stop the arguments, and I did not truly think she would be gone for any length of time. It was wrong, and I regret it, but what truly made it an incident that continues to be brought up over and over again is the way Kirk reacted.

87. Tahnee did leave the house that day, but I knew where she would go, her friend Heather's house. Tahnee had a place to go and was not in any danger or living on the street. I was hoping for two things, 1) Kirk would realize the severity of the situation and step up and help parent; and, 2) Tahnee would realize how good she had it and make a commitment to change and participate with her family in a positive nature. Instead, Kirk retrieved Tahnee from Heather's (exactly where I suspected she would go) and brought her home. In front of the children he said "this house belongs to the children" and that it was going to "always be their home no matter what they say or do." In other words, the children need not show me any respect, were free to do whatever they wanted or did not want to do at the home, and there was not going to be any consequence. Kirk expresses his view in his motion that the children's only

“fault” was to want some independence from me, or to dare to question a decision I made concerning them.

88. I note that in his motion he presents his theme that I could not accept the independence of the children in a way that makes no sense. Strangely, while saying on the one hand that I was too involved in the older children’s lives (and thus could not accept their independence), he also states that after giving birth to Rylee and having a toddler, Brooke, I became more focused on the two youngest children, while I became less tolerant of the oldest three children’s attempts to be more independent. (Kirk’s aff. p. 7) That statement is contradictory and illogical. It stands to reason that if I was more focused on the younger children that I would be less focused on the older three and any of their attempts to be more independent would be aided by my focus on the younger children.

89. Kirk, however, was wrong about what was going on. The person that best expressed what happened that day was Tahnee. In a letter that she wrote, she outlined how she felt about the incident. A true and correct copy of that letter is attached hereto as Exhibit A-5. For me, the incident is over, and I love Tahnee and always will. She should, and I believe does, know that I will be there for her whenever she needs me for as long as I live.

90. While Kirk is quick to blame me for every ill that has ever occurred in our family, he fails to mention any of his own confrontations with Whitney and Tahnee. When they were defiant with him the story had a different ending. He chased Tahnee down the street yelling. My recollection is that he couldn’t catch her and came back empty handed, and it was a while later when Tahnee mustered enough courage to come home. He also chased Whitney with a hairbrush in our home and caught her upstairs and spanked her with the brush in hand. He also chased Tahnee while playing golf at the golf course and she fell down in a hazard and cut her leg. He

grabbed her and brought her back to the golf cart. All of these instances occurred during the same timeframe, and during all the above instances Kirk used profanity. Kirk did these things only on a few occasions when the girls were defiant with him, and they stopped being defiant. With me, however, that never happened. I couldn't threaten them with physical punishment. Tahnee is six feet tall and Whitney is five foot eight and they both are junior black belts. The girls were bigger, stronger, and faster than me. At five foot three and often with a toddler and infant in my arms, I posed no real threat to them. With Kirks constant undermining and non-supportive nature, I could not discipline them in anyway.

EXHIBIT “H”



6 July 2013

To Whom It May Concern:

I am writing this letter in regards to Rylee Harrison. She was first seen by us in April 2011 after mother had become suspicious that the testosterone medication that she had been prescribed by her physician might be causing changes in her daughter. She had been applying the cream in the areas recommended by the FDA and the drug manufacturer. She sought out medical opinion, and it was suspected that the medication that she was using might have been giving some secondary transference to her child and causing changes in her body. At the time of the prescription, there was no warning to the consumer or physician that such a transference of testosterone cream to fomites and then other household members could occur. Now such a black box warning does exist, but in 2011 it did not.

Upon learning that the cream may be the cause for her daughters development of pubic hair, she stopped the cream and switched to injections. This is safe, and would allow continued co-bedding with the children in a safe manner.

It was discussed that the testosterone exposure may of advanced her bone age, and when she went into puberty, we may consider a surgical implant of Supprelin to suppress puberty and maximize her height. The need for the implant is totally voluntary, and in no way is required for her to have a healthy life. The implant secretes a hormone that her body normally would make, and in itself has no side effects that could harm her.

Estimation of height is exactly that. An estimate. The closer you get to the final adult height, which typically is at age 14-15 in a female, the more accurate the estimation. Estimations done at age 2 are not very accurate, and there are general formulas and ways to estimate final adult height, but many factors in the course of ones life can come into play and alter this- things such as subclinical ovarian cysts that advance bone age. Our estimation, based upon the fathers height and the mothers height that the midparental height, or genetic expectation was to be 68 inches in height. This differs from the pediatricians estimation of 6 feet tall, but is considered to be more accurate. We felt that Rylee was on track to having a final adult height of 64 inches. This was based upon an advanced bone age that she had done. This is still with 2 standard deviations from the midparental height, and still is

5235 South Durango, Suite 103 - Las Vegas - Nevada - 89148
Office: (702) 851-7287 Fax: (702) 851-7286

HE pEds

The Pediatric
Endocrine &
Diabetes
Specialists



considered to be within the normal range for her genetic potential, just on the lower end of it. Many children can have advanced bone age without exposure to testosterone. Ovarian cysts can advance it, obesity can advance it, and there are factors that we don't understand. To say that Rylee's predicted height and advanced bone age is solely secondary to the testosterone exposure would be wrong. It did contribute, there is no doubt, but to be solely responsible we cannot say.

Rylee's mother has been to every single appointment. She has called into the office, followed up on lab results, xray results, and has always asked very appropriate and intelligent questions. She has never missed an appointment, missed a lab draw, and has researched on her own to educate herself on options that she may have. Upon learning that the cream could be harming the family, she immediately stopped, and switched to a non contaminating formulation.

I am of the opinion that Rylee's mother has shown nothing but genuine interest in Rylee's health as any mother would. She appears to be the main caregiver and liason for her health.

As Rylee's stature is going right now, she is in the lower range of normal for her genetic potential. Use of the implant is a consideration, but not an absolute, and may even possibly not be needed. Depends how things play out. Her weight can contribute to advanced bone age, and it is not uncommon for preadolescent females to have ovarian cysts that wax and wane and effect the bone age. To say that the testosterone cream and exposure are solely responsible would be very wrong. Mother became suspicious and initiated the workups that led to the diagnosis. She was vigilant, and correct in her suspicions. We feel the mother has been very involved in Rylee's health beyond the testosterone, and only has Rylee's best intentions at heart.

Respectfully,

Ashresh Dewan, MD
Endocrinology

5235 South Durango, Suite 103 - Las Vegas - Nevada - 89148
Office: (702) 851-7287 Fax: (702) 851-7286

EXHIBIT "I"

14 October 2013

The Pediatric
Endocrine &
Diabetes
Specialists



DECLARATION EXECUTED IN THE STATE OF NEVADA (NRS 53.045)

1. My name is Dr. Asheesh Dewan.
2. I am an adult.
3. I make this declaration of my personal knowledge unless stated otherwise.
4. I am a physician licensed in the State of Nevada. I specialize in pediatric endocrinology. Rylee Harrison has been my patient since April 2011, when her parents brought her to me for possible precocious puberty.
5. Since that time I have seen Rylee on regularly scheduled appointments. Most recently, I examined her on October 7, 2013, after she had drawn blood samples and a bone age x-ray to determine her growth pattern.
6. I reviewed the results of her tests with her parents during that appointment. At that time I informed them of my conclusions:
 - A. Rylee, who will be age 11 in January has entered puberty which is normal for her age. Rylee is currently 63.22" inches tall. Rylee's bone age x-ray matches her current chronological age of 11 and displays bone age and growth patterns which are normal for her age and genetic potential. The Mid parental height growth potential is estimated at 68 inches given her parents adult height. Rylee does not have advanced bone age and no medical intervention of any kind is warranted.
 - B. Given her current height and bone age Rylee is estimated to be at the high end of her genetic potential with an predicted adult height of around 5'10" tall.
 - C. In my opinion, she is healthy and doing well; she does not need further blood draws or tests.
 - D. I would like to examine her again in six months, only to monitor her weight.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date 14-October 2013, in Las Vegas

A handwritten signature in black ink, appearing to read 'Asheesh Dewan'.

Asheesh Dewan, MD
Endocrinology

EXHIBIT "J"

Chart 2: Custody Criteria*

STATE	Suitability Factors**	Child's Wishes	Joint Custody Authorized	Presumption in Favor of Joint Custody	Cooperative Parent	Domestic Violence**	Attorney or GAL***
Alabama	X	X ¹	X	X ²	X	X	
ALAB. CODE § 30-3-131 ALAB. CODE § 30-3-152							
Alaska	X	X	X		X	X	X
ALASKA STAT. § 25.20.060 ALASKA STAT. § 25.24.150							
Arizona	X	X	X	X	X	X	X
ARIZ. REV. STAT. § 25-321 ARIZ. REV. STAT. § 25-403							
Arkansas		X	X			X	X
ARK. CODE ANN. § 9-13-101							
California	X	X	X	X ²	X	X	X
CAL. FAM. CODE § 3010 CAL. FAM. CODE § 3011 CAL. FAM. CODE § 3020 CAL. FAM. CODE § 3027 CAL. FAM. CODE § 3027.5 CAL. FAM. CODE § 3028 CAL. FAM. CODE § 3030.5 CAL. FAM. CODE § 3031 CAL. FAM. CODE § 3040 CAL. FAM. CODE § 3041 CAL. FAM. CODE § 3041.5 CAL. FAM. CODE § 3042 CAL. FAM. CODE § 3044 CAL. FAM. CODE § 3046 CAL. FAM. CODE § 3047 CAL. FAM. CODE § 3048 CAL. FAM. CODE § 3064 CAL. FAM. CODE § 3080 CAL. FAM. CODE § 3081 CAL. FAM. CODE § 3085 CAL. FAM. CODE § 3120 CAL. FAM. CODE § 3150 CAL. FAM. CODE § 6323							
Colorado	X	X	X ³		X	X	X
COLO. REV. STAT. § 14-10-124							
Connecticut	X	X	X	X ²	X	X	X
CONN. GEN. STAT. § 46B-54 CONN. GEN. STAT. § 46B-56							
Delaware	X	X	X		X	X	X
DELA. CODE ANN. TIT. 13 § 721 DELA. CODE ANN. TIT. 13 § 722							
District of Columbia	X	X	X		X	X	X
D.C. CODE § 16-914							
Florida	X	X	X	X ⁴	X	X	X
FLA. STAT. § 61.13 FLA. STAT. § 61.401							
Georgia	X	X	X			X	X
G.A. CODE ANN. § 19-9-3							
Hawaii	X	X	X			X	X
HAW. REV. STAT. § 571-46							
Idaho	X	X	X	X		X	X
IDAH. CODE ANN. § 32-704 IDAH. CODE ANN. § 32-717 IDAH. CODE ANN. § 32-717B							
Illinois	X	X	X		X	X	X
750 ILL. COMP. STAT. 5/601 750 ILL. COMP. STAT. 5/602 750 ILL. COMP. STAT. 5/602.1							

STATE	Suitability Factors**	Child's Wishes	Joint Custody Authorized	Presumption in Favor of Joint Custody	Cooperative Parent	Domestic Violence**	Attorney or GAL**
Indiana	X	X	X			X	X
IND. CODE § 31-17-2-8 IND. CODE § 31-17-2-15 IND. CODE § 31-17-6-1							
Iowa	X	X	X		X	X	X
IOWA CODE § 598.12 IOWA CODE § 598.41							
Kansas	X	X	X		X	X	X
KAN. STAT. ANN. § 23-2219 KAN. STAT. ANN. § 23-3203 KAN. STAT. ANN. § 23-3206							
Kentucky	X	X	X			X	
KY. REV. STAT. ANN. § 403.270							
Louisiana	X	X	X	X		X	X
LA. CIV. CODE ANN. ART. 131 LA. CIV. CODE ANN. ART. 132 LA. CIV. CODE ANN. ART. 134 LA. REV. STAT. ANN. 9:345 LA. REV. STAT. ANN. 9:364							
Maine	X	X	X ³		X	X	X
ME. REV. STAT. TIT. 19-A § 1507 ME. REV. STAT. TIT. 19-A § 1653							
Maryland		X ⁶	X			X	X
MD. CODE ANN. FAM. LAW § 9-101.1 MD. CODE ANN. FAM. LAW § 1-202 MD. CODE ANN. FAM. LAW § 5-203							
Massachusetts			X			X	X
MASS. GEN. LAWS CH. 208 § 28 MASS. GEN. LAWS CH. 208 § 31 MASS. GEN. LAWS CH. 208 § 31A MASS. GEN. LAWS CH. 209C § 10 MASS. GEN. LAWS CH. 215 § 56A							
Michigan	X	X	X		X	X	X
MICH. COMP. LAWS § 722.23 MICH. COMP. LAWS § 722.24 MICH. COMP. LAWS § 722.26A							
Minnesota	X	X	X	X ²	X	X	X
MINN. STAT. § 518.17 MINN. STAT. § 518.165							
Mississippi		X ²	X	X ²		X	X
MISS. CODE ANN. § 93-5-23 MISS. CODE ANN. § 93-5-24							
Missouri	X	X	X ³		X	X	X
MO. REV. STAT. § 452.375 MO. REV. STAT. § 452.385 MO. REV. STAT. § 452.410 MO. REV. STAT. § 452.423							
Montana ⁹	X	X	X			X	X
MONT. CODE ANN. § 40-4-205 MONT. CODE ANN. § 40-4-212							

Chart 2: Custody Criteria* (continued)

STATE	Statutory Factors**	Child's Wishes**	Joint Custody Authorized	Presumption in Favor of Joint Custody	Cooperative Parent	Domestic Violence***	Attorney or GAL****
Nebraska NEB. REV. STAT. § 42-358 NEB. REV. STAT. § 42-364 NEB. REV. STAT. § 43-2923	X	X	X			X	X
Nevada NEV. REV. STAT. § 125-480	X	X ^{9,5}	X	X	X	X	
New Hampshire N.H. REV. STAT. ANN. § 461-A:6	X ¹	X	X		X	X	X
New Jersey N.J. STAT. ANN. § 9:2-4	X	X	X		X	X	X
New Mexico N.M. STAT. ANN. § 40-4-8 N.M. STAT. ANN. § 40-4-9 N.M. STAT. ANN. § 40-4-9.1	X	X	X	X	X	X	X
New York N.Y. DOM. REL. LAW § 240		X ¹⁰				X	X
North Carolina N.C. GEN. STAT. § 50-13.1 N.C. GEN. STAT. § 50-13.2		X ¹¹	X			X	
North Dakota N.D. CENT. CODE § 14-09-06.2 N.D. CENT. CODE § 14-09-06.4	X	X	X		X	X	X
Ohio OHIO REV. CODE ANN. § 3109.04	X ³	X	X ¹²		X	X	X
Oklahoma OKLA. STAT. TIT. 43 § 109 OKLA. STAT. TIT. 43 § 11.2		X	X ¹²		X	X	X
Oregon OR. REV. STAT. § 107.137	X	X ¹³	X ¹⁴		X	X	
Pennsylvania 23 PA. CONS. STAT. ANN. § 5328 23 PA. CONS. STAT. ANN. § 5334	X	X	X		X	X	X
Rhode Island R.I. GEN. LAWS § 15-5-16 R.I. GEN. LAWS § 15-5-16.2		X ¹⁵	X		X ¹⁵	X	X
South Carolina S.C. CODE ANN. § 63-3-530 S.C. CODE ANN. § 63-3-810 S.C. CODE ANN. § 63-15-30 S.C. CODE ANN. § 63-15-40		X	X			X	X
South Dakota S.D. CODIFIED LAWS § 25-4-45		X ¹⁶	X			X	X
Tennessee TENN. CODE ANN. § 36-4-132 TENN. CODE ANN. § 36-6-101 TENN. CODE ANN. § 36-6-106	X	X	X	X ¹²	X	X	X
Texas TEX. FAM. CODE ANN. § 107.002		X ¹⁸	X ¹⁹	X		X	X
Utah UTAH CODE ANN. § 30-3-10 UTAH CODE ANN. § 30-3-10.02 UTAH CODE ANN. § 30-3-10.10 UTAH CODE ANN. § 30-3-11.2	X	X	X		X	X	X

STATE	Statutory Factors**	Child's Wishes**	Joint Custody Authorized	Presumption in Favor of Joint Custody	Cooperative Parent	Domestic Violence***	Attorney or GAL****
Vermont VT. STAT. ANN. TIT. 15 § 594; 665; 665A	X	X ²⁰	X		X	X	X
Virginia VA. CODE ANN. § 20-124.2; 20-124.3	X	X	X		X	X	X ²¹
Washington WASH. REV. CODE § 26.09.013 WASH. REV. CODE § 26.09.187 WASH. REV. CODE § 26.09.220	X	X	X		X	X	X
West Virginia W. VA. CODE § 48-6-206 W. VA. CODE § 48-9-209 W. VA. CODE § 48-9-302	X	X	X		X	X	X
Wisconsin WIS. STAT. § 767.41 WIS. STAT. § 767.407	X	X	X	X	X	X	X
Wyoming WYO. STAT. ANN. § 20-2-201	X	X ²²	X		X	X	X

* The chart looks at child custody determinations during a divorce or separation. The statutes cited do not necessarily affect child custody decisions in other situations.

** Although there is a statutory list of factors, the court may in its discretion consider other factors under the particular circumstances of the case.

*** The jurisdiction has enacted a statute permitting the consideration of domestic violence in conjunction with child custody. The statutes vary from making domestic violence a factor in custody determinations, to imposing presumption against custody in batterers or imposing special procedural considerations in cases involving domestic violence.

**** This column indicates whether a state has statutory authority for appointment of a guardian *ad litem* or attorney for a child specifically in child custody cases.

1. By case law. See, e.g., *Naudin v. Haddock*, 882 So. 2d 364 (Ala. Civ. App. 2003).

2. There is a presumption that joint custody is in the best interest of the child if both parents request joint custody.

3. Does not use the term "child custody," but instead uses the terminology, such as "parental responsibilities and rights," "legal custodian," or other similar terminology.

4. Fla. Stat. § 61.13(2)(c)(2)—"The court shall order the parental responsibility for a minor child to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child."

5. Domestic violence is not addressed in the statute but has been considered by courts as a factor in case law.

6. By case law. See, e.g., *Hild v. Hild*, 157 A.2d 442 (Md. 1960); *Wagner v. Wagner*, 674 A.2d 1 (Md. Ct. Spec. App. 1996); *Montgomery Cnty. Dep't of Soc. Services v. Sanders*, 381 A.2d 1154 (Md. Ct. Spec. App. 1977).

7. Factors considered in custody decisions are listed in case law. See *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983).

8. Public policy encourages participation of both parents in decisions and statute directs that "the court shall determine the custody arrangement which will best assure both parents participate in such decisions . . . so long as it is in the best interests of the child." This statute, however, does not create a presumption in favor of joint custody. *In re Marriage of Kroeger-Eberhart v. Eberhart*, 254 S.W.3d 38, 2007 Mo. App. LEXIS 1661 (Mo. Ct. App. 2007).

9. In Montana, the words "custody," "joint," "primary parent," or "visitation" are not used when referring to child custody. Parents are considered to have identical rights as to the child, but their parenting times may differ.

9.5. Nevada will consider a child's wishes, among other factors, if the child is of sufficient age and capacity to form an intelligent preference as to custody.

10. By case law. See *Gant v. Higgins*, 203 A.D.2d 23 (N.Y. App. Div. 1994).

11. By case law. See, e.g., *Harris v. Harris*, 115 N.C. 587 (1894); *Brooks v. Brooks*, 184 S.E.2d 417 (N.C. Ct. App. 1971).

12. Uses the term "shared parenting."

13. By case law. See *In re Marriage of Tuttle*, 660 P.2d 196 (Or. Ct. App. 1983).

14. The court may only order joint custody if both agree to joint custody. The court may not order joint custody over the objection of either parent.

15. By case law. See, e.g., *Africano v. Castell*, 837 A.2d 721 (R.I. 2003); *Pettinato v. Pettinato*, 382 A.2d 909 (R.I. 1990).

16. See *Price v. Price*, 611 N.W.2d 425 (S.D. 2000).

17. It is presumed that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or agree to joint custody in open court.

18. By case law. See *Vazquez v. Vazquez*, 292 S.W.3d 80 (Tex. App. 2007).

19. Texas uses the language "sole or joint managing conservator" rather than "sole or joint custody."

20. By case law. The court is not required or forbidden to consider the preference of the child. See *Cameron v. Cameron*, 398 A.2d 294 (Vt. 1979).

21. Discussed further in *Vernacchio v. Vernacchio*, 429 S.E.2d 482 (Va. Ct. App. 1993).

22. By case law. See *JRS v. GMS*, 90 P.3d 718 (Wyo. 2004).

0001

DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY COURT
MOTION/OPPOSITION FEE
INFORMATION SHEET
(NRS 19.0312)

Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent
DEFENDANT'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER
RESOLVING PARENT CHILD ISSUES [TO DELETE "TEENAGE DISCRETION" PROVISION]
AND OTHER EQUITABLE RELIEF;
DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE
HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND
ATTORNEY'S FEES AND SANCTIONS

Motions and
Oppositions to Motions
filed after entry of a final
order pursuant to NRSS
125, 125B or 125C are
subject to the Re-open
filing fee of \$25.00,
unless specifically
excluded (NRS 19.0312)

NOTICE:

If it is determined that a motion or
opposition is filed without payment
of the appropriate fee, the matter
may be taken off the Court's
calendar or may remain undecided
until payment is made.

Mark correct answer with an "X"

1. No final Decree or Custody Order has been
entered. ☐ YES ☒ NO
2. This document is filed solely to adjust the amount of
support for a child. No other request is made.
☐ YES ☒ NO
3. This Motion is made for reconsideration or a new
trial and is filed within 10 days of the Judge's Order
if YES, provide file date of Order: _____
☐ YES ☒ NO

If you answered YES to any of the questions above,
you are not subject to the \$25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to \$25 filing fee

Dated this 17th day of October, 2013

Jolene Hoeft

Printed Name of Preparer

Signature of Preparer

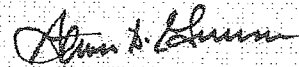
Electronically Filed
Sep 10 2014 04:08 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

HARRISON V. HARRISON
CASE NUMBER 66157
CROSS-APPELLANT'S EXHIBITS A-I
OF THE DOCKETING STATEMENT

EXHIBIT “A”

1 SAO
2 SMITH & TAYLOR
3 RADFORD J. SMITH, ESQ.
4 Nevada State Bar No. 002791
5 64 N. Pecos Road, Suite 700
6 Henderson, Nevada 89074
7 Telephone: (702) 990-6448
8 Facsimile: (702) 990-6456
9 rsmith@radfordsmith.com

Electronically Filed
07/11/2012 01:41:38 PM


CLERK OF THE COURT

7 GARY R. SILVERMAN, ESQ.
8 SILVERMAN, DECARIA, & KATTELMAN
9 Nevada State Bar No. 000409
10 6140 Plumas Street, Suite 200
11 Reno, NV 89519
12 Telephone: (775) 322-3223
13 Facsimile: (775) 322-3649
14 silverman@silverman-decaria.com

12 *Attorneys for Defendant*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

16 KIRK ROSS HARRISON,

17 Plaintiff,

18 vs.

19 VIVIAN MARIE LEE HARRISON,

20 Defendant.

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

FAMILY DIVISION

22 STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES

23 DATE OF HEARING: N/A
24 TIME OF HEARING: N/A

25
26 COME NOW, Defendant, Vivian Marie Lee Harrison (hereinafter Vivian"), by and through her
27 attorneys, Radford J. Smith, Esq., and Gary R. Silverman, Esq., and Plaintiff, Kirk Ross Harrison
28

1 (hereinafter "Kirk") by and through his attorneys, Thomas Standish, Esq., and Edward L. Kainen, Esq.,
2 and hereby stipulate and agree and request that the Court find and order as follows:

3 1. *Resolution of Custody and Support Issues:* The parties (referred to individually as "parent"
4 or collectively as "parents" below) have two (2) minor children born the issue of this marriage, namely
5 Emma Brooke Harrison, born June 26, 1999, and Rylee Marie Harrison, born January 24, 2003. The
6 parties have not adopted any children, and Vivian is not pregnant. The parties desire by this stipulation to
7 resolve all issues regarding the care, custody, control and support of their minor children. The parties
8 hereby represent and agree that the provisions set forth below outline a plan that is in the best interest of
9 the minor children.
10

11 2. *Legal Custody:* The parents will share joint legal custody of the minor children. Joint legal
12 custody shall be defined as follows:
13

14 2.1. Each parent shall consult and cooperate with the other in substantial questions
15 relating to religious upbringing, educational programs, significant changes in social environment, and
16 health care of the children. Each parent shall have access to medical and school records pertaining to the
17 children, and (except as limited in paragraph 3 below) shall each be permitted to independently consult
18 with any and all professionals involved with the care, treatment or education of the children.
19

20 2.2. The parents shall jointly select all schools, day care providers, and counselors for the
21 children. In the event the parents cannot agree to the selection of a school, the child(ren) shall remain in
22 the school she is (or they are) then attending pending mediation and/or further court order.
23

24 2.3. Unless otherwise stated herein, the parents shall jointly select all health care
25 providers for the children, including all medical providers, dentists or orthodontists, optical care providers,
26 psychological counselors and mental health providers, and neither parent shall seek non-emergency health
27 care, whether physical or mental, for the children without the knowledge and consent of the other.
28

1 2.4. Each parent shall be empowered to obtain emergency health care for either child
2 without the consent of the other parent. Each parent shall notify the other parent as soon as reasonably
3 possible of any illness or injury of either child requiring emergency medical attention, the location of any
4 emergency care of either child, and the result of such care.
5

6 2.5. Each parent shall provide the other parent, upon receipt, with any information
7 concerning the children's care, education, or activities, including, but not limited to, copies of report cards,
8 school meeting notices, vacation schedules, class programs, requests for teacher conferences, results of
9 standardized or diagnostic tests, notices or schedules of activities, samples of school work, order forms for
10 school pictures, all communications from health care providers, and the names, addresses, and telephone
11 numbers of all the children's schools, health care providers, regular day care providers, and counselors.
12

13 2.6. Each parent shall advise the other parent of school, athletic, church, and social events
14 in which the children participate, and each agrees to notify the other parent within a reasonable time after
15 first learning of such event so as to allow the other parent to make arrangements to attend the event if he
16 or she chooses to do so. Both parents may participate in and attend activities involving the children,
17 including, but not limited to, activities such as open house, school and church activities and events,
18 athletic events, school plays, graduation ceremonies, school carnivals, and any other activities involving
19 the children. Regardless of what parent has the custodial care of the children on the date of such event,
20 each parent shall be afforded a reasonable time to greet, congratulate, take pictures, or participate in other
21 normal activities with the children acknowledging or memorializing the event.
22

23 2.7. Each parent shall provide the other parent with the address and telephone number at
24 which the minor children reside, and each shall notify the other parent at least thirty (30) days prior to any
25 change of address of the children, and shall provide the telephone number of such address change as soon
26 as it is assigned.
27
28

1 2.8. Each parent shall provide the other parent with a travel itinerary and, whenever
2 reasonably possible, telephone numbers at which either child can be reached, whenever either child will be
3 away from that parent's home for a period of twenty-four (24) hours or more. The parties each
4 acknowledge that pursuant to current federal law, each will need to seek the written permission of the
5 other party for any travel with the children outside of the United States, which written permission shall not
6 be unreasonably withheld.
7

8 2.9. Each parent shall encourage liberal communication between both children and the
9 other parent. Each parent shall be entitled to reasonable telephone communication with the children.
10 Each parent agrees to be restrained, and is restrained, from unreasonably interfering with the children's
11 right to privacy during such telephone conversations.
12

13 2.10. Neither parent shall interfere with the right of the children to transport clothing, toys
14 and other personal belongings freely between the parents' respective homes.
15

16 2.11. Neither parent shall disparage the other in the presence of either child, nor shall
17 either parent make any comment of any kind that would demean the other parent in the eyes of either
18 child. Additionally, each parent agrees to instruct their respective family and friends that no disparaging
19 remarks are to be made regarding the other parent in the presence of either child.
20

21 2.12. The parents further agree to communicate directly with each other regarding the
22 needs and well being of their children, and each parent agrees that he or she shall not to use either child to
23 communicate with the other parent regarding parental issues, or to transfer notes, payments, or other
24 documents to the other parent without the other parent's consent.
25

26 3. *Therapist for the Minor Children:* The parents agree that the minor children shall engage
27 in therapeutic sessions with a mutually agreed-upon child psychologist or psychiatrist upon the request of
28 either party. The psychologist or psychiatrist shall be chosen jointly by the parties. If the parties are

1 unable to agree upon a psychiatrist or psychologist within 30 days of the date of the filing of this
2 Stipulation and Order, then the Court shall appoint that individual. The determination of the need for the
3 children to engage in and/or continue with therapy shall be at the discretion of the therapist, unless
4 otherwise agreed in writing by the parties. The therapist shall not be called as a witness in this case in the
5 absence of an issue requiring mandatory reporting under NRS 432B.220. In the absence of such a
6 mandatory reporting issue, the therapist shall be immune from process in this matter, and shall not be
7 called to testify. The therapist's role would be entirely therapeutic and one to which the children would
8 address any issues or problems for peaceful resolution. For any instance where the therapist believes that
9 the behavior of either parent should be addressed, and the child provides consent to the therapist to
10 address the issue, the psychologist shall direct any discussion, suggestions, or questions to the parties'
11 Parenting Coordinator appointed pursuant to paragraph 4 below. Neither party shall directly contact the
12 therapist in the absence of a written agreement to that effect. The parties shall equally divide the cost of
13 such therapy.

14
15
16
17 4. *Parenting Coordinator:* The parties shall hire a Parenting Coordinator to resolve disputes
18 between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by
19 the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon
20 by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order
21 appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation
22 and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the
23 appointment.

24
25 5. *Weekly Division of Time with the Minor Child:* The parties shall share joint physical
26 custody of the minor children. VIVIAN shall have the children in her care each Monday from after
27 school, or Monday at 9:00 a.m. when the children are not in school (subject to the provisions of paragraph
28

1 7.6), until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. KIRK
2 shall have the children in his care from Wednesday after school, or Wednesday at 9:00 a.m. when the
3 children are not in school, until Friday after school, or Friday at 9:00 a.m. when the children are not in
4 school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00
5 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the
6 children are not in school.
7

8 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each
9 child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the
10 time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-
11 share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their
12 minor children to allow each child the right to exercise such "teenage discretion" in determining the time
13 the child desires to spend with each parent once that child reaches 14 years of age.
14

15 6.1. The parties do not intend by this section to give the children the absolute ability to
16 determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to
17 feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to
18 spend additional time with either parent or at either parent's home.
19

20 6.2. Such adjustments shall not be prompted or suggested by either parent, but shall
21 originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to
22 avoid spending time with the other parent, and they shall each encourage the children to follow the regular
23 schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this
24 provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address
25 this issue with the Parenting Coordinator and/or the Court.
26
27
28

1 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may
2 address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator
3 as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit
4 the discretion of the District Court in making child custody determinations.
5

6 6.4. In the event either child wishes to permanently modify the regular custodial schedule
7 beyond the scope of this provision once that child reaches 14 years of age, she may address this matter
8 with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting
9 Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS
10 125.480(4)(a).
11

12 7. *Holiday Time with the Minor Children:* Holidays and special times shall take precedence
13 over but not break the continuity of the plan. The parties will discuss and agree on a schedule of holiday
14 visitation for any holiday not specifically addressed herein.
15

16 7.1. *Summer Vacation or Intersession Break:* The parties shall each be entitled to two
17 weeks of uninterrupted visitation with the children during the children's Summer Vacation/Intersession
18 periods. The party exercising such visitation shall advise the other party, in writing, thirty (30) days in
19 advance of the visitation. The parties shall alternate yearly having the priority for scheduling visitation,
20 with Kirk having the priority in odd-numbered years, and Vivian having priority in even-numbered years.
21 provided, however, Kirk shall not designate vacation time during the period of the children's sewing
22 camp. That priority in scheduling must be exercised by notice to the other party by March 1 of each year,
23 and if the party with priority fails to notify the other party of a summer vacation schedule by that time,
24 then priority in that year shall be granted to the first party to notice the other of such vacation plans. The
25 two week period may be broken into two one-week periods, but no smaller unit. The visitation periods
26 shall not be taken during the other parties' holiday visitation periods outlined herein. In addition, the
27
28

1 parties shall be entitled to the following additional periods: VIVIAN shall be entitled to an additional ten
2 days to attend the sewing camp with the children each year in which she and the children have previously
3 participated. VIVIAN shall advise KIRK of the dates as soon as she learns of them so that the parties may
4 schedule summer vacation periods. KIRK shall be entitled to an additional seven (7) days to attend the
5 Utah/Lagoon trip with the children each year in which he and the children have previously participated.
6 KIRK shall advise VIVIAN of the dates of the Utah/Lagoon trip as soon as he learns of them so that the
7 parties may schedule summer vacation periods. The particular activities during these additional periods
8 may be modified at each party's discretion. Also, because of the proximity of the date of this Agreement,
9 for the Summer Break 2012 Vivian shall have the children in her care from August 5 through August 19
10 for her two week vacation period, and July 19 through July 31 for sewing camp. Kirk shall have the
11 children in his care for the period beginning July 10 and ending on July 19, and from August 20 through
12 August 26.

13
14
15 7.2. *Winter Break:* The Winter Break shall be defined utilizing the nine-month school
16 year calendar for the Clark County, Nevada school district. The holiday shall be divided into two periods.
17 the first beginning after school the day school recesses for the Winter Break, and ending December 25th at
18 noon. The second period shall be defined as commencing December 25th at noon, and ending at 7:00 p.m.
19 the day before school recommences. The parties shall alternate care of the child during those periods.
20 with VIVIAN having the children during the first period in even-numbered years, and for the second
21 period in odd-numbered years. KIRK shall have the children during the first period in odd-numbered
22 years, and for the second period in even-numbered years.

23
24
25 7.3. *Thanksgiving Visitation:* The Thanksgiving holiday shall be defined as commencing
26 after school (or at 3:00 p.m. if the children are not in school) on the Wednesday before Thanksgiving, and
27 ending the Sunday following Thanksgiving at 7:00 p.m. The parties shall alternate having the children
28

1 during the Thanksgiving holiday, with VIVIAN having the children in her care during the Thanksgiving
2 holiday in odd-numbered years, and KIRK having the children in his care during the Thanksgiving
3 holiday in even-numbered years.

4
5 7.4. *Spring Break:* The Spring Break vacation shall be based upon the nine-month school
6 calendar in Clark County, Nevada. The Spring Break period shall be defined as commencing the Friday
7 that school recesses before the vacation period, and shall end on at 7:00 p.m. the Sunday before school
8 recommences. KIRK shall have the children during the Spring Break vacation period in even-numbered
9 years, and VIVIAN shall have the children during the Spring Break vacation period in odd-numbered
10 years.

11
12 7.5. *Independence Day:* The Independence Day holiday shall be defined as commencing
13 July 4th at 9:00 a.m., and ending July 5th at 10:00 a.m. KIRK shall have the children in his care for the
14 Independence Day holiday during even-numbered years, and VIVIAN shall have the children in her care
15 for the Independence Day holiday in odd-numbered years.

16
17 7.6. *Other Nationally And State-Observed Holidays:* With respect to such nationally
18 observed holidays and holidays observed by the State of Nevada, to wit: 1) Martin Luther King Day; 2)
19 President's Day; 3) Memorial Day; and 4) Labor Day, VIVIAN shall have the children in her care both
20 that Monday holiday and the preceding weekend. In the event that VIVIAN does not normally have the
21 children the weekend before the Monday holiday, she shall take the weekend with the children but grant
22 the following two weekends to KIRK. KIRK shall have the children on the weekend of one Staff
23 Development Day each year (which for the 2012-2013 school year is October 12, 2012), and each Friday
24 that Nevada Day is observed (which for 2012-2013 school year is October 26, 2012). Commencing 2013,
25 Kirk shall designate the Staff Development Day weekend he will have the children in his care by
26 September 1 each year. In the event that KIRK does not normally have the children the weekend
27
28

1 following these Friday school holidays, he shall take the weekend with the children but grant the
2 following two weekends to VIVIAN. No other Staff Development Days shall create any exceptions to
3 the normal visitation schedule.
4

5 7.7. *Veteran's Day*: Veteran's Day shall be observed on the day that it falls as a holiday
6 (typically November 11), provided, however, if Veteran's Day is observed on a Monday, VIVIAN shall
7 have the preceding weekend with the children. In the event that VIVIAN does not normally have the
8 children the weekend before the Monday holiday, she shall take the weekend with the children but grant
9 the following two weekends to KIRK. KIRK shall have the children on Veteran's Day in 2016, when it
10 shall fall on a Friday, and the weekend following that Friday. In the event that KIRK does not normally
11 have the children the weekend before the Friday Veteran's Day holiday, he shall take the weekend with
12 the children but grant the following two weekends to VIVIAN.
13

14 7.8. *Father's Day*: Regardless of which parent is entitled to have the children on the
15 Sunday which is designated "Father's Day," KIRK shall be entitled to have the children from at least 10:00
16 a.m. until 8:00 p.m. that day.
17

18 7.9. *Mother's Day*: Regardless of which parent is entitled to have the children on the
19 Sunday designated as "Mother's Day," VIVIAN shall be entitled to have the children from at least 10:00
20 a.m. until 8:00 p.m. that day.
21

22 7.10. *Children's Birthdays*: The parties shall alternate having the children for the
23 children's birthdays. VIVIAN shall have the children for their birthday in odd-numbered years, and KIRK
24 shall have the children for their birthday in even-numbered years. The children's birthday shall be defined
25 as beginning at 9:00 a.m. on the birthday, and ending at 9:00 p.m. on that day.
26
27
28

1 8. *Miscellaneous Provisions Regarding Care of Children:*

2 8.1. While the parties recognize that the majority of exchanges shall be effectuated by
3 dropping off and picking up the children at school, when school is not in session, the parents agree that in
4 effectuating and implementing the aforementioned custody arrangements, the parent to whom the physical
5 custody of the children is to be transferred at any such time that the physical custody of the children is to
6 be changed from one parent to the other shall be responsible for picking up the children at the other
7 parent's residence (i.e., when KIRK is to have the actual physical custody of the children, KIRK shall be
8 responsible for picking up the children at VIVIAN's residence; and, conversely, when VIVIAN is to have
9 the physical custody of the children, VIVIAN shall be responsible for picking up the children at KIRK's
10 residence.
11

12 8.2. The parents agree that the children shall be picked up, and shall be available to be
13 picked up, at the designated times set forth above. Should a delay become necessary, the parent
14 responsible for such a necessary delay shall immediately notify the other parent to advise him or her of the
15 problem. For example, if the receiving parent is unable to pick up the children at the designated time,
16 such receiving parent shall immediately notify the other parent of that fact. Conversely, if the children are
17 not available for the receiving parent to pick up at the designated time, the receiving parent shall be
18 notified immediately by the other parent. Moreover, in the event any scheduled time cannot be kept due
19 to the illness or other unavailability of a child and/or the receiving parent, the parent unable to comply
20 with the schedule shall notify the other parent and the children as soon as reasonably possible. In the
21 event the time-shared arrangement cannot be kept due to the illness or other unavailability of a child, the
22 receiving parent shall be entitled to comparable time within thirty (30) days after the occurrence of such
23 missed time with the child(ren).
24
25
26
27
28

1 9. *Child Support:* Based upon the current financial condition of the parties, and the fact that
2 neither party currently engages in full time employment, neither party shall be required to pay child
3 support to the other.
4

5 9.1. The provisions regarding child support herein are consistent with the statutory
6 requirements of NRS 125B.070 and NRS 125B.080, as applied in *Wright v. Osburn*, 114 Nev. 1367, 970
7 P.2d 1071 (1998), and *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).
8

9 10. *Tax Exemption:* VIVIAN shall be entitled to claim Rylee as a dependent each year, and
10 KIRK shall be entitled to claim Brooke each year as a dependent until such time that Brooke is no longer
11 eligible as a tax dependent. In the year following the last year that Brooke is eligible to be claimed as a
12 tax dependent, the parties shall begin alternating Rylee as a dependant with VIVIAN claiming Rylee in the
13 first year.
14

15 10.1. *Health Insurance:* Pending the entry of a Decree of Divorce in this matter, KIRK
16 shall maintain the minor children on the current policy of health insurance, and pay all healthcare
17 expenses for the minor children not covered by insurance, with community funds. Commencing upon the
18 first day of the month following the filing of a Decree of Divorce in this matter, KIRK shall be solely
19 responsible for any premiums for such insurance, or for a policy reasonably comparable in benefits and
20 premiums, which policy shall be chosen by KIRK. The parties shall be equally responsible for
21 deductibles or co-pays required by the insurance policy, and any and all expenses for the healthcare costs
22 of the minor children not covered by the insurance, including orthodontic and optical expenses, until such
23 time as each child, respectively, reaches the age of eighteen (18), or if still in high school, the age of
24 nineteen (19), marries, or otherwise becomes emancipated.
25

26 10.2. *Documentation of Out-of-Pocket Expenses Required:* A party who incurs an
27 out-of-pocket expense for medical care is required to document that expense and provide the other party
28

1 proof of payment of that expense. A receipt of payment from the health care provider is sufficient to prove
2 the expense so long as it has the name of the child on it and shows an actual payment by the party seeking
3 reimbursement.

4
5 10.3. *Timely Submission of Requests for Reimbursement:* The party who has paid or
6 incurred a health care expense for a minor child must submit a claim for reimbursement to the insurance
7 company within the deadline required for reimbursement by the insurance policy. If a party fails to timely
8 submit such a claim for reimbursement, and the claim is denied by the insurance company as untimely,
9 that party shall pay the entire amount which would have been paid by the insurance company as well as
10 one-half of the expense which would not have been paid by insurance if the claim had been timely filed.

11
12 10.4. *Mitigation of Health Expenses Required; Use of Covered Insurance Providers:* Each
13 party has a duty to mitigate medical expenses incurred by or for the minor children. Absent compelling
14 circumstances, a party must take the minor children to a health care provider covered by the insurance in
15 effect and use preferred or covered providers, if available, in order to minimize the cost of healthcare for
16 the minor children. The burden is on the party using a non-covered health care provider to demonstrate
17 that the choice not to use a covered provider, or the lowest cost option under the policy, was reasonably
18 necessary in the particular circumstances. If the Court finds the choice of a non-covered or more
19 expensive covered provider was not reasonably necessary, then the Court may impose a greater portion of
20 financial responsibility for the cost of that health care on the party who incurred that expense up to the full
21 amount which would have been provided by the lowest cost insurance choice.

22
23
24 10.5. *Sharing of Insurance Information Required:* The party providing insurance coverage
25 for the children has a continuing obligation to provide insurance information to the other party including,
26 but not limited to, copies of policies and policy amendments as they are received, claim forms, preferred
27 provider lists (as modified from time to time), and identification cards. If the insuring party fails to timely
28

1 supply any of the above items to the other party, and that failure results in a denial of a claim because of
2 the non-insuring party's failure to comply with the procedures required by the amended or updated
3 insurance policies, the party providing insurance shall be responsible for all healthcare expenses incurred
4 by the minor child for any claim that would have been covered by insurance.
5

6 10.6. *Reimbursement For Out-of-Pocket Expenses:* A party that seeks reimbursement for
7 one-half of an unreimbursed healthcare expense he or she has incurred on behalf of a minor child must
8 submit such request for reimbursement to the other party within thirty (30) days of incurring such expense
9 or being advised by the provider that such expense would not be reimbursed. If a party fails to request
10 such reimbursement within that time period, that party shall forfeit any right to seek reimbursement. A
11 party who receives a written request for contribution for an unreimbursed health care expense for a child
12 incurred by the other party must reimburse the other party one-half of that expense within thirty (30) days
13 of receipt of the written request for contribution. The party receiving the request for contribution must
14 raise any objection to the request for contribution within the thirty (30) day period after the request for
15 contribution is received or shall be deemed to have waived such objection. Any objection to the request
16 for contribution must be made in writing.
17

18 10.7. *Sharing Insurance Reimbursement:* Any reimbursements for payments made directly
19 by a party or the parties to any healthcare provider for a minor child shall be distributed according to the
20 amount of payment by each party. If a party receives such a reimbursement, that party shall distribute the
21 reimbursement within seven (7) days of its receipt.
22

23 10.8. *Effect of Not Obtaining or Maintaining Required Health Insurance Coverage:* If
24 either party is individually required to provide health insurance or pay other health care related costs for
25 the parties' minor children and fails to do so, that party shall be responsible for that portion of any medical
26 expense that would have been paid by a reasonably priced insurance policy available at the time. Should
27
28

1 the party obligated to provide health insurance for the minor children lose that ability, the parties shall
2 jointly choose and pay for an alternative policy. The Court shall reserve jurisdiction to resolve any
3 dispute relating to alternative insurance.
4

5 *Mandatory provisions:* The following statutory notices relating to custody/visitation of the minor
6 children are applicable to the parties herein:

7 Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either
8 party intends to move their residence to a place outside the State of Nevada, and take the minor children
9 with them, they must, as soon as possible, and before the planned move, attempt to obtain the written
10 consent of the other party to move the minor children from the State. If the other party refuses to give
11 such consent, the moving party shall, before they leave the State with the children, petition the Court for
12 permission to move with the children. The failure of a party to comply with the provision of this section
13 may be considered as a factor if a change of custody is requested by the other party. This provision does
14 not apply to vacations outside the State of Nevada planned by either party.
15
16

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

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

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

4
5 Section 8. If a parent of the child lives in a foreign country or has significant
6 commitments in a foreign country:

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

11 (b) Upon motion of the parties, the Court may order the parent to post a bond if
12 the Court determines that the parents pose an imminent risk of wrongfully
13 removing or concealing the child outside the country of habitual residence. The
14 bond must be in an amount determined by the Court and may be used only to
15 pay for the cost of locating the child and returning him to his habitual residence
16 if the child is wrongfully removed from or concealed outside the country of
17 habitual residence. The fact that a parent has significant commitments in a
18 foreign country does not create a presumption that the parent poses an imminent
19 risk of wrongfully removing or concealing the child."

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

22 The parties, and each of them, are hereby placed on notice that, pursuant to NRS 125.450, a parent
23 responsible for paying child support is subject to NRS 31A.010 through NRS 31A.340, inclusive, and
24 Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes, regarding the withholding of wages and
25 commissions for the delinquent payment of support, that these statutes and provisions require that, if a
26 parent responsible for paying child support is delinquent in paying the support of a child that such person
27 has been ordered to pay, then that person's wages or commissions shall immediately be subject to wage
28 assignment and garnishment, pursuant to the provisions of the above-referenced statutes.

29 The parties acknowledge, pursuant to NRS 125B.145, that an order for the support of a child, upon
30 the filing of a request for review by:

1 (a) The welfare division of the department of human resources, its designated
2 representative or the district attorney, if the welfare division or the district attorney
3 has jurisdiction in the case; or,

4 (b) a parent or legal guardian of the child,

5 must be reviewed by the court at least every 3 years pursuant to this section to determine whether the
6 order should be modified or adjusted. Further, if either of the parties is subject to an order of child
7 support, that party may request a review pursuant the terms of NRS 125B.145. An order for the support of
8 a child may be reviewed at any time on the basis of changed circumstances.

9 IT IS SO STIPULATED.

10 SMITH & TAYLOR

JOLLEY, URGAS, WIRTH, WOODBURY &
STANDISH

11
12 RADFORD J. SMITH, ESQ.
13 Nevada State Bar No. 002791
14 64 N. Pecos Road, Suite 700
15 Henderson, Nevada 89074
16 (702) 990-6448
17 Attorney for Defendant Vivian Harrison

EDWARD L. KAINEN, ESQ.
Nevada State Bar No. 005029
10091 Park Run Dr. #110
Las Vegas, Nevada 89145
(702) 823-4900
Attorney for Plaintiff Kirk Harrison

18 VIVIAN HARRISON

KIRK HARRISON

19 Good Cause appearing.

20 IT IS SO ORDERED this 11th day of JULY 2012.

21
22 DISTRICT JUDGE

23 Respectfully Submitted:

24 SMITH & TAYLOR

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

EXHIBIT “B”

1 NTSO

2 THOMAS J. STANDISH, ESQ.

3 Nevada Bar No. 1424

4 tjs@juwww.com

5 JENNIFER POYNTER-WILLIS, ESQ.

6 Nevada Bar No. 9281

7 jpw@juwww.com

8 JOLLEY, URGAL, WIRTH, WOODBURY & STANDISH

9 3800 Howard Hughes Parkway, 16th Floor

10 Las Vegas, Nevada 89169

11 (702) 699-7500

12 (702) 699-7555

13 EDWARD L. KAINEN, ESQ.

14 Nevada Bar No. 5029

15 ed@kainenlawgroup.com

16 KAINEN LAW GROUP, PLLC

17 10091 Park Run Drive, Suite 110

18 Las Vegas, NV 89145

(702) 823-4900

(702) 823-4488 (Fax)

Attorneys for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant

CASE NO.: D-11-443611-D

DEPT NO.: Q

Date of Hearing: n/a

Time of Hearing: n/a

NOTICE OF ENTRY OF STIPULATION AND ORDER RESOLVING
PARENT/CHILD ISSUES

///

///

///

///

///

///

///

///

1 PLEASE TAKE NOTICE that the attached **STIPULATION AND ORDER**
2 **RESOLVING PARENT/CHILD ISSUES** was entered in the above-entitled matter on July
3 11, 2012.

4 DATED this 12th day of July, 2012.

5 JOLLEY URG A WIRTH WOODBURY
6 & STANDISH

7 By: 

8 THOMAS STANDISH, ESQ.

9 Nevada Bar No. 1424

JENNIFER POYNTER-WILLIS, ESQ.

10 Nevada Bar No. 9281

11 3800 Howard Hughes Parkway, 16th Floor

12 Las Vegas, Nevada 89169

13 Attorneys for Plaintiff

JOLLEY URG A WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, Suite 1600, Las Vegas, NV 89109
Telephone: (702) 699-7500 Fax: (702) 699-7555

JOLLEY URG WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, Suite 1600, Las Vegas, NV 89109
Telephone: (702) 699-7500 Fax: (702) 699-7555

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard Hughes Parkway, 16th Floor, Las Vegas, Nevada, 89169.

On the 12th day of July, 2012, I served the within **NOTICE OF ENTRY OF STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES** on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

RADFORD J. SMITH, ESQ.
64 N. PECOS ROAD, STE. 700
HENDERSON, NV 89074

GARY R. SILVERMAN, ESQ.
6140 PLUMAS ST., #200
RENO, NV 89519

and placing the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service by Mail was executed by me on the 12th day of July, 2012, at Las Vegas, Nevada.

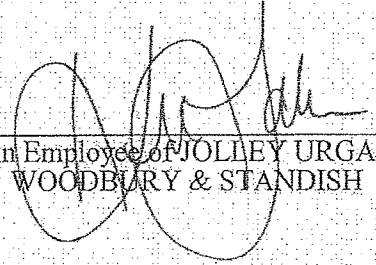

An Employee of JOLLEY URG WIRTH
WOODBURY & STANDISH

EXHIBIT “C”

1 ORDR
2

Electronically Filed
10/29/2013 11:54:30 AM

3
4 DISTRICT COURT


CLERK OF THE 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 HARRISON,)

11)
12 Defendant.)

13
14 ORDER FOR APPOINTMENT OF
15 PARENTING COORDINATOR

16 On July 11, 2012, this Court entered the parties' Stipulation and Order Resolving
17 Parent/Child Issues (hereinafter referred to as "Parenting Plan"). Said Parenting Plan
18 expressly mandated that the parties "hire a Parenting Coordinator to resolve disputes
19 between the parties regarding the minor children." Parenting Plan 5:17-18 (Jul. 11,
20 2012). Thus, pursuant to the express terms of their Parenting Plan, the parties
21 consented to the appointment of a Parenting Coordinator to resolve disputes, and not
22 merely to provide mediation services. As this Court's Order, the resolution of disputes
23 contemplates decision-making authority pursuant to the terms and limitations set forth
24 herein. The Court having considered all of the pleadings on file herein, and good cause
25 appearing, does hereby Order the appointment of a Parenting Coordinator under the
26 following terms and conditions:
27
28

VICE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
1 VEGAS, NEVADA 89101

1
2 1.0 APPOINTMENT AND DESIGNATION OF TERMS

3 Margaret Pickard is hereby appointed as Parenting Coordinator in this matter
4 (said appointee hereinafter referred to as the "Parenting Coordinator"). The Parenting
5 Coordinator's full name, title, mailing addresses and phone numbers are as follows:

6 Name: Margaret Pickard

7 Street Address: 10120 S. Eastern Ave #200

8 City: Henderson State: Nevada Zip Code: 89052

9 Telephone #: (701) 595-6771 Fax # (702) 605-7321

10 E-mail: margaretpickard@aol.com

11
12 2.0 PARENTING COORDINATOR FEES/EXPENSE SHARING

13 Hourly fees for the services of the Parenting Coordinator shall be set by the
14 Parenting Coordinator pursuant to a written agreement with the parties. All fees shall
15 be advanced equally by the parties. The Parenting Coordinator may recommend a re-
16 allocation of fees and costs on any single issue if it appears that the conduct of one party
17 warrants same.

18
19 3.0 GENERAL AUTHORITY

20 The Parenting Coordinator shall have the general authority to recommend a
21 resolution to parent/child and custody/visitation issues, as set forth below and within the
22 following guidelines:

23 3.1 Facilitate the resolution of disputes regarding the implementation of the
24 parenting plan, the schedule, or parenting issues, provided such resolution does not
25 involve a substantive change to the shared parenting plan. A substantive change is
26
27
28

1 defined as a modification to the parenting plan that (a) significantly changes the
2 timeshare of the children with either parent; or (b) modifies the timeshare such that it
3 amounts to a change in the physical custody designation.
4

5 3.2 Recommend the implementation of non-substantive changes to, and/or
6 clarify, the parenting plan, including but not limited to issues such as:
7

8 (a) transitions/exchanges of the children including date, time, place,
9 means of transportation and transporter;

10 (b) holiday sharing;

11 (c) summer or track break vacation sharing and scheduling;

12 (d) communication between the parents;

13 (e) health care management issues, including choice of medical providers
14 and payment of unreimbursed medical expenses (including dental, orthodontic,
15 psychological, psychiatric or vision care), pursuant to the Court's order for payment of
16 said expenses;
17

18 (f) education or day care including but not limited to, school choice,
19 tutoring, summer school, and participation in special education testing and programs;
20 as well as allocation of the cost for the foregoing items;
21

22 (g) children's participation in religious observances and religious
23 education;
24

25 (h) children's participation in extracurricular activities, including camps
26 and jobs;
27

28 (i) children's travel and passport issues;

1
2 (j) purchase and sharing of children's clothing, equipment and personal
3 possessions, including possession and transporting of same between households;

4 (k) children's appearance and/or alteration of children's appearance,
5 including haircuts, tattoos, ear, face or body piercing;

6
7 (l) communication between the parents including telephone, fax, e-mail,
8 etc. as well as communication by a parent with the children including telephone, cell
9 phone, pager, fax, and e-mail when the children are not in that parent's care; and

10 (m) contact with significant other(s) and/or extended families.

11
12 4.0 PROCEDURES AND RELATED REQUIREMENTS

13 4.1 Each party may provide the Parenting Coordinator with copies of pertinent
14 pleadings and orders which relate to the issues to be brought to the Parenting
15 Coordinator. The Parenting Coordinator shall also have direct access to all pertinent
16 orders and pleadings on file in the case, including files under a Sealing Order of the
17 Court.
18

19 4.2 All written communications by a party to the Parenting Coordinator shall
20 be copied or provided to the other party, concurrently.
21

22 4.3 Each parent is responsible for contacting the Parenting Coordinator within
23 ten (10) days of entry of this order to schedule an initial meeting. The parties shall
24 make themselves and the minor children available for meetings and/or appointments as
25 deemed necessary by the Parenting Coordinator. The Parenting Coordinator shall
26 determine in each instance whether an issue warrants a meeting with the parties.
27
28

YEN G. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

1 4.4. The parties shall participate in good faith in an initial mediation/conflict
2 resolution process with the Parenting Coordinator in an effort to resolve a dispute.
3

4 (a) Should mediation result in an agreement, the Parenting Coordinator
5 shall prepare a simple "Agreement" on the subject for signature by each party and the
6 Parenting Coordinator. The Parenting Coordinator shall send a copy of the Agreement
7 to each party; the parties shall each sign the Agreement, and return their copy to the
8 Parenting Coordinator within fourteen (14) days from the date of receipt.
9

10 (b) Should the mediation not result in an Agreement, the Parenting
11 Coordinator shall prepare and send to the parties a written decision in the form of a
12 "Recommendation," as well as a courtesy copy to the Court, resolving the dispute. Said
13 Recommendation shall set forth the reasons for the Parenting Coordinator's decision.
14

15 (i) Within ten (10) days after the issuance of a Recommendation,
16 any party may file with the Court and serve upon the other party and Parenting
17 Coordinator a notice of Objection to the recommendation. The Parenting Coordinator
18 shall be given a copy of the Objection and notice of the hearing at least ten (10) days
19 prior to the hearing, unless otherwise ordered by the Court. The notice must include:
20

21 (1) A copy of the Recommendation;
22

23 (2) A concise statement setting forth the reasons that the
24 party disagrees with the Recommendation; and
25

26 (3) A statement of the relief requested.
27 ...
28 ...

YON C. DUCKWORTH
DISTRICT JUDGE

WELLY DIVISION, DEPT. O.
VEGAS, NEVADA 89101

1
2 (ii) If, within ten (10) days after issuance of the
3 Recommendation, a Notice of Objection is not filed, the Recommendation shall be
4 deemed approved by the Court and shall become an Order of the Court.

5 4.5 The parties understand that the Parenting Coordinator's Recommendation
6 is not a final decision and is not immediately effective, but rather can be reviewed by the
7 Court through the objection procedure. However, the parties are on notice and
8 understand that the purpose and intent of the Court in appointing a Parenting
9 Coordinator pursuant to the terms of their Parenting Plan is to resolve disputes between
10 the parties without the expense of litigation. Therefore, the Court will overturn a
11 Recommendation of the Parenting Coordinator only upon the showing of evidence to
12 the satisfaction of the Court to warrant such a result.
13

14 4.6 The parties shall provide in a timely manner any documents requested by
15 the Parenting Coordinator and/or execute any releases required for the Parenting
16 Coordinator to directly obtain documents or records which the Parenting Coordinator
17 deems relevant to the submitted issues. Failure to do so may result in imposition of
18 sanctions by the Court.
19

20 4.7 The Parenting Coordinator shall have the authority to interview and
21 require the participation of other persons whom the Parenting Coordinator deems to
22 have relevant information or to be useful participants in the parenting coordination
23 process, including, but not limited to, custody evaluator, teachers, health and medical
24 providers, stepparents, and significant others.
25
26
27
28

1 5.0 PARENTING COORDINATOR APPEARANCES IN COURT

2
3 5.1 In the event that the testimony of the Parenting Coordinator is required
4 for any hearing, including depositions, or other Court action by one or both parties, the
5 Parenting Coordinator's fees for such services shall be paid by both parties, in advance,
6 according to the estimate by the Parenting Coordinator. The Court shall determine the
7 ultimate allocation of such fees between the parties.
8

9 5.2 A Parenting Coordinator directed by the Court to testify in a Court
10 proceeding shall not be disqualified from participating in further parenting coordination
11 efforts with the family, but the Court in its discretion may order the substitution of a
12 new Parenting Coordinator or may relieve the Parenting Coordinator of his/her duties
13 or the Parenting Coordinator may voluntarily determine that such substitution would
14 be appropriate.
15

16
17 6.0 GRIEVANCES

18 6.1 The Parenting Coordinator may be disqualified on any of the grounds
19 applicable to the removal of a Judge, Referee, Arbitrator, or Mediator, except that no
20 peremptory challenge shall be permitted.
21

22 6.2 Complaints or grievances from any party regarding the performance, actions
23 or billing of the Parenting Coordinator shall only be determined according to the
24 following procedure:
25

26 (a) A person having a complaint or grievance regarding the Parenting
27 Coordinator must discuss the matter with the Parenting Coordinator in person before
28 pursuing it in any other manner;

1
2 (b) If after discussion the party decides to pursue a complaint, that party
3 must first submit a written letter detailing the complaint or grievance to the Parenting
4 Coordinator with a copy to the parties;

5
6 (c) The Parenting Coordinator shall then provide a written response to
7 the grievance to the party or parties within thirty (30) days of the written complaint or
8 grievance; and

9
10 (d) If the grievance or complaint is not resolved after this exchange, the
11 complaining party may proceed by noticed motion to the Court addressing the issues
12 raised in the complaint or grievance.

13 6.3 Neither party may initiate a Court proceeding for a complaint or grievance
14 regarding the Parenting Coordinator without following the preceding procedure. Failure
15 to comply with said procedure may result in sanctions by the Court.
16

17 6.4 Neither party shall file any complaint or make any written submission
18 regarding the Parenting Coordinator to the Parenting Coordinator's licensing board
19 without first complying with these grievance procedures.
20

21 7.0 TERMS OF APPOINTMENT

22 7.1 The Parenting Coordinator is appointed until discharged by the Court.
23 The Parenting Coordinator may apply directly to the Court for a discharge, and shall
24 provide the parties with notice of the application for discharge. The Court may
25 discharge the Parenting Coordinator without a hearing unless either party requests a
26 hearing in writing within ten (10) days from the application for discharge.
27
28

YCE G. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. C
LAS VEGAS, NEVADA 89101

1 7.2 Either party may seek to suspend or terminate the Parenting Coordinator
2
3 process by filing a motion with the Court. The Parenting Coordinator's services may not
4 be terminated without order of the Court.

5 7.3 In the event that the Parenting Coordinator is discharged, the Court will
6 furnish a copy of the Order of termination of the Parenting Coordinator.
7

8 DATED this 29th day of October, 2013.


9
10
11 
12 BRYCE C. DUCKWORTH
13 DISTRICT COURT JUDGE
14 DEPARTMENT Q
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “D”

DISTRICT COURT
CLARK COUNTY, NEVADA

Plaintiff,

v.

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

Defendant.

DECREE OF DIVORCE

The above-entitled cause having come on regularly for hearing on the 3rd day of December, 2012, before the above-entitled Court, Plaintiff, KIRK ROSS HARRISON ("Kirk") appearing in person and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm of JOLLEY, URGAS, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE LEE HARRISON ("Vivian") appearing in person and through her attorney, RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED, Vivian's Answer having been entered, and the parties having waived the making, filing and service of Findings of Fact and Conclusions of Law, and the giving of any and all notices required by law or rules of the District Court; the Court having heard the testimony of witnesses sworn and examined in open Court, the cause having been submitted for decision and judgment, and the Court being fully advised, finds:

☐ Other _____
☐ Dismissed - Want of Prosecution
☐ Involuntary (Sanitary) Dismissal
☐ Deliberate Judgment
☐ Transferred
 Total Dispositions: _____
☐ Disposed After Trial Start ☐ Judgment Reinstated by Trial

WCE C. DUCKWORTH
DISTRICT JUDGE

WILY DIVISION, DEPT. Q
7 VEGAS, NEVADA 80101

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,
26
27
28

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.
8

9
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.
18

19
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
27
28

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
28

VICE G. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
HUMAN SERVICES, LAS VEGAS, NEVADA 89101

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 Each party shall update the information filed with the Court and the Welfare Division
4 of the Department of Human Resources within ten days should any of that information
5 become inaccurate.
6

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.
18

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
27
28

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
26
27
28

1 account ending 3211 and UBS KJ&C Pooled account ending 722-140 with
2 Vivian's Charles Schwab IRA account ending 2759. Following entry of the
3 Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall
4 be utilized for the division of this account. A QDRO has been prepared,
5 circulated, and is in the process of being finalized. This Court shall retain
6 jurisdiction to enter said qualified order.
7

- 8
- 9 22. One-half of the gold and silver coins acquired by the parties during
10 marriage. Vivian has received the following gold coins: 55 American Eagle
11 gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African
12 Krugerrand gold coins. Vivian has received 2,500 Silver Eagle silver coins.
13
- 14 23. The 2011 Toyota Avalon.
- 15 24. The Colt Government Model 380 semi-automatic pistol and the Smith &
16 Wesson Model 37 - 38 caliber Chief's Special Airweight revolver.
17
- 18 25. All personal property items identified and appraised by Joyce Newman as
19 set forth in the "Summary Appraisal Report Volume I of II" with an
20 effective date of November 20, 2012, except for the following enumerated
21 items: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike;
22 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40
23 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright
24 Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80
25 work on paper; 81 work on paper; 82 work on paper; 83 pool Cues; 84
26 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on
27
28

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

3
4 26. Except as provided otherwise herein, any and all Vivian's clothing, jewelry,
5 articles of personal adornment, miscellaneous personal possessions, and
6 personal affects, including family heirlooms and personal property received
7 by gift or inheritance.

8
9 27. The residence located at 1514 Sunrise Circle, Boulder City, Nevada (Parcel
10 #186-17-501-004), with a stipulated value of \$760,000.00, together with
11 all improvements thereon and all appurtenances thereto. Kirk shall
12 execute a quitclaim deed waiving and releasing any interest whatsoever in
13 the residence located at 1514 Sunrise Circle, Boulder City, Nevada.

14
15 28. The residence located at 213 Jasmine Way, Boulder City, Nevada (Parcel
16 #186-04-516-097), together with all improvements thereon and all
17 appurtenances thereto.

18
19 29. The residence located at 1521 Sunrise Circle, Boulder City, Nevada (Parcel
20 #186-17-510-011), together with all improvements thereon and all
21 appurtenances thereto.

22
23 30. The money and/or property each party receives pursuant to this Decree
24 shall be included for all purposes in the amount each party receives as part
25 of the ultimate resolution in the divorce between the parties, including any
26 and all entities or properties formed or purchased with their respective
27 portions of the distribution identified herein.
28

YOE C. DUCHONORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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,
25
26
27
28

YCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
3100 LAS VEGAS, NEVADA 89101

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.
27

28 ...

YCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF
JUDICIAL SERVICES, NEVADA 89101

1 whereby each party received \$124,809.55 on or about December 24, 2012.

2 Said account is in Kirk's name and Kirk shall retain this account.

- 3
- 4 9. One-half of the balance in the Bank of America checking account ending
- 5 in 4040, with a balance of \$36,346.02 as of February 5, 2013. Following
- 6 the equal division of the balance contained in the account, Kirk shall retain
- 7 this account.

- 8
- 9 10. One-half of the balance in the Bank of America account ending in 8682,
- 10 with a balance of \$6,638.54 as of January 7, 2013. Said account is
- 11 currently in Kirk's name. Following the equal division of the balance
- 12 contained in the account, Kirk shall retain this account.

- 13
- 14 11. One-half of the balance in the Nevada Bank & Trust account ending in
- 15 2713, with a balance of \$740.42 as of February 4, 2013. Said account is
- 16 currently in Kirk's name. Following the equal division of the balance
- 17 contained in the account, Kirk shall retain this account.

- 18
- 19 12. One-half of the balance in the Nevada Bank & Trust account ending in
- 20 1275 (Certificate of Deposit), with a balance of \$16,360.45 as of February
- 21 5, 2013. Said account is currently in Kirk's name. Following the equal
- 22 division of the balance contained in the account, Kirk shall retain this
- 23 account.

- 24
- 25 13. One-half of the balance in the Wells Fargo account ending in 8032
- 26 (Certificate of Deposit), with a balance of \$28,809.58 as of February 5,
- 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2013. Said account is currently in Kirk's name. Following the division of the balance contained in the account, Kirk shall retain this account.
14. 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. Said account is in Kirk's name and Kirk shall retain this account.
15. The entire balance in Kirk's separate property Bank of America account ending in 2521, with a balance of \$112,024.01 as of February 14, 2013. Said account is currently in Kirk's name and Kirk shall retain this account.
16. 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. Said account is currently in Kirk's name. Following the division of the balance contained in the account, Kirk shall retain this account.
17. The entire balance in Kirk's separate property UBS RMA account ending in 8538, with a balance of \$382,166.83 as of January 31, 2013. Said account is in Kirk's name and Kirk shall retain this account.
18. 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. Said account is in Kirk's name and Kirk shall retain this account.
19. The entire balance in the Vanguard account ending in 4530/3952. The 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
12 24. Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of
13 \$797,335.53 as of December 31, 2012, subject to Vivian's right to that
14 portion of said account necessary to equalize the difference between the
15 combined total of Kirk's UBS IRA account ending 3211 and UBS KJ&C
16 Pooled account ending 722-140 with Vivian's Charles Schwab IRA account
17 ending 2759. Following entry of the Decree of Divorce a Qualified
18 Domestic Relations Order ("QDRO") shall be utilized for the division of
19 this account. A QDRO has been prepared, circulated, and is in the process
20 of being finalized. This Court shall retain jurisdiction to enter said
21 qualified order.
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 35. Parcel #6052, consisting of approximately 39.91 acres, in Washington
20 County, Utah, together with all improvements thereon and all
21 appurtenances thereto, including Water Right #413 (Unnamed Spring)
22 and Water Rights #71-4450 and #71-4173 (total of 4 acre feet for #71-
23 4450 & #71-4173).

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

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

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

YOE C. BACKWORTH
DISTRICT JUDGE


MILY DIVISION, DEPT. 0
1 VEGAS, NEVADA 89101

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

JUDICIAL DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

EXHIBIT “E”

Alvin L. Johnson

CLERK OF THE COURT

1 **ORDER**
2 EDWARD L. KAINEN, ESQ.
3 Nevada Bar No. 5029
4 ANDREW L. KYNASTON, ESQ.
5 Nevada Bar No. 8147
6 KAINEN LAW GROUP, PLLC
7 10091 Park Run Drive, Suite 110
8 Las Vegas, Nevada 89145
9 Telephone (702) 823-4900
10 Facsimile (702) 823-4488
11 Administration@KainenLawGroup.com

12 THOMAS STANDISH, ESQ.
13 Nevada Bar No. 1424
14 JOLLEY URGAS WIRTH WOODBURY & STANDISH
15 3800 Howard Hughes Parkway, 16th Fl.
16 Las Vegas, Nevada 89169
17 Telephone (702) 699-7500
18 Facsimile (702) 699-7555
19 tjs@juwww.com

20 Co-counsel for Plaintiff

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 KIRK ROSS HARRISON,

24 Plaintiff,

25 vs.

26 VIVIAN MARIE LEE HARRISON,

27 Defendant.

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

Date of Hearing: 10/30/13
Time of Hearing: 10:00 a.m.

28 **ORDER**

29 This matter having come on for hearing this 30th day of October, 2013, before the
30 Honorable Bryce Duckworth, Plaintiff, KIRK ROSS HARRISON ("Father"), present and represented
31 by and through his attorneys, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC,
32 and THOMAS STANDISH, ESQ., of the law firm of JOLLEY URGAS WIRTH WOODBURY &
33 STANDISH, and Defendant, VIVIAN MARIE HARRISON ("Mother"), present and represented by and
34 ...
35 ...
36 ...

RECEIVED

DEC 17 2013

**FAMILY COURT
DEPARTMENT Q**

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH,
2 CHARTERED, and GARY SILVERMAN, ESQ., of the law firm of SILVERMAN, DECARIA &
3 KATTELMAN, CHARTERED; the Court having reviewed the papers and pleadings on file herein,
4 being fully advised in the premises, and good cause appearing, makes the following Orders:

5 IT IS HEREBY ORDERED that Father's "Motion to Modify Order Resolving
6 Parent/Child Issues and for Other Equitable Relief" and Mother's "Countermotion to Resolve
7 Parent/Child Issues, To Continue Hearing on Custody Issues, for an Interview of the Minor Children,
8 and for Attorney's Fees and Sanctions" are denied.

9 IT IS FURTHER ORDERED that the Court will address the issue of a Parenting
10 Coordinator and therapist for the children in separate, independent Orders.

11 IT IS FURTHER ORDERED that, with respect to any future filings with the Court, both
12 parties shall adhere to the 30-page limit unless they have received permission from the Court to exceed
13 said 30-page limit.


14 IT IS FURTHER ORDERED that the Court will issue a separate written Order regarding
15 each party's request for attorney's fees and costs herein.

16 DATED this DEC 12 2013 day of December, 2013.

17
18
19 
DISTRICT COURT JUDGE 

20 Submitted by:

21 KAINEN LAW GROUP, PLLC

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

Approved as to form and content:

RADFORD J. SMITH, CHARTERED

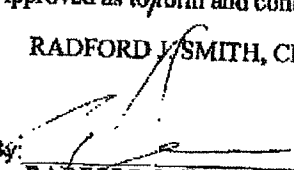
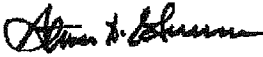
By: 
RADFORD J. SMITH, ESQ.
Nevada Bar No. 2791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

EXHIBIT “F”

Electronically Filed
06/13/2014 04:34:51 PM


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

Facsimile: (702) 990-6456

rsmith@radfordsmith.com

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 2. The request to suspend, remove or otherwise modify the TEENAGE
21 DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and
22 the Court expects the counselor to be involved in this process. The purpose of TEENAGE
23 DISCRETION is not to remove blocks of time from a party and if a party is being removed for a
24 period of time (aside from vacations), then the Court would be concerned. TENAGE
25 DISCRETION should be implemented from time-to-time and there should not be any issues
26
27
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.
17

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).
21

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

11
12
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:

14 RADFORD J. SMITH, CHARTERED

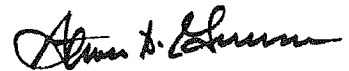
Approved as to Form and Content:

KAINEN LAW GROUP, PLLC

15
16 
17 RADFORD J. SMITH, ESQ.
18 Nevada Bar No. 002791
19 64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorneys for Defendant

EDWARD L. KAINEN, ESQ.
Nevada State Bar No. 005029
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
Attorneys for Plaintiff

EXHIBIT “G”



CLERK OF THE COURT

1 **SNTC**
2 **EDWARD L. KAINEN, ESQ.**
3 Nevada Bar No. 5029
4 **ANDREW L. KYNASTON, ESQ.**
5 Nevada Bar No. 8147
6 **KAINEN LAW GROUP, PLLC**
7 10091 Park Run Drive, Suite 110
8 Las Vegas, Nevada 89145
9 Telephone (702) 823-4900
10 Facsimile (702) 823-4488
11 Administration@KainenLawGroup.com

12 **THOMAS STANDISH, ESQ.**
13 Nevada Bar No. 1424
14 **JOLLEY URG A WIRTH WOODBURY & STANDISH**
15 3800 Howard Hughes Parkway, 16th Fl.
16 Las Vegas, Nevada 89169
17 Telephone (702) 699-7500
18 Facsimile (702) 699-7555
19 tjs@juwww.com

20 Co-counsel for Plaintiff

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 **KIRK ROSS HARRISON,**

24 Plaintiff,

25 vs.

26 **VIVIAN MARIE LEE HARRISON,**

27 Defendant.

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

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

28 **NOTICE OF APPEAL**

29 Notice is hereby given that Plaintiff appeals to the Nevada Supreme Court from the
30 following:

- 31 1. Order for Appointment of Parenting Coordinator filed on October 29, 2013, a copy of
32 which is attached hereto as **Exhibit "1."**¹

33 ...

34 _____
35 ¹ The Order from which this appeal is taken may have been a non-final Order and was entered prior
36 to the Decree of Divorce (said Decree was filed on October 31, 2013); said Decree was subject to a
37 Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time
38 until the Notice of Entry of the Order resolving the tolling motion which was served on June 16,
2014.

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

2. Decree of Divorce entered on October 31, 2013, only to the extent it deals with child custody related matters, a copy of which is attached hereto as **Exhibit "2."**²
3. Order, filed December 17, 2013, denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, a copy of which is attached hereto as **Exhibit "3."**³
4. Order from Hearing, related to Plaintiff's Motion For A Judicial Determination of the Teenage Discretion Provision, filed on June 13, 2014, a copy of which is attached hereto as **Exhibit "4."**⁴

Plaintiff also appeals from all other rulings and orders made final and appealable by the foregoing.⁵

Dated this 17th day of July, 2014.

KAINEN LAW GROUP, PLLC

By: 

EDWARD L. KAINEN, ESQ., #5029
ANDREW L. KYNASTON, ESQ., #8147
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff

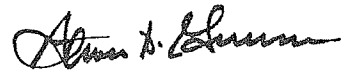
² The Decree of Divorce from which this appeal is taken was filed on October 31, 2013; said Decree was subject to a Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time until the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

³ The Order from which this appeal is taken may have been a non-final Order and was entered after the Decree of Divorce (said Decree was filed on October 31, 2013), but during the time that said Decree was subject to a Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time until the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

⁴ The Order from which this appeal is taken may have been a non-final Order and was entered after the Decree of Divorce (said Decree was filed on October 31, 2013), but concurrent with the resolution of the Motion to Alter, Amend, Correct and Clarify Judgment, the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

⁵ Plaintiff previously filed a notice of appeal from certain orders dealing with attorneys' fee issues. The present appeal is entirely separate, dealing only with child custody issues.

EXHIBIT “H”


CLERK OF THE COURT

1 NOAS
2 RADFORD J. SMITH, CHARTERED
3 RADFORD J. SMITH, ESQ.
4 Nevada Bar No. 002791
5 64 N. Pecos Road, Suite 700
6 Henderson, Nevada 89074
7 Telephone: (702) 990-6448
8 Facsimile: (702) 990-6456
9 rsmith@radfordsmith.com

7 GARY R. SILVERMAN, ESQ.
8 SILVERMAN, DECARIA, & KATTLEMAN
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

12 *Attorneys for Defendant*

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

17 KIRK HARRISON,

18 Plaintiff,

19 vs.

20 VIVIAN HARRISON,

21 Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY DIVISION

23 NOTICE OF CROSS-APPEAL

24 NOTICE is hereby given that Defendant, VIVIAN HARRISON, hereby cross-appeals to the
25 Supreme Court of the State of Nevada the following Orders –
26

27 ...

28 ...

1 (i) Cross-Appellant appeals the Trial Court's Order for Appointment of Parenting
2 Coordinator filed on October 29, 2013, a copy of which is attached hereto as Exhibit "A."

3
4 (ii) Cross-Appellant appeals the Trial Court's Decree of Divorce entered on October 31,
5 2013, only to the extent it deals with child custody related matters, a copy of which is attached hereto as
6 Exhibit "B."

7
8 (iii) Cross-Appellant appeals the Trial Court's Order filed on December 17, 2013 denying
9 Cross-Appellant's counter-motion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues,
10 for an Interview of the Minor Children, and for Attorney's Fees and Sanctions, a copy of which is
11 attached hereto as Exhibit "C."

12
13 (iv) Cross-Appellant appeals the Trial Court's Order from the Hearing filed on June 13, 2014
14 related to Cross-Appellant's counter-motion to Clarify Orders, a copy of which is attached hereto as
15 Exhibit "D."

16 ^{6/2}
17 Dated this 12 day of August, 2014

18 RADFORD J. SMITH, CHARTERED

19
20 Garima Varshney
RADFORD J. SMITH, ESQ.

21 Nevada Bar No. 002791

22 GARIMA VARSHNEY, ESQ.

23 Nevada Bar No. 011878

64 N. Pecos Road, Suite 700

Henderson, Nevada 89074

24 *Attorney for Defendant/Cross-Appellant*
25
26
27
28

CERTIFICATE OF SERVICE

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

I served the foregoing document described as "NOTICE OF CROSS-APPEAL" on this 12th day of August, 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

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

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Kirk Harrison

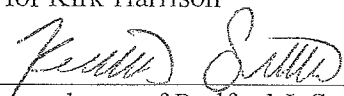
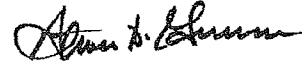

An employee of Radford J. Smith, Chartered

EXHIBIT “I”



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.

.....

.....

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

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;

.....

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

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

6 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.D. Magalanes
NOTARY PUBLIC in and for said
County and State

