HARRISON V. HARRISON

CASE NUMBER 66157

CROSS-APPELLANT'S EXHIBITS

V-W

OF THE DOCKETING STATEMENT

EXHIBIT "V"

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DISTRICT COURT

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: May 21, 2014 Time of Hearing: 10:00 a.m.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF AND OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH NAIMI LAW GROUP, and hereby submits his Reply to Defendant's Opposition

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To Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc. and his Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions.

DATED this 14th day of May, 2014.

KAINEN LAW GROUP, PLC

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. The Within Motion Is Well Grounded, Made In Good Faith, And Was Filed In The Best Interests of the Children

The attorneys for the parties in this matter have exchanged letters wherein they have set forth their respective understanding of the meaning of the teenage discretion provision. The attorneys have also submitted affidavits before the Court setting forth their understanding of the teenage discretion provision. These respective understandings are diametrically opposite. Vivian's attorneys assert the ambiguous language means a 14 year old can **order** the parent to make weekly modifications to the custody schedule, which the parent must **obey** without question or discussion and without any regard to prior plans or arrangements or the best interest of the other minor child. Although Vivian's attorneys drafted the ambiguous language which is at issue, they chose not to use the words which they now claim the ambiguous words to mean. In sharp contrast, Kirk's attorneys have set forth their understanding of the meaning of the language in question as providing the 14 year old can make a **request**, which request can be either granted or denied by the parent in the parent's good judgment. In other words, the parent still has the responsibility and authority to act as a parent – not the child.

As set forth in the prior motions, Vivian materially violated the teenage discretion provision by manipulating Brooke by undeniably prompting and suggesting to Brooke to make adjustments to the weekly schedule as well as making an adjustment to permanent custody. The implementation of the

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teenage discretion provision by Vivian has caused and continues to cause considerable problems for the children and Kirk.

Kirk's prior motions, as does the within motion, requested the Court to **interpret** the provision to provide the 14 year old can make a request of a parent, but not order the parent to make changes to the weekly custody schedule or, in the alternative, to nullify the provision on several different bases, including the best interests of the children, the provision has been so undermined by the improper suggestions, prompting, and inaccurate explanations by Vivian to Brooke, there was no meeting of the minds as to its meaning as evidenced by the letters and affidavits of counsel as well as Kirk's affidavit setting forth his understanding of its meaning, public policy reasons, etc. Importantly, in denying the prior motions and countermotions regarding the teenage discretion provision, the Court declined to rule on the merits of the motions, but rather stated its preference for issues involving modifications to the weekly custody schedule to be addressed with the parenting coordinator. (Hearing Transcript, 10.30.13, p. 18, l. 3-14 A true and correct copy of this hearing transcript is attached hereto as Exhibit "7.") The Court did not rule the 14 year old can make a request of a parent, nor did the Court rule a 14 year old can order a parent. For the sake of the children and the parties, a ruling on the merits is needed.

Respectfully, under these circumstances where there has been no ruling on the merits, both motions were denied without prejudice, opposing counsel have diametrically opposed interpretations of the operative language, the continued implementation of the provision by Vivian is causing problems for the children, an expert opinion has been obtained which indicates the provision, as implemented, may well have long term emotional adverse impacts for the children, it is unthinkable that Kirk would be sanctioned in any way for trying to protect their children from further and perhaps, irreversible harm.

The opinion of Dr. Roitman was submitted to assist the Court. In light of that opinion, it is in the best interests of the children that this matter be resolved by the Court as soon as possible. Vivian's baseless assertion that Dr. Roitman's opinion was submitted to this Court "for purposes of bolstering his record on appeal, not any good faith attempt to persuade the Court" is baseless and utter nonsense.

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(Opposition, p. 10, l. 13-14) Kirk urges the Court to make a ruling on the merits in the best interests of their children, which will eliminate the continued existence of the teenage discretion provision as implemented by Vivian and therefore eliminate the unnecessary serious risk to which the children have been exposed.

B. Vivian's Attorneys Caused Kirk Not To Be Present When The Parenting Coordinator and Teenage Discretion Provisions Were Discussed Between Counsel

Vivian's attorneys refused to negotiate custody in this matter in Kirk's presence. Kirk was therefore relegated to a conference room on the first floor of Mr. Smith's office, while the attorneys for both sides and Vivian were on the second floor conducting the negotiations. As a consequence of this demand, Kirk was not present when the parenting coordinator and teenage discretion provisions were discussed between counsel. Kirk was therefore not privy to what was said.

When Kirk first read the parenting coordinator provision, he questioned what a parenting coordinator did. He was told a parenting coordinator functioned as a mediator. Kirk responded he thought that was a good idea as he believed strongly in the benefit of using a mediator. Having no prior experience whatsoever in Family Court, Kirk assumed a parenting coordinator was a mediator who specialized in Family Court cases.

When Kirk was shown the teenage discretion provision, he interpreted the provision as only enabling the 14 year old to feel comfortable in making reasonable requests, which the parent, in good faith and considering all of the circumstances, could grant or deny. Kirk did not like the provision because he thought it would create uncertainty for the children and he was concerned Vivian would view the provision as a justification to manipulate Brooke to make all to frequent requests and the denial of those requests would cause friction between Kirk and Brooke. Tom Standish's affidavit is clear as to how the provision was explained to Kirk:

> 8. Kirk had never seen a teenage discretion provision before and did not know what it was. When he read it he expressed concern. I assured him with the changes I ultimately had made, it did not provide anything differently than the law otherwise provides. Kirk questioned if that was the case, then why was the provision necessary. I told him it was because Vivian was aware of teenage discretion and Mr. Smith said he had to have it in the agreement to satisfy his client.

(Exh. 2 to Motion, Tom Standish Aff. ¶8)

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Consistent with the foregoing statement, Mr. Standish further attested as follows:

> 9. I have read Mr. Silverman's affidavit wherein he wrote, "Mr. Harrison must know that the 'teen' exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody."
>
> 10. I negotiated the provision and I certainly did not know what Mr. Silverman claims Mr. Harrison must have known. As written, it was my interpretation of the provision that after the age of 14 years, the child could make a request. It was never my understanding under this provision that a child could order a parent to make a change to the weekly schedule and the parent had to obey without question or discussion and it would be irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to the younger sibling.

(Exh. 2 to Motion, Tom Standish Aff. ¶9 & 10)

Ed Kainen's interpretation is consistent, as evidenced by the following paragraphs from his affidavit:

> 3. I am familiar with the terms of Paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. I have read the letters from Radford J. Smith, Esq. setting forth his interpretation of this provision, which are both dated, November 6, 2013. As set forth in my letter of November 6, 2013, I strongly disagree with the interpretation made by Mr. Smith and it is directly contrary to my own interpretation. All three letters are attached to the prior motions regarding teenage discretion.
>
> 5. In all of the years I have practiced, I have never seen a teenage discretion provision interpreted in the manner this provision has been interpreted by Messrs. Smith and Silverman and certainly would never advise a client to agree to such a provision, as interpreted by Messrs. Smith and Silverman.

(Exh. 1 to Motion, Ed Kainen Aff. ¶3 & 5)

The specific language of the teenage discretion provision at issue was drafted by Vivian's attorneys. It is undeniably ambiguous, as it is obviously subject to more than one interpretation, as evidenced by the diametrically opposite interpretations by the parties' respective counsel. *Margrave v. Dermody Properties, Inc.*, 110 Nev. 824, 878 P.2d 291 (1994) (A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation.) The fact the Nevada Supreme Court has used the "and/or" term in two unrelated opinions does not make it any less ambiguous.

Vivian argues that the teenage discretion and parenting coordinator provisions were a fundamental part of her agreement for joint custody. The same argument is true for Kirk. He thought he was settling for joint custody and had a mediator in place to resolve any disputes. Kirk does not belittle the importance of resolution by mediation. Since the mediator does not have the power of

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ordering the parties, through recommendations or otherwise, the mediator focuses on reaching **amicable resolutions** which are in the **mutual best interest** of the parties and their children. This process is relationship building going forward. It would be a positive environment in which this family could heal. However, there is an important difference between the parties positions in the context of settling for joint custody. Kirk did not have an undisclosed plan to use any component of the settlement to inequitably obtain "de facto primary custody" in a callously created environment which would foreseeably place unnecessary emotional stress upon Brooke and Rylee by separating these children. Kirk thought his attorneys had bargained for and obtained a joint custody settlement which would put the adversarial positioning in the rear view mirror.

C. Vivian's Attorneys Did Not Submit a Proposed Order Appointing Parenting Coordinator until March of 2013 And The Delays Associated With This Issue Did Not Occur In A Vacuum

Kirk's counsel have consistently taken the position that it was premature to nominate a parenting coordinator prior to an agreement between the parties as to what the parenting coordinator can and cannot do. *See* (Plaintiff's Opposition to Defendant's Motion for An Order Appointing A Parenting Coordinator, filed July 19, 2013, p. 3, l. 18-24) It made no sense whatsoever to nominate prospective parenting coordinators before an agreement was reached between the parties setting forth the role of the parenting coordinator.

As previously set forth in Kirk's opposition to Vivian's motion for an order appointing a parenting coordinator, Vivian's attorneys did not provide a proposed order for the appointment of a parenting coordinator until March of 2013. During that same time period, Kirk's attorneys were trying to get a response from Vivian regarding the proposed MSA, which had been provided to Vivian's attorneys on February 19, 2013.[1] In fact, in March of 2013, Vivian's counsel informed Kirk's counsel, "We have reviewed the proposed MSA; I will be providing you a revised MSA next week for review." Despite this representation, nothing was provided. For approximately four months, Kirk's attorneys tried to obtain Vivian's response to the MSA in exchange for Kirk's response to the proposed parenting

[1] The parties were also in the process of exchanging billing information during that same time period, with Kirk filing his opposition and countermotions for attorneys' fees on May 28, 2013.

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coordinator order. An agreement was reached between the attorneys to exchange alternative drafts on July 12, 2013. Although Kirk was ready to make the exchange, Vivian still was not. Rather than waste any more time trying to make the exchange, Kirk submitted his proposed order for the appointment of a parenting coordinator as part of the opposition to Vivian's motion on July 19, 2013. As the Court is well aware, Vivian failed to provide any response to Kirk's proposed MSA for well over **seven months** – until September 30, 2013 and only after being directed to do so by this Court. *See* (Plaintiff's Opposition to Defendant's Motion for An Order Appointing A Parenting Coordinator, filed July 19, 2013, p. 2, l. 14-25; p. 3, l. 1-24) In an effort to progress the effort to reach an agreement on an MSA and enter a decree of divorce from the hearing on December 3, 2012, Kirk was forced to file a Motion To Enforce Decree of Divorce on May 13, 2013. However, over four and one-half months later, Vivian had still failed to file an opposition.

D. Vivian All But Concedes That Under *Nevada Law* No Contract Was Formed Regarding the Appointment of a Parenting Coordinator

Noticeably absent from the Opposition is any attempt whatsoever to distinguish any of the Nevada controlling cases providing that no contract was ever formed between the parties regarding the appointment of a parenting coordinator. The parenting coordinator provision does not contain sufficient specificity to form a contract as almost every necessary material provision is absent. The parties agreement that the Court can "resolve any disputes regarding the terms of the appointment" does nothing to change this fact, as the requisite specificity and material provisions are still absent. The law in Nevada is clear – an **agreement to agree** in a settlement agreement is not a contract. The law in Nevada is so clear on this point that Vivian did not even attempt to argue otherwise.

Although, in effect, conceding there is no enforceable agreement between the parties regarding the appointment of a parenting coordinator, Vivian then takes a giant leap, and argues – despite no agreement between the parties and Kirk believing at the time that a parenting coordinator functioned as a mediator – this Court should simply order the appointment of a parenting coordinator under NRCP 53. There is no motion. There is no Nevada case law or statutory basis for such an argument. Instead, for such an extreme proposition, which raises substantial due process issues for the parties, Vivian relies solely upon a decision from the District of Columbia. However, in the District of Columbia there is a

specific **domestic relations** statute – "Rule 53 of the Superior Court Rules Governing Domestic Relations" – which authorized the appointment of a parenting coordinator in exceptional circumstances.

In the sole case relied upon by Vivian regarding the appointment of a parenting coordinator, *Jordan v. Jordan*, 14 A.3d 1136 (D.D. 2011), the court held, "that Rule 53 of the Superior Court Rules Governing Domestic Relations Proceedings authorized the trial court both to appoint a parenting coordinator under the exceptional circumstances presented by this case, and to delegate decision-making authority to the parenting coordinator over day-to-day issues that **do not implicate the court's exclusive responsibility to adjudicate the parties' rights to custody and visitation.**" 14 A.3d at 1151 (emphasis added).

Ironically, Vivian presents *Jordan* for the proposition that without any agreement between the parties for the appointment of a parenting coordinator, this Court has the authority to appoint a parenting coordinator, who, according to Vivian, would have decision making authority to make recommendations which would affect the parties' rights to custody and visitation! Vivian not only wants the parenting coordinator to determine the parties rights under the ambiguous provision concerning modifications to the weekly custody schedule, make recommendations, and to **interview the children** as part of that process, but Vivian also wants the parenting coordinator to **interview the children** for the purpose of permanently modifying the regular custodial schedule in accordance with Subparagraph 6.4 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. (Opposition, p. 5, l. 3-12; p. 11, l. 3) This is despite this Court's effective nullification of Subparagraph 6.4 of the stipulation and order, pursuant to Subparagraph 3.1 of this Court's Order for Appointment of Parenting coordinator, filed October 29, 2013. This is also despite this Court's prior unequivocal statement to the parties that absent something more, the Court would not grant a 14 year old's request to permanently modify the regular custodial schedule:

> THE COURT: I don't need a child interview. I - - the less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process. The parties agreed that it was in the best interest of the children to exercise joint physical custody. I don't want this to become a situation where it's just a matter of time and as soon as you turn 14 you get to decide where you want to live. That's - - that's not how it works and under NRS 125.490, there is a presumption now because you agreed to joint physical custody, there is a presumption that joint physical custody is in the best interest of the children.

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> And to overcome that, I - - I don't find - - let's say an interview came forward and that's - - that's what I hear, that there's a desire to - - to live primarily with Mom. If - - if that is - - I - - I find - - I would be hard pressed to find the expressions standing alon[e] of a 14-year-old child would be sufficient to overcome the presumption.

(Hearing Transcript, 10.30.13, p. 32, l. 22-24; p. 33, l. 1-14.)

Despite this Court's actions and statements to the contrary, Vivian has a clear agenda to continue to enmesh the children in custodial battles and to utilize the parenting coordinator to facilitate that agenda by interviewing the children.

The *Jordan* decision is consistent with the line of cases cited in the moving papers that parenting coordinators should **not** be given any power to determine, adjudicate, or make recommendations ***which affect*** the parties' rights to custody and visitation. *See* Motion, p. 21, l. 22-28; p. 22, l. 1-19. The *Jordan* court noted that in the order appointing the parenting coordinator, "The order permits the parenting coordinator to 'make decisions resolving day-to-day conflicts between the parties **that *do not affect* the court's exclusive jurisdiction to determine[ ] fundamental issues of custody and visitation.**' Moreover, it provides that '**[n]othing in this order shall be construed to be or confer on the Special Master the right or obligation to conduct a custody evaluation**. . .'" A.3d at 1145 (emphasis added). The *Jordan* appellate court also emphasized that it read the order appointing the parenting coordinator, "to permit the parenting coordinator to make decisions, or to delegate tie-breaking authority to either parent, **only regarding 'day-to-day' issues.**[2] *Id.* at 1157 (emphasis added).

There are several reasons why Vivian's desperate end run must fail. First, as noted, there is no motion before the Court for the appointment of a parenting coordinator. Second, the appointment of a parenting coordinator who is empowered ***to affect*** the parties rights to custody and visitation, without the parties' informed agreement, presents substantial due process issues. Third, in Nevada, absent an agreement between the parties to retain a parenting coordinator, there is no authority to appoint a

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[2] The due process challenge in *Jordan* failed because the appointment of the parenting coordinator in that case was specifically excluded from determining, adjudicating, recommending or ***affecting***, in any way, the "parties' rights to custody and visitation" and the parenting coordinator's authority was limited to "only regarding day-to-day issues.

parenting coordinator.[3] Therefore, the only circumstance in which one can be appointed is when the parties agree to such an appointment, and importantly, when the parties agree to the **terms** of the appointment. *Schilder v. Hazelton*, 84 Mass. App. Ct. 1131, 2014 WL 288896.

E. Dr. Roitman's Opinions Regarding the Teenage Discretion Provision Are Based Upon The Documents Enumerated On The First Two Pages Of His Opinion

Contrary to Vivian's false assertion, Dr. Roitman did not diagnose Rylee in his opinion. (Opposition, p. 10, l. 9-10) Vivian also falsely asserts that Dr. Roitman's opinions are "based solely on Kirk's input." (Opposition, p. 10, l. 10-11) This also is totally baseless. Dr. Roitman's opinions are based upon what has been filed by both parties in this case. The first and second pages of Dr. Roitman's opinion sets forth the documents he reviewed. (Motion, Exh. 3) The documents reviewed are the motions and countermotions filed in connection with the teenage discretion provision, including the letters and affidavits submitted by **both** parties.

The opinions expressed by Dr. Roitman in Exhibit 3 to the motion should cause serious concern to everyone involved in this case, including Vivian and Vivian's attorneys. The best interests of the children should be the focus. Vivian's attorneys continued baseless disparagement of Dr. Roitman needs to stop. Dr. Roitman did not "previously unethically submit[ ] an opinion."[4] As previously addressed, Dr. Roitman based his opinions upon much more trustworthy information than any of the custody expert opinions offered by Vivian – especially Drs. Applebaum and Ronningstam, who each based their opinions solely upon a brief interview with Vivian, and who appropriately qualified their opinions on that basis.[5]

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[3] The Court has previously noted that Nevada does not have a statute that specifically references parenting coordinators. (Hearing Transcript, 10.30.13, p. 16, l. 6-7)

[4] It should be noted that Dr. Roitman's earlier opinions were consistent with the opinions of Vivian's own treating psychologist and Vivian's own treating psychiatrist, which were subsequently obtained in discovery, and also consistent with the results of the MPPI which was subsequently administered by Dr. Margolis.

[5] Dr. Roitman, appropriately, qualified his opinions as well, based upon the fact he was unable to interview Vivian at the time. It should be noted, in contrast, that Dr. Applebaum and Dr. Ronningstam had the opportunity to review extensive collateral source information, which, by that time, included not only Kirk's January 4, 2010 letter to Dr. Roitman and the affidavits of Tahnee, Whitney and Kirk, but the medical records of all of Vivian's treating physicians including Dr. Squiterri, Dr. Duffy, and Dr.

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Vivian baselessly asserts, "Dr. Roitman also does not contemplate the essential facts present at the time of the entry of the agreement." (Opposition, p. 10, l. 16-17) There is no basis whatsoever for this statement. Vivian's baseless claims that Kirk disparaged Vivian to Brooke were clearly set forth by Vivian's attorneys in the enumerated documents reviewed by Dr. Roitman.

Vivian makes yet another baseless assertion, "Kirk and Dr. Roitman seem to suggest that the ideal forum for resolution of any dispute between the parents, or the children and the parents, is lengthy, repetitive and scathing court filings." (Opposition, p.11, l. 11-13) Nothing could be further from the truth. The continued existence of the teenage discretion provision, as interpreted by Vivian's attorneys and implemented by Vivian, is what is creating the problems. The continued adversarial positioning between the parties created by this provision, as implemented, is the source of the emotional stress being unnecessarily placed upon their children. The callous empowerment of a 14 year old child by the provision, as interpreted, is undermining parental authority in all areas.

Vivian's assertions of having "always been the parent" fly in the face of the undisputed record. Kirk had to walk away from his practice to take care of the children, because Vivian no longer wanted to care for the children and spend time with the children on a day to day basis. Discovery from multiple diet centers and doctors' offices confirmed that Vivian took Phentermine and other controlled substances for over seven years, which caused her to have severe insomnia and exhibit extremely delusional behavior to the detriment of not only herself, but every member of the family. Vivian chose to leave the children for extended periods of time – over five months just in 2010 – in the delusional pursuit of men half her age and living half way around the world. When Vivian wasn't out of town, she would sequester herself alone behind a closed door in the home.

It is Vivian who is attempting to alienate these children from Kirk – not the other way around. Vivian started her campaign to alienate Brooke and Rylee from Kirk soon after the service of the motion for temporary custody in September of 2011. It has become evident that if Vivian perceives she has any

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Life, all of the medical records confirming Vivian's seven years of drug abuse, the documentation Vivian completed for Dr. Life, and the results of the MPPI conducted by Dr. Margolis. Both Dr. Applebaum and Dr. Ronningstam chose to ignore all of this information, so they could render the opinions they did.

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prospect of obtaining "de facto primary custody," Vivian will continue this campaign, even if it means permanently emotionally harming Brooke and Rylee in the process. Kirk does not disparage Vivian to the children. It is not in the children's best interest for one parent to disparage the other parent to the children. Vivian does not understand that fact.

Kirk has taken the children to the Court appointed therapist, Dr. Ali, and when Dr. Ali's office did not follow up with additional appointments, Kirk telephoned his office to insure that Dr. Ali continued to see the children. Kirk is worried about Brooke and Rylee and wants to insure they see Dr. Ali on a regular basis.

II. CONCLUSION

If Vivian wanted a teenage discretion provision which provided a 14 year old can **order** the parent to make weekly modifications to the custody schedule, which the parent must **obey** without question or discussion and without any regard to prior plans or arrangements or the best interest of the other minor child, her attorneys were capable of using these very words and presenting such language for Kirk to accept or reject. However, no parent in their right mind, who genuinely is sensitive to the best interests of their children, would ever agree to such language. Therefore, the language presented was "the parties intend to allow the children to feel comfortable . . ." The stakes are too high for the children for the adults to play a game of "gotcha."

Similarly, if Vivian wanted the parties to agree to jointly retain a parenting coordinator empowered with all of the authority, which was subsequently set forth in Vivian's proposed order, then it was incumbent upon Vivian to afford Kirk the opportunity to make an informed decision whether to accept or reject a parenting coordinator vested with such authority. Kirk was never afforded that opportunity. Again, the stakes are far to high – the best interests and emotional well being of the children – for the adults to play a game of "gotcha."

The teenage discretion provision **creates** uncertainty and instability for the children and adversarial positioning between the parties, within which the children are enmeshed. The continued existence of this provision can cause permanent severe emotional damage to Brooke and Rylee. There was no meeting of the minds between the parties regarding its terms. Vivian's material breaches of material and essential terms of this provision, including embedding in Brooke's mind that she has the

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absolute unfettered right to determine her own custody, has undermined any chance for the provision to be reasonably applied. Conflicts between the parties regarding custody of any significance were infrequent between the date of this Court's Order Resolving Parent/Child Issues on July 11, 2012 and Brooke's 14th birthday on June 26, 2013.

Only this Court has the judicial authority to determine the meaning of the "teenage discretion" provision. Kirk was advised the provision, as drafted, provided nothing other than what the law already provided, which is a fourteen year old can simply make a request. That was Kirk's understanding at the time he signed the agreement. On the other hand, Vivian's position is that Brooke can *order* Kirk, her father, at any time to take her to Vivian's house during his custody time and he must *obey* his 14 year old daughter without question or discussion and it is irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to Rylee.

The appointment of the parenting coordinator creates the forum to continue the adversarial positioning created by the "teenage discretion" provision.. Vivian is insistent the parenting coordinator interview Brooke and Rylee. The proposed parenting coordinator intends to enmesh Brooke and Rylee further into the conflict by interviewing them. Agreeing to retain a person "to resolve conflicts" is not sufficient specificity to bind a person to a parenting coordinator, vested with all of the judicial powers delegated by the Court in its subsequent Order For Appointment of Parenting Coordinator, filed October 29, 2013, and certainly insufficient to compel a person to be bound by the overreaching terms contained in the parenting coordinator's proposed agreements.

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Kirk desperately wants the adversarial positioning to stop for the benefit of Brooke and Rylee and their entire family, including Vivian. The continued existence of the teenage discretion provision, as advocated by Vivian, creates and continues the adversarial positioning. The insertion of a parenting coordinator into the process facilitates the continuation of the adversarial positioning and further enmeshes Brooke and Rylee in the middle of conflict. The Court is, respectfully, requested, in the best interests of Brooke and Rylee, to nullify Paragraphs 4 and 6 of the Court's Order Resolving Parent/Child Issues.

DATED this 14th day of May, 2014.

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DISTRICT COURT

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: 5/21/14 Time of Hearing: 10:00 a.m.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14th day of May, 2014, I deposited a true and correct copy of the "*Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions*" in the United States Mail, first class, postage prepaid thereon, to the following:

Radford Smith, Esq.
Radford J. Smith, Chartered
64 N. Pecos Road, Suite 700
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An Employee of KAINEN LAW GROUP, PLLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

FAMILY DIVISION

ORAL ARGUMENT REQUESTED

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

DATE OF HEARING: May 21, 2014
TIME OF HEARING: 10:00 a.m.

COME NOW, Defendant, VIVIAN MARIE LEE HARRISON, through her attorneys Radford J. Smith, Esq., of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria, & Kattleman, and submits the following points and authorities in Reply to Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions.

I.

INTRODUCTION

The core theme of Kirk's multiple motions on the subject of teenage discretion and the appointment of a Parenting Coordinator is that Kirk, a skilled lawyer, and both his lawyers knowledgeable and experienced, did not understand the language or effect of the teenage discretion provision, or the function of a parenting coordinator. Though his attorneys' signatures appear on the stipulated and Court ordered Parenting Plan which appoints a parenting coordinator to "resolve disputes of the parties regarding the minor children," and though Kirk did not or seek rehearing or judicial review of the Court's October 29, 2013 Order Appointing a Parenting Coordinator, Kirk and his counsel now take the unsupportable position that this Court should find that its order appointing a parenting coordinator is an unconstitutional delegation of judicial power that denies Kirk due process. Vivian respectfully submits the Court may find those illogical, unworthy of credence, and not brought in good faith.

II.

KIRK'S CONTINUED MISTATEMENTS IN HIS FILINGS DEMONSTRATE HIS BAD FAITH

Kirk's 14 page Reply and Opposition contain numerous and repeated misstatements (or sometimes misdirection or pure fantasy) that demonstrate that his third motion to eliminate the teenage discretion provision, and his second motion to "nullify" the Parenting Coordinator. Kirk's claims are addressed in the order presented in his Reply:

1) The Attorneys in this Action Did not Express Different Views About the Function of the Teenage Discretion Provision at the time of its Negotiation

Kirk commences his Reply and Opposition by contending that the attorneys have expressed differing views of their understanding of the teenage discretion provision. The notion is that his attorneys did not intend the plain effect of the language of the agreement, that the parties' daughters, at a

certain age, would have the discretion to make minor alteration to the parenting plan to spend more time with either parent. That contention is not supported by the communication between counsel during the negotiation of the provision.

After months of negotiation, on May 25, 2012, Vivian's counsel sent a second[1] proposed parenting plan to Kirk's counsel. (*See,* Correspondence from Radford J. Smith, Esq. to Thomas Standish, Esq. dated 25, 2012, and enclosed draft parenting plan attached hereto as **Exhibit "A"**). In that draft was a "teenage discretion" provision that read:

> 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 amount of time the child desires to spend with each parent, with the understanding that the parents will work together to encourage frequent contact and communication between each parent and the child. 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 amount of time the child desires to spend with each parent once that child reaches 14 years of age.

Mr. Standish, responded to that proposed provision in his letter of May 29,. 2012 a copy of which attached hereto as **Exhibit "B."** In that letter Mr. Standish set forth Kirk's complaints the structure of paragraph 6. Kirk's objections addressed the right of the child to choose a separate custodial structure: "Kirk also believes that it is not in Brooke's best interest to foist the responsibility upon her to choose which parent to live with more than the other parent at a particular point in time." Nothing about that statement suggests any doubt that what Vivian was proposing was to allow the girls to make a choice, not a request.

Vivian clarified her position through counsel by letter dated June 1, 2012:

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[1] Vivian first provided Kirk with a parenting plan in June, 2011 granting the parties both joint legal and physical custody of the children. That plan formed the basis for the second proffered plan. The primary differences in the plan were the provisions addressing counseling for the children (paragraph 5), a parenting coordinator (paragraph 4), and the teenage discretion provision (paragraph 6).

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.

(**Exhibit "C"** attached hereto [emphasis supplied]). Mr. Standish responded by letter dated June 7 (**Exhibit "D"** attached hereto) that reads in pertinent part:

Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First Kirk proposes that the age for consideration of teenage discretion be **16 years old.**

Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (page 6 beginning at line 10). It would read as follows:

Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator,** 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 amount of time the child desires to spend with each parent once the child reaches 16 years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

[Emphasis in original]. The correspondence is conclusive. Kirk specifically and unequivocally offered to grant the children the right to "exercise such 'teenage' discretion in determining the amount of time the child desires to spend with each parent once the child reaches 16 years of age." That sentence belies Kirk's contention that neither he did not understand that the teenage discretion was anything more than a request, or that he did not understand the provision at all. Logic tells us that Kirk and his counsel fully understood that the import of the paragraph was to grant the children the right to alter the timeshare after a certain age.

Through Kirk's proposed modifications, which grant the Parenting Coordinator the right to object to the exercise of teenage discretion, Kirk and his counsel acknowledged that the parenting coordinator was going to be something more than a mediator. It is inconceivable that Mr. Standish and Kirk never discussed the role or duties of a parenting coordinator as Kirk now falsely contends.

Giving due regard to Mr. Standish's (Kirk's) concerns, undersigned counsel redrafted the teenage discretion provision and send the revised Parenting Plan to Mr. Standish on June 15, 2012. The provision continued to grant discretion to the children at 14, but included: 1) prohibition of the children altering the custodial schedule by use of teenage discretion (a prohibition that is not contained in Mr. Standish's June 7 letter) 2) prohibitions against either parent encouraging the child to exercise teenage discretion (a concern Mr. Standish raised in his letter of May 29, 2012) (paragraph 6.2); 3) safeguards for review of the exercise of the "teenage discretion" through the parenting coordinator or the Court (paragraph 6.3); and, a provision permitting the children to speak to the Parenting Coordinator in regard to their desire to modify custody, but limiting the determination of any custodial change to the Court. What the revised paragraph did *not* do, however, was change the right of the children to exercise discretion - that material element of the agreement was consistent throughout all of the proposals associated with this paragraph, including Kirk's.

Mr. Standish's response to the June 20, 2012 draft was contained in an email dated July 3, 2012 that reads:

> Sorry, I got dragged into a couple of emergencies on other cases, and then left town yesterday on vacation. I should have done a quick e-mail to you earlier than now.
> We did meet with Kirk and I believe that we are settled. The only thing I would add to your stipulation would be the provision that Kirk could remove the girls from school on two Fridays before two of his weekends during the school year, so that he could have two 3-day weekends, since Vivian will effectively have "his" two 3-day weekends with Monday holidays during the year.
>
> Are you the office Thursday and Friday? I have my laptop with me on vacation and I can respond to e-mails. I will also be glad to have somebody take a shot at revising the stipulation if that will help you.
>
> Let me know.
>
> I think it is still vital that we confirm we have a settlement, and then sign the Stipulation as soon as we can, before anybody changes their mind! I hope that Vivian is still on board, and that you will tell her that I apologize for the delay in getting back to you. We are also responding to Gary's letter to assure him that Kirk will be in touch with Brian Boone and we will move forward promptly on those financial issues.
>
> Have a good 4th-- hopefully I can hear from you on Thursday. You can also call my cell if that is helpful. Thanks again for all your perseverance on this.

(**Exhibit "E"**), Mr. Standish expresses only Kirk's concern about the distribution of holidays – he does not take issue with any of the language contained in the revised teenage discretion provision. Mr. Standish was aware of Vivian's intent (through the language in her first draft of the provision) to permit the parties' daughters to make alterations to the parenting schedule at 14 years of age.

Plain construction of the English language informs us that the sentence "[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" (Parenting Plan, paragraph 6.1) means that they could either request **or** make adjustments. As argued by Vivian the first two times she was required to oppose Kirk's newly minted argument that he and his lawyers did not

understand the language, the remainder of the language in paragraph 6 would be entirely unnecessary if paragraph 6.1 were deemed only to allow the child to request a modification.

For example, if the child had only the right to request a change, and, as Kirk demands, he would have the right to deny that request, there would be no reason to include the sentence (found in paragraph 6.2) "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." How could a parent's time be eroded by a request the parent could veto? What need would there be for a parent to bring such requests to the Parenting Coordinator and/or the Court? Most telling, neither Kirk nor his lawyers ever expressed any doubt or objection to the effect of that language, and on the contrary, when Mr. Standish set forth Kirk's view, he granted the children the discretion to modify the parenting schedule, albeit at age 16.

2) **Kirk's Motions are Part of His Continued Attempt to Delay the Process Agreed to in the Parenting Plan.**

Kirk attempts to justify his nearly one year delay in complying with the terms of the Parenting Plan (that require each party to select and provide names of a proposed parenting coordinator and therapist by citing to delays in the response to the proposed Marital Settlement Agreement ("MSA"), and the preparation of a draft order appointing a parenting coordinator. Kirk ignores key facts. First, while the Parenting Plan requires notification of choices for a parenting coordinator and therapist (Parenting Plan, paragraphs 3 and 4) the plan does not require either party to prepare a draft order appointing a parenting coordinator (paragraph 4). His counsel could have drafted an order, but neither party did because they were focusing on the property issues for months, and there were few disputes between the parties that would have required the intervention of a parenting coordinator. Those facts had nothing to do with the MSA, which Kirk fails to note was prepared months late by his counsel.

Moreover, Kirk's contends that his delay in identifying a parenting coordinator was affected by the preparation of the order appointing one, this is not an excuse as to why he would not identify a proposed therapist as required by the agreement. We now know, from the subtext and tenor of his series of post trial motions, that he will do anything to avoid having the parties' daughters interviewed by *anyone* (or having the results of their interview published as in the case of Dr. Paglini). Vivian submits that his delay was designed to undermine the process that he now seeks to "nullify."

3) There is no Evidence that Vivian has Manipulated Brooke into Exercising Teenage Discretion.

Kirk, unable to write any brief without attacking Vivian, claims in his Reply, at pages 2-3, "Vivian materially violated the teenage discretion provision by manipulating Brooke by undeniably prompting and suggesting to Brooke to make adjustments to the weekly schedule as well as making adjustment to permanent custody." That statement is false. As indicated in Vivian's first Opposition to Kirk's Motion to Resolve Parent Child Issues, there are more than adequate reasons (including the extremely close bond the children have with Vivian, and Kirk's use of anger, guilt, and criticism to attempt to control them) that could account for either child's desire to spend more time with Vivian. *See* Opposition to Kirk's Motion to Resolve Parent Child Issues filed on October 17, 2013, pages 5-22.

It is submitted that the pleading reflect that Kirk actively dislikes or abhors Vivian, and it follows that the girls' desire to live with Vivian is fueled by their reluctance to live in a home where they may not openly and unconditionally love their mother. *See* Reply to Plaintiff'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, filed on October 28, 2013, Page 4, lines 24-28, incorporated by this reference.

As indicated before, however, Brooke's exercise of time has had little to do with Kirk, and instead was based upon activities or time that Brooke logically wanted to spend with her mother. *See*

Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8. On most, the schedule was altered only by a few hours, and for are sensible reasons.[2] Brooke has utilized the teenage discretion provision in how it was intended, and consistent with its express terms. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, page 7, lines 2-8. As stated in the present motion, the only time Brooke has exercised the teenage discretion provision in the last several months is when she wanted to spend the night with her mother before scheduled dental surgery the following day.

Vivian submits that Kirk's counsel understood that such minor variations to the parenting plan were predictable, and that Brooke should be granted the latitude to make such decisions to avoid inevitable dissension and conflict that would arise from resistance to those choices. Kirk, however,

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[2] For example, Brooke exercised teenage discretion on the following times –

(1) The first time when Brooke exercised teenage discretion was when she wanted to be with Vivian when shopping for Ballet point shoes. Brooke exercised discretion for five (5) hours on that day. *See* Kirk's Motion to Modify Order re: Teenage Discretion filed on October 1, 2013, page 7, line 14. Vivian and the children had bought dance shoes together throughout the years that Brooke and Rylee have been in dance.

(2) The second time Brooke exercised teenage discretion was on the day of Brooke's Homecoming Dance (a Saturday) when Brooke desired to be at Vivian's home to dress and do make-up with her friends for the dance. Brooke wanted to be with her mother who is skilled and experienced in applying make-up, and helped her learn how to apply make-up. Brooke was with Vivian for approximately two to three hours. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

(3) The third time Brooke exercised teenage discretion was Brooke exercised overnight stays with Vivian during only one period (a two day timeframe where Rylee was on a separate trip to Catalina, and Brooke could spend alone time with Vivian). *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

(4) The fourth time Brooke exercised teenage discretion was to retrieve from Vivian's home the props, to make shopping bags, wrap presents, and prepare costumes, all for her and Rylee's Winter Recital. Vivian has a craft and sewing room in her home that is equipped with arts, crafts and sewing supplies. Vivian has been the parent that has taken the historical responsibility of preparing the props and costumes for the children's school projects and dance. It is understandable that the children wanted to be with Vivian to help them prepare for the recital. They were with Vivian for approximately three hours. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

demands to be in a position of control, and now attacks Vivian, her counsel, the parties' daughters, and the entire system of parenting coordination in unjustified motions that have caused Vivian thousands of dollars to defend.

4) **Kirk is not Seeking to Interpret the Court's Orders, and the Court has Stated its Orders Denying Kirk's Previous Attempts to "Nullify" his Agreement to Appoint a Parenting Coordinator, and Agree to a Teenage Discretion Provision**

Kirk contends in his Reply that his Motions seek only to "interpret" the court's orders (Reply p.3 line 3-4), and that "there has been no ruling on the merits" of his Motions. (Reply, p.3, lines 16-17). Contrary to these false contention, his present motion reads:

> The Court is, respectfully, requested, in the best interest of Brooke and Rylee, to nullify Paragraphs 4 and 6 of the Court's Order Resolving Parent/Child Issues.

(Motion, page 24, lines 4-5). "Interpret" and "nullify" do not have the same meaning. Kirk is seeking to rescind his agreement, not shed light to the meaning of the terms (that are plain).

Further, on December 12, 2013, the Court entered its order from Kirk's first motion (Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief filed October 2, 2013) seeking to modify the "teenage discretion" provision, by stating that the motion was "denied." December 12, 2013 Order page 2 line 8. The Court stated in that Order it would address a Parenting Coordinator and therapist by separate order which it had done by Order filed October 29, 2013. Kirk's filed his second motion, styled "Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision" on November 18, 2013. That motion was heard on December 18, 2013. The minutes contain express statements of the Court denying the Kirk's request that the provision be read to grant no discretion to the children. Kirk contention that his repeated motions were denied without prejudice is false.

5) Kirk's Contention that Vivian's Lawyers Insisted that he be Excluded from Settlement Negotiations Regarding the Parenting Coordinator Provision and the Teenage Discretion Provision is False

Kirk claims he was precluded from being part of the negotiations leading to the execution of the Parenting Plan. This claim is demonstrably false. As shown by the drafts exchanged during negotiation, and attached hereto, there was never any further negotiation of the Parenting Coordinator paragraph (paragraph 4 of the Parenting Plan) or the "teenage discretion" paragraph (paragraph 6) after June 15, 2012. The date that Kirk references was the date scheduled for his deposition, July 11, 2012 at which the parties made no changes paragraph 6, and the only change to paragraph 4 was to eliminate the reference to an attached draft order to appoint a parenting coordinator. All counsel involved discussed that the that order appointing a parenting coordinator would be drafted amongst the parties, and that any disputes regarding the agreement would be resolved by the Court

6) Kirk has not Presented Dr. Roitman's Opinion in Good Faith

Kirk contends that he solicited Dr. Roitman's opinion to inform the court regarding the evils of the teenage discretion provision. He could have done so as part of his previous two motions, but did not. Kirk could have requested that Dr. Roitman meet the children about whom he was asked to opine, but he did not. Kirk could have sought an opinion from Dr. Paglini, who has had the benefit of speaking to the children, but he did not. Vivian has outlined in great detail how Kirk manipulated Dr. Roitman's opinion of Vivian, and how that opinion was baseless and unethical. *See,* Defendant's Reply to Opposition to Motion for Attorney's Fees and Sanctions, filed September 11, 2013, page 10. Kirk's new contention that Dr. Roitman's original opinion of Vivian followed the diagnosis of her treating physician and subsequent MMPI departs from the truth and reality. Her treating physician (nor any of the experts who ever met Vivian) never found she suffered from Narcisisstic Personality Disorder as

Roitman irresponsibly contended, and her MMPI result was "normal." Even after the Court made findings there was no credible evidence supporting Dr. Roitman's "diagnosis" of Vivian (*See*, Findings, Conclusions, and Orders, filed February 10, 2014, page 23), Kirk continues to suggest that his opinion was valid.

IV.

CONCLUSION

Vivian request the Court stop Kirk from filing repetitive and baseless motions that cost Vivian substantial attorney's fees to address. A simple sanction of attorney's fees will not deter him by reason of his wealth. The Court, under EDCR 7.60, is not limited in an award of sanctions. The Court is requested to enter an order designed to deter Kirk from continuing to litigate in this fashion by requiring him to seek leave to file any further motions and that Vivian be required to oppose such motions only upon an order of this Court that she respond to such issues as they deem necessary.

Dated this 20th day of May, 2014.

RADFORD J. SMITH, CHARTERED

Garima Varshney

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CERTIFICATE OF SERVICE

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

I served the foregoing document described as:

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS on May 20, 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 enclosed in a sealed envelope, return receipt requested, addressed :

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An employee of Radford J. Smith, Chartered

EXHIBIT "A"

RADFORD J. SMITH, CHARTERED
A Professional Corporation

THIS FACSIMILE IS CONFIDENTIAL.

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TO:	FROM:
Thomas Standish, Esq.	Jolene For Radford J. Smith, Esq.
COMPANY:	DATE:
Jolley, Urga, Wirth, Woodbury & Standish	MAY 25, 2012
PHONE NUMBER:	FAX NUMBER:
699-7500	699-7555
RE:	CASE NUMBER:
Harrison v. Harrison	D-11-443611-D
	TOTAL NO. OF PAGES INCLUDING COVER:

☐ URGENT ✓ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

DOCUMENT(S) ATTACHED:

CORRESPONDENCE WITH STIPULATION AND ORDER ATTACHED

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May 25, 2012

VIA FACSIMILE
Thomas Standish, Esq.

Re: Harrison v. Harrison

Dear Tom:

Consistent with our conversation this morning, attached is a draft Stipulation and Order Re: Parenting Plan. Please note that because of the timing of the Agreement, I have included specific dates for the summer of 2012 that Vivian would request to have the children in her care. Vivian plans on taking the children outside of the U.S. during her vacation period, and thus she would request that Kirk cooperate with her to locate the children's passports, or replacing those passports.

Please review and advise.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:
Enc: as stated

cc: Vivian Harrison (via email)
Gary Silverman, Esq. (via email)
Edward Kainen, Esq. (via email)

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Attorneys for Defendant

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 DIVISION**

STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES

DATE OF HEARING: N/A
TIME OF HEARING: N/A

COME NOW, Defendant VIVIAN MARIE LEE HARRISON (hereinafter VIVIAN"), by and through her attorneys Radford J. Smith, Esq. and Gary R. Silverman, Esq., and Plaintiff KIRK ROSS

HARRISON (hereinafter "KIRK") by and through his attorneys Thomas J. Standish, Esq. and Edward L. Kainen, Esq., and hereby stipulate and agree and request that the Court FIND AND ORDER AS FOLLOWS:

1. *Resolution of Custody and Support Issues:* The parties (referred to individually as "parent" or collectively as "parents" below) have two (2) minor children born the issue of this marriage, namely EMMA BROOKE HARRISON, born June 26, 1999, and RYLEE MARIE HARRISON, born January 24, 2003. The parties have not adopted any children, and VIVIAN is not pregnant. The parties desire by this stipulation to resolve all issues regarding the care, custody, control and support of their minor children. The parties hereby represent and agree that the provisions set forth below outline a plan that is in the best interest of the minor children.

2. *Legal Custody*: The parents will share joint legal custody of the minor children. Joint legal custody shall be defined as follows:

2.1. Each parent shall consult and cooperate with the other in substantial questions relating to religious upbringing, educational programs, significant changes in social environment, and health care of the children. Each parent shall have access to medical and school records pertaining to the children, and (except as limited in paragraph 3 below) shall each be permitted to independently consult with any and all professionals involved with the care, treatment or education of the children.

2.2. The parents shall jointly select all schools, day care providers, and counselors for the children. In the event the parents cannot agree to the selection of a school, the child(ren) shall remain in the school she is (or they are) then attending pending mediation and/or further court order.

2.3. The parents shall jointly select all health care providers for the children, including all medical providers, dentists or orthodontists, optical care providers, psychological counselors and

mental health providers, and neither parent shall seek non-emergency health care, whether physical or mental, for the children without the knowledge and consent of the other.

2.4. Each parent shall be empowered to obtain emergency health care for either child without the consent of the other parent. Each parent shall notify the other parent as soon as reasonably possible of any illness or injury of either child requiring emergency medical attention, the location of any emergency care of either child, and the result of such care.

2.5. Each parent shall provide the other parent, upon receipt, with any information concerning the care, education, or activities of the children, including, but not limited to, copies of report cards, school meeting notices, vacation schedules, class programs, requests for teacher conferences, results of standardized or diagnostic tests, notices or schedules of activities, samples of school work, order forms for school pictures, all communications from health care providers, and, the names, addresses, and telephone numbers of all of the children's schools, health care providers, regular day care providers, and counselors.

2.6. Each parent shall advise the other parent of school, athletic, church, and social events in which the children participate, and each agrees to notify the other parent within a reasonable time after first learning of such event so as to allow the other parent to make arrangements to attend the event if he or she chooses to do so. Both parents may participate in and attend activities involving the children, including, but not limited to, activities such as open house, school and church activities and events, athletic events, school plays, graduation ceremonies, school carnivals, and any other activities involving the children. Regardless of what parent has the custodial care of the children on the date of such event, each parent shall be afforded a reasonable time to greet, congratulate, take pictures, or participate in other normal activities with the children acknowledging or memorializing the event.

2.7. Each parent shall provide the other parent with the address and telephone number at which the minor children reside, and each shall notify the other parent at least thirty (30) days prior to any change of address of the children, and shall provide the telephone number of such address change as soon as it is assigned.

2.8. Each parent shall provide the other parent with a travel itinerary and, whenever reasonably possible, telephone numbers at which either child can be reached, whenever either child will be away from that parent's home for a period of twenty-four (24) hours or more. The parties each acknowledge that pursuant to current federal law, each will need to seek the written permission of the other party for any travel with the children outside of the United States, which written permission shall not be unreasonably withheld.

2.9. Each parent shall encourage liberal communication between both children and the other parent. Each parent shall be entitled to reasonable telephone communication with the children. Each parent agrees to be restrained, and is restrained, from unreasonably interfering with the children's right to privacy during such telephone conversations.

2.10. Neither parent shall interfere with the right of the children to transport clothing, toys and other personal belongings freely between the parents' respective homes.

2.11. Neither parent shall disparage the other in the presence of either child, nor shall either parent make any comment of any kind that would demean the other parent in the eyes of either child. Additionally, each parent agrees to instruct their respective family and friends that no disparaging remarks are to be made regarding the other parent in the presence of either child.

2.12. The parents further agree to communicate directly with each other regarding the needs and well being of their children, and each parent agrees that he or she shall not to use either child to

communicate with the other parent regarding parental issues, or to transfer notes, payments, or other documents to the other parent without the other parent's consent.

3. *Therapist for the Minor Children*: The parents agree that, if necessary, the minor children shall engage in therapeutic sessions with a mutually agreed-upon child psychologist or psychiatrist. The determination of the need for the children to engage in therapy shall be at the discretion of the therapist, unless otherwise agreed in writing by the parties. The therapist shall not be called as a witness in the case in the absence of an issue requiring mandatory reporting under NRS 432B.220. In the absence of a mandatory reporting issue, the therapist shall be immune from process in this matter, and shall not be called as a witness. The therapist's role would be entirely therapeutic and one to which the children would address any issues or problems for peaceful resolution. In any instance in which the therapist believes that he or she must address the behavior of either parent, the psychologist shall direct any discussion, suggestions, or questions to the parties' Parenting Coordinator appointed pursuant to paragraph 4 below. Neither party shall directly contact the therapist in the absence of a written agreement to that effect. The parties shall equally divide the cost of such therapy.

4. *Parenting Coordinator:* The parties shall engage a Parenting Coordinator to resolve disputes between the parties regarding the minor children. The parties shall make best efforts to mutually agree upon a Parenting Coordinator, but in the absence of such agreement, the Court shall retain jurisdiction to appoint a Parenting Coordinator. The Parenting Coordinator shall serve pursuant to the terms of an order in the form attached as Exhibit "1" hereto.

5. *Weekly Division of Time with the Minor Child:* The parties shall share joint physical custody of the minor children. KIRK shall have the children in his care each Monday from after school, or 9:00 a.m. when the children are not in school, until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. VIVIAN shall have the children in her care from Wednesday after

school, or at 9:00 a.m. when the children are not in school, until Friday after school, or Friday at 9:00 a.m. when the children are not in school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school.

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 amount of time the child desires to spend with each parent, with the understanding that the parents will work together to encourage frequent contact and communication between each parent and the child. 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 amount of time the child desires to spend with each parent once that child reaches 14 years of age

7. *Holiday Time with the Minor Children:* Holidays and special times shall take precedence over but not break the continuity of the plan. The parties will discuss and agree on a schedule of holiday visitation for any holiday not specifically addressed herein.

7.1. *Summer Vacation or Intersession Break*: The parties shall each be entitled to two weeks of uninterrupted visitation with the children during the children's Summer Vacation/Intersession periods. The party exercising such visitation shall advise the other party, in writing, thirty (30) days in advance of the visitation. The parties shall alternate yearly having the priority for scheduling visitation, with Kirk having the priority in even-numbered years, and Vivian having priority in odd-numbered years. That priority in scheduling must be exercised by notice to the other party by March 1 of each year, and if the party with priority fails to notify the other party of a summer vacation schedule by that time, then priority in that year shall be granted to the first party to notice the other of such vacation plans. The two

week period may be broken into two one-week periods, but no smaller unit. The visitation periods shall not be taken during the other parties' holiday visitation periods outlined herein. In addition, VIVIAN shall be entitled to attend the sewing camp with the children each year that she and the children have previously participated in. VIVIAN shall advise KIRK of the dates of the sewing camp as soon as she learns of them so that the parties may schedule summer vacation periods. Also, because of the proximity of the date of this Agreement, for the Summer Break 2012 Vivian shall have the children in her care from August 5 through August 19 for her two week vacation period, and July 21 through July 31 for sewing camp. Kirk shall have the children in his care for the two week period beginning ____ and ending on ____.

7.2. *Winter Break*: The Winter Break shall be defined utilizing the nine-month school year calendar for the Clark County, Nevada school district. The holiday shall be divided into two periods, the first beginning after school the day school recesses for the Winter Break, and ending December 25th at noon. The second period shall be defined as commencing December 25th at noon, and ending at 7:00 p.m. the day before school recommences. The parties shall alternate care of the child during those periods, with KIRK having the children during the first period in even-numbered years, and for the second period in odd-numbered years. VIVIAN shall have the children during the first period in odd-numbered years, and for the second period in even-numbered years.

7.3. *Thanksgiving Visitation*: The Thanksgiving holiday shall be defined as commencing after school (or at 3:00 p.m. if the children are not in school) on the Wednesday before Thanksgiving, and ending the Sunday following Thanksgiving at 7:00 p.m. The parties shall alternate having the children during the Thanksgiving holiday, with KIRK having the children in his care during the Thanksgiving holiday in odd-numbered years, and VIVIAN having the children in her care during the Thanksgiving holiday in even-numbered years. In odd-numbered years, the parties shall switch visitation

periods as follows: If KIRK's regularly-scheduled weekend immediately follows Thanksgiving, VIVIAN shall receive KIRK's Monday to Wednesday visitation preceding Thanksgiving, and KIRK shall receive VIVIAN's Wednesday to Friday visitation (encompassing Thanksgiving Day). If VIVIAN's regularly scheduled weekend immediately follows Thanksgiving, VIVIAN shall receive KIRK's Friday to Wednesday visitation, and KIRK shall receive VIVIAN's Wednesday to Monday visitation (encompassing Thanksgiving Day).

7.4. *Spring Break*: The Spring Break vacation shall be based upon the nine-month school calendar in Clark County, Nevada. The Spring Break period shall be defined as commencing the Friday that school recesses before the vacation period, and shall end on at 7:00 p.m. the Sunday before school recommences. KIRK shall have the children during the Spring Break vacation period in even-numbered years, and VIVIAN shall have the children during the Spring Break vacation period in odd-numbered years.

7.5. *Independence Day*: The Independence Day holiday shall be defined as commencing 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 Independence Day holiday during odd-numbered years, and VIVIAN shall have the children in her care for the Independence Day holiday in even-numbered years.

7.6. *Veteran's Day*: The parties shall alternate having the children on Veteran's Day, which shall be defined as November 11 from 9:00 a.m. to 7:00 p.m. KIRK shall have the children in his care on Veteran's Day in even-numbered years, and VIVIAN shall have the children in her care on Veteran's Day during odd-numbered years.

7.7. *Other Nationally And State-Observed Holidays*: With respect to such nationally observed holidays and holidays observed by the State of Nevada, such as Martin Luther King Day, President's Day, Memorial Day, Labor Day, Nevada Admission Day, and any other such holiday where

the Monday or Friday of any particular week is observed as a national or state holiday, the parent who has the actual physical custody of the children during the immediately preceding weekend shall continue to have the physical custody of the child until 7:00 p.m. on such holiday.

7.8. *Father's Day*: Regardless of which parent is entitled to have the children on the Sunday which is designated "Father's Day," the KIRK shall be entitled to have the children from at least 10:00 a.m. until 8:00 p.m. that day.

7.9. *Mother's Day*: Regardless of which parent is entitled to have the children on the Sunday designated as "Mother's Day," the VIVIAN shall be entitled to have the children from at least 10:00 a.m. until 8:00 p.m. that day.

7.10. *Children's Birthdays*: The parties shall alternate having the children for the children's birthdays. KIRK shall have the children for their birthday in odd-numbered years, and VIVIAN shall have the children for their birthday in even-numbered years. The children's birthday shall be defined as beginning at 9:00 a.m. on the birthday, and ending at 9:00 p.m. on that day.

8. *Miscellaneous Provisions Regarding Care of Children*:

8.1. While the parties recognize that the majority of exchanges shall be effectuated by dropping off and picking up the children at school, when school is not in session, the parents agree that in effectuating and implementing the aforementioned custody arrangements, the parent to whom the physical custody of the children is to be transferred at any such time that the physical custody of the children is to be changed from one parent to the other shall be responsible for picking up the children at the other parent's residence (i.e., when KIRK is to have the actual physical custody of the children, KIRK shall be responsible for picking up the children at VIVIAN's residence; and, conversely, when VIVIAN is to have the physical custody of the children, VIVIAN shall be responsible for picking up the children at KIRK's residence.

8.2. The parents agree that the children shall be picked up, and shall be available to be picked up, at the designated times set forth above. Should a delay become necessary, the parent responsible for such a necessary delay shall immediately notify the other parent to advise him or her of the problem. For example, if the receiving parent is unable to pick up the children at the designated time, such receiving parent shall immediately notify the other parent of that fact. Conversely, if the children are not available for the receiving parent to pick up at the designated time, the receiving parent shall be notified immediately by the other parent. Moreover, in the event any scheduled time cannot be kept due to the illness or other unavailability of a child and/or the receiving parent, the parent unable to comply with the schedule shall notify the other parent and the children as soon as reasonably possible. In the event the time-shared arrangement cannot be kept due to the illness or other unavailability of a child, the receiving parent shall be entitled to comparable time within thirty (30) days after the occurrence of such missed time with the child(ren).

9. *Child Support:* Based upon the current financial condition of the parties, and the fact that neither party currently engages in full time employment, neither party shall be required to pay child support to the other.

9.1. The provisions regarding child support herein are consistent with the statutory requirements of NRS 125B.070 and NRS 125B.080, as applied in *Wright v. Osburn,* 114 Nev. 1367, 970 P.2d 1071 (1998), and *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).

10. *Tax Exemption*: The parties shall alternate annually the ability to claim the minor children as dependents for purposes of income tax deductions. VIVIAN shall be entitled to claim the children as dependents in the 2013 tax year and all odd tax years. KIRK shall be entitled to claim the children as dependents in the 2012 tax year and all even tax years.

11. *Health Insurance:* Kirk shall maintain the children on the current policy of health insurance. Kirk shall be responsible for any premiums for such insurance, and the parties shall be equally responsible for deductibles or co-pays required by the insurance policy, and any and all expenses for the healthcare costs of the minor children not covered by the insurance, including orthodontic and optical expenses, until such time as each child, respectively, reaches the age of eighteen (18), or if still in high school, the age of nineteen (19), marries, or otherwise becomes emancipated. Until such resolution, all such costs shall continued to be paid by KIRK from the parties' community funds.

11.1. Documentation of Out-of-Pocket Expenses Required: A party who incurs an out-of-pocket expense for medical care is required to document that expense and provide the other party proof of payment of that expense. A receipt of payment from the health care provider is sufficient to prove the expense so long as it has the name of the child on it and shows an actual payment by the party seeking reimbursement.

11.2. Timely Submission of Requests for Reimbursement: The party who has paid or incurred a health care expense for a minor child must submit a claim for reimbursement to the insurance company within the deadline required for reimbursement by the insurance policy. If a party fails to timely submit such a claim for reimbursement, and the claim is denied by the insurance company as untimely, that party shall pay the entire amount which would have been paid by the insurance company as well as one-half of the expense which would not have been paid by insurance if the claim had been timely filed.

11.3. Mitigation of Health Expenses Required; Use of Covered Insurance Providers: Each party has a duty to mitigate medical expenses incurred by or for the minor children. Absent compelling circumstances, a party must take the minor children to a health care provider covered by the insurance in effect and use preferred or covered providers, if available, in order to minimize the cost of healthcare for the minor children. The burden is on the party using a non-covered health care provider to demonstrate

that the choice not to use a covered provider, or the lowest cost option under the policy, was reasonably necessary in the particular circumstances. If the Court finds the choice of a non-covered or more expensive covered provider was not reasonably necessary, then the Court may impose a greater portion of financial responsibility for the cost of that health care on the party who incurred that expense up to the full amount which would have been provided by the lowest cost insurance choice.

11.4. Sharing of Insurance Information Required: The party providing insurance coverage for the children has a continuing obligation to provide insurance information to the other party including, but not limited to, copies of policies and policy amendments as they are received, claim forms, preferred provider lists (as modified from time to time), and identification cards. If the insuring party fails to timely supply any of the above items to the other party, and that failure results in a denial of a claim because of the non-insuring party's failure to comply with the procedures required by the amended or updated insurance policies, the party providing insurance shall be responsible for all healthcare expenses incurred by the minor child for any claim that would have been covered by insurance.

11.5. Reimbursement For Out-of-Pocket Expenses: A party that seeks reimbursement for one-half of an unreimbursed healthcare expense he or she has incurred on behalf of a minor child must submit such request for reimbursement to the other party within thirty (30) days of incurring such expense or being advised by the provider that such expense would not be reimbursed. If a party fails to request such reimbursement with that time period, that party shall forfeit any right to seek reimbursement. A party who receives a written request for contribution for an unreimbursed health care expense for a child incurred by the other party must reimburse the other party one-half of that expense within thirty (30) days of receipt of the written request for contribution. The party receiving the request for contribution must raise any objection to the request for contribution within the thirty (30) day period after the request for

contribution is received or shall be deemed to have waived such objection. Any objection to the request for contribution must be made in writing.

11.6. Sharing Insurance Reimbursement: Any reimbursements for payments made directly by a party or the parties to any healthcare provider for a minor child shall be distributed according to the amount of payment by each party. If a party receives such a reimbursement, that party shall distribute the reimbursement within seven (7) days of its receipt.

11.7. Effect of Not Obtaining or Maintaining Required Health Insurance Coverage: If either party is individually required to provide health insurance or pay other health care related costs for the parties' minor children and fails to do so, that party shall be responsible for that portion of any medical expense that would have been paid by a reasonably priced insurance policy available at the time. Should the party obligated to provide health insurance for the minor children lose that ability, the parties shall jointly choose and pay for an alternative policy. The Court shall reserve jurisdiction to resolve any dispute relating to alternative insurance.

Mandatory provisions: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

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

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

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

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

> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the 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 amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

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

The parties, and each of them, are hereby placed on notice that, pursuant to NRS 125.450, a parent responsible for paying child support is subject to NRS 31A.010 through NRS 31A.340, inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes, regarding the withholding of wages and commissions for the delinquent payment of support, that these statutes and provisions require that, if a parent responsible for paying child support is delinquent in paying the support of a child that such person has been ordered to pay, then that person's wages or commissions shall immediately be subject to wage assignment and garnishment, pursuant to the provisions of the above-referenced statutes.

The parties acknowledge, pursuant to NRS 125B.145, that an order for the support of a child, upon the filing of a request for review by:

> (a) The welfare division of the department of human resources, its designated representative or the district attorney, if the welfare division or the district attorney has jurisdiction in the case; or,
>
> (b) a parent or legal guardian of the child,

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

must be reviewed by the court at least every 3 years pursuant to this section to determine whether the order should be modified or adjusted. Further, if either of the parties is subject to an order of child support, that party may request a review pursuant the terms of NRS 125B.145. An order for the support of a child may be reviewed at any time on the basis of changed circumstances.

IT IS SO STIPULATED.

SMITH & TAYLOR

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

JOLLEY, URGA, WIRTH, WOODBURY & STANDISH

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3800 Howard Hughes Parkway - 16th Floor
Las Vegas, Nevada 89169
(702) 699-7500
Attorney for Plaintiff Kirk Harrison

VIVIAN HARRISON

KIRK HARRISON

Good Cause appearing,

IT IS SO ORDERED this____ day of_____, 2012.

DISTRICT JUDGE

Respectfully submitted:

SMITH & TAYLOR

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorneys for Defendant Vivian Harrison

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RADFORD J. SMITH, CHARTERED

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TO: Thomas Standish, Esq.

FROM: Jolene
For Radford J. Smith, Esq.

COMPANY: Jolley, Urga, Wirth, Woodbury & Standish

DATE: MAY 25, 2012

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
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EXHIBIT "B"

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BILL SPORER, MBA
DIRECTOR OF ADMINISTRATION

OF COUNSEL
CHARLES T. COOK
ROGER A. WIRTH

May 31, 2012

VIA EMAIL
Radford Smith, Esq.
RADFORD J. SMITH CHARTERED
64 North Pecos Road, Ste. 700
Las Vegas, Nevada 89074
Fax: (702) 990-6456
rsmith@radfordsmith.com

Re: Proposed Parenting Plan

Dear Mr. Smith:

I am in receipt of your letter with the proposed parenting plan in the above-referenced matter. This letter is written in response thereto, making suggested revisions in the hope of finalizing this agreement. The suggestions reference only three paragraphs which are specifically identified below.

With respect to paragraph 5, Kirk would prefer to have his custodial periods be inclusive of Wednesday/Thursday each week, rather than Monday/Tuesday. Kirk has no problem paying for 100% of Brooke and Rylee's health insurance, pursuant to Paragraph 11. However, Kirk only has the ability to obtain a group health insurance plan through Harrison Dispute Resolution if he continues to mediate cases. Kirk is already only doing about six or seven mediations each year and it is his experience that attorneys and their clients prefer doing mediations earlier in the week. Moreover, Kirk routinely has mediations go well into the night and therefore there is a strong resistance to scheduling any mediations on Fridays (people seem more willing to mess up their work week, than their weekend). Accordingly, Kirk would request that the designated fixed periods be switched.

As regards paragraph 6, Kirk and I both feel that the uncertainty about the future for minor children particularly Rylee and Brookes, is one of the difficulties of divorce litigation, particularly protracted litigation. Kirk views the proposed "teenage discretion" paragraph 6 as unnecessarily continuing that uncertainty for Brooke and Rylee, as well as for he and Vivian.

Kirk also believes that 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, or could lead to one parent or the other "lobbying" Brooke or Rylee, or trying to curry favor with one or both of them.

Overall, it is Kirk's earnest desire to move forward with as positive of an arrangement as possible, and therefore, because he views this provision as being potentially divisive, he is concerned that it may perpetuate some measure of the conflict and stress of this case. Accordingly, as Kirk would very much like to finalize an agreement on custody, he respectfully urges Vivian to reconsider this provision.

In addressing paragraph 7.1, Kirk would like to be able to have a similar annual time set aside with Brooke and Rylee, and proposes that each parent, in addition to the annual two week vacation, get 10 days each summer with the children to do an annual activity.

I look forward to hearing from you.

Sincerely,

JOLLEY URGA WIRTH WOODBURY & STANDISH

Tom

Thomas J. Standish, Esq.

TJS/kg

EXHIBIT "C"

RADFORD J. SMITH, CHARTERED

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FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Thomas Standish, Esq.	Jolene For Radford J. Smith, Esq.
COMPANY:	DATE:
Jolley, Urga, Wirth, Woodbury & Standish	JUNE 1, 2012
PHONE NUMBER:	FAX NUMBER:
699-7500	699-7555
RE:	CASE NUMBER:
Harrison v. Harrison	D-11-443611-D
	TOTAL NO. OF PAGES INCLUDING COVER:
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☐ URGENT ✓ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

DOCUMENT(S) ATTACHED: CORRESPONDENCE FROM RADFORD J. SMITH, ESQ., DATED TODAY 6/1/12

64 NORTH PECOS ROAD-SUITE 700 • HENDERSON, NEVADA 89074

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RADFORD J. SMITH, ESQ.
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RSMITH@RADFORDSMITH.COM

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

Send Result Report

MFP

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Firmware Version 2H7_2F00.012.012 2011.07.14

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RADFORD J. SMITH, CHARTERED

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TO:	FROM:
Thomas Standish, Esq.	Jolene For Radford J. Smith, Esq.
COMPANY:	DATE:
Jolley, Urga, Wirth, Woodbury &	JUNE 1, 2012

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
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EXHIBIT "D"

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BILL SPOERER, SPHR
DIRECTOR OF ADMINISTRATION

OF COUNSEL
CHARLES T. COOK
ROGER A. WIRTH

June 7, 2012

VIA EMAIL
Radford Smith, Esq.
RADFORD J. SMITH CHARTERED
64 North Pecos Road, Ste. 700
Las Vegas, Nevada 89074
Fax: (702) 990-6456
rsmith@radfordsmith.com

Re: Harrison v Harrison

Dear Rad Smith,

The purpose of this letter is to respond to your correspondence dated June 1, 2012.

Summer Vacation:
Kirk is amenable to the girls attending Sewing Camp with Vivian. The camp is approximately 10 days. Kirk, however, would propose that he have the girls each August for the Utah/Lagoon trip that he has taken with them the last two years. This trip typically lasts approximately 7 days and occurs in late August. Outside of those allocations, Kirk proposes that each party have summer vacations with the girls for two weeks each year (either an uninterrupted two week vacation or two one week vacations). In all fairness, to allow both parties to have substantial, equal and meaningful time with the children this summer, Vivian may have to reschedule the dates of her proposed European trip with the girls. As of now, Vivian has the girls scheduled to do dance classes, sewing camp and traveling leaving only a week or two open for Kirk at the end of June.

Timeshare:
Regarding the joint physical timeshare, Kirk has seriously considered the options and because the parties did not agree on the weekday portion of the timeshare, he would now like to propose that the parties observe a week on/week off schedule. This schedule would consist of each party having 7 days with the children with the exchange occurring on Sunday evening.

Teenage Discretion:
Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First - Kirk proposes that the age for consideration of teenage discretion be 16 years old.

Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (Page 6, beginning at line 10). It would read as follows:

Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator,** 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 amount of time the child desires to spend with each parent once that child reaches 16 years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

As always, should you have any questions or concerns, please feel free to contact this office.

Sincerely,

JOLLEY URGA WIRTH WOODBURY & STANDISH

for

Thomas J. Standish, Esq.

TJS/kg

EXHIBIT "E"

Filters Used:
1 Tagged Record

Email Report

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Date Printed: 5/20/2014
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Date 7/03/2012 Time 5:28PM 12:00AM Duration 0.00 (hours) Code Case Related
Subject Harrison Stipulation Staff Radford J Smith
Client Thomas J. Standish MatterRef Harrison adv. Harrison MatterNo D-11-443611-D
From "Thomas J. Standish" <TJS@juww.com>
To "rsmith@radfordsmith.com" <rsmith@radfordsmith.com>
CC To
BCC To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

Custom1 Custom3
Custom2 Custom4

Rad:

Sorry, I got dragged into a couple of emergencies on other cases, and then left town yesterday on vacation. I should have done a quick e-mail to you earlier than now.

We did meet with Kirk and I believe that we are settled. The only thing I would add to your stipulation would be the provision that Kirk could remove the girls from school on two Fridays before two of his weekends during the school year, so that he could have two 3-day weekends, since Vivian will effectively have "his" two 3-day weekends with Monday holidays during the year.

Are you the office Thursday and Friday? I have my laptop with me on vacation and I can respond to e-mails. I will also be glad to have somebody take a shot at revising the stipulation if that will help you.

Let me know.

I think it is still vital that we confirm we have a settlement, and then sign the Stipulation as soon as we can, before anybody changes their mind! I hope that Vivian is still on board, and that you will tell her that I apologize for the delay in getting back to you. We are also responding to Gary's letter to assure him that Kirk will be in touch with Brian Boone and we will move forward promptly on those financial issues.

Have a good 4th-- hopefully I can hear from you on Thursday. You can also call my cell if that is helpful. Thanks again for all your perseverance on this.

HARRISON V. HARRISON

CASE NUMBER 66157

CROSS-APPELLANT'S EXHIBITS

U

OF THE DOCKETING STATEMENT

EXHIBIT "U"

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

FAMILY DIVISION

ORAL ARGUMENT REQUESTED

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES, etc.; COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

DATE OF HEARING: May 21, 2014
TIME OF HEARING: 10:00 a.m.

COME NOW, Defendant, VIVIAN MARIE LEE HARRISON, through her attorneys Radford J. Smith, Esq., of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria, & Kattleman, and submits the following points and authorities to support her Opposition

identified above, and requests that the Court deny Plaintiff's Motions. Further, Defendant requests this Court's order:

1. Directing Kirk to execute the fee agreement proposed by the Court appointed parenting coordinator;
2. Entering sanctions under EDCR 7.60 against Plaintiff based upon his filing of a frivolous motion; and,
3. For such other and further relief as the Court finds equitable in the premises.

Dated this 7 day of April, 2014

RADFORD J. SMITH, CHARTERED

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Attorney for Defendant

I.

INTRODUCTION

Kirk seeks to "nullify" paragraph 4 (agreeing to appoint a parenting coordinator) and paragraph 6 (an agreement regarding the exercise of "teenage discretion) of the Court's July 11, 2012 Parenting Plan arising from the stipulation executed by the parties and their counsel. Vivian opposes Kirk's motions, and requests by countermotion that Kirk pay her attorney's fees and costs incurred to oppose these repeats of Kirk's multiple motions already denied by the Court. Vivian further countermoves for an order directing Kirk to execute the fee agreement of the Court appointed Parenting Coordinator, Margaret Pickard.

II.

THE COURT SHOULD CONFIRM ITS ORDER APPOINTING A PARENTING COORDINATOR THAT WAS ENTERED PURSUANT TO THE PARTIES' AGREEMENT

Paragraph 4 of the Court's July 11, 2012 Parenting Plan reads:

> *Parenting Coordinator:* The parties shall hire a Parenting Coordinator ***to resolve disputes*** between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment.

[Emphasis supplied]. On May 10, 2013, after Kirk did not respond for nearly a year to Vivian's nomination of a parenting coordinator, and did not respond for months to her proposed order appointing a parenting coordinator, she filed a motion requesting that the Court exercise its discretion under paragraph 4. By Opposition and Countermotion filed July 19, 2013, Kirk opposed Vivian's motion and submitted his proposed Order Appointing Parenting Coordinator as Exhibit "2" to his Opposition. On October 29, 2014, this Court resolved the differences in the parties' proposed orders (as expressly agreed under Paragraph 4), and entered its Order Appointing Margaret Pickard as the parenting coordinator. Kirk did not seek to modify that order via motion to amend under NRCP 52 or NRCP 60, nor did he challenge the order through the Nevada Supreme Court.

Ms. Pickard initially sent a proposed retainer agreement ("Agreement for Parent Coordination Services") to the parties that included terms already addressed in the Court's order. Kirk objected to certain terms of the agreement, and demanded, as part of his requested revisions to the retainer agreement, that Ms. Pickard insert a provision prohibiting her from speaking to the parties' children. That demand was contrary to the express terms of the Court's orders, and consequently Vivian objected to any limitation on the Parenting Coordinator's ability to speak to the children, and to the restatement of

terms in the agreement already addressed in the Court's order. *See,* Correspondence attached hereto collectively as Exhibit "A."

As addressed in Vivian's counsel's April 7, 2014 letter to Ms. Pickard, the Court's orders do not prevent the Parenting Coordinator from speaking to the children, and instead require the Parenting Coordinator to speak to the children under certain circumstances. Paragraph 4.7 of the Order Appointing Parenting Coordinator reads:

> The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others.

Further, the parties' stipulated parenting plan reads:

> 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.
>
> 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).

Thus, far from any limitation on the Parenting Coordinator contacting the children, the Court's orders grant the Parenting Coordinator the right to speak to any third party that the Parenting Coordinator "deems to have relevant information" and they ***expressly grant the children the right to speak to the Parenting Coordinator*** under certain circumstances. There is no reasonable reading of these orders that would limit the Parenting Coordinator's right to speak to the children. Contrary to Kirk's assertion, however, Vivian has never requested that Ms. Pickard interview the children.

Ms. Pickard revised her retainer agreement so that it only referenced the Court's orders, and addressed payment for her services. She did not include the language Kirk demanded eliminating her ability to speak to the children. (*See* Exhibit "B" attached hereto). Vivian executed the proposed agreement and provided Ms. Pickard with a retainer. Kirk has refused to execute the agreement.

Kirk now moves the Court to "nullify" its October 29, 2013 Order because he did not agree to its terms. (*Motion*, page 15). Kirk's argument ignores his voluntary grant of discretion to the Court (under Paragraph 4 of the stipulated parenting plan) to resolve any disputes between the parties regarding either the parenting coordinator, or the terms under which the parenting coordinator would serve.

Kirk's current motion goes far beyond his previous complaints about the content of the Order Appointing the Parenting Coordinator. He now decries the entire concept of parenting coordinators. He argues that the Court's October 29, 2013 Order is an unconstitutional grant of power to the Parenting Coordinator, and is thus a violation of Kirk's right of due process. (*Motion*, page 21). He suggests that

other states have restricted or eliminated parenting coordination, and that this Court, and the State of Nevada should do so as well.

Contrary to the Kirk's contention, the Court's order does not grant any judicial authority to the parenting coordinator, and is a proper exercise of the Court's discretion under NRCP 53. As previously argued by Vivian the first time Kirk raised these contentions , in the well written and researched opinion in *Jordan v. Jordan,* 14 A.3d 1136 (D.C. App. 2011), the court addressed and affirmed the power of a trial court to appoint a parenting coordinator in high conflict cases under the District of Columbia's nearly identical Rule 53.

In *Jordan,* the Court addressed the increasing use and approval of parenting coordinators by courts in various states:

> We begin by providing context for the trial court's appointment of a parenting coordinator in this case. In the past decade, the use of parenting coordinators in high-conflict custody cases has become increasingly common. Parenting coordinators simplify the litigation process in highly contentious parenting situations by helping parents to reduce conflict, while decreasing their reliance on the intervention of the courts. *See* Dana E. Prescott, *When Co-Parenting Falters: Parenting Coordinators, Parents-in-Conflict, and the Delegation of Judicial Authority, 20 Maine Bar J. 240, 240 (Fall 2005)*; *see also* Christine Coates, *et al., Parenting Coordination for High-Conflict Families, 42 Fam. Ct. Rev. 246 (April 2004).* Because interparental conflict is "the major source of detriment to children of divorce," and "most [parental disputes in the divorce context are] minor . . . such as one-time changes in [matters like] telephone access [. . . and] after-school activities," the availability of a parenting coordinator to minimize day-to-day disagreements is in the best interests of the children. *See Coates, supra, at 246-47.* We are aware of 30 jurisdictions, in 27 states, that permit the appointment of parenting coordinators pursuant to a statute or court rule. In addition, we are aware of nine other jurisdictions where courts have referred to the use of parenting coordinators in opinions, but did not specifically cite the authority relied upon to appoint a parenting coordinator.

Id. at 1153-1154.[1]

---

[1] Pennsylvania Supreme Court's adoption of a rule prohibiting parenting coordination that Kirk cites in his motion may have its source in matters unrelated to the issue of parenting coordination. *See,* Exhibit "C" attached hereto. There is, of course, no such rule in Nevada, and the appointment of parenting coordinators in high conflict cases is common in the Family Division of the Eighth Judicial District Court.

Further, affirming the lower court's appointment of a parenting coordinator, the *Jordan* court found that its order granting the right to the parenting coordinator to address "day to day" decisions was not an unconstitutional grant of authority by the court:

> Rule 53 also authorized the trial court to delegate decision-making authority over day-to-day issues to the parenting coordinator. Subsection (c) of the rule provides that the order referring a matter to a special master "may specify or limit the master's powers and may direct the master to . . . do or perform particular acts . . . . Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to . . . do all acts and take all measures necessary and proper for the efficient performance of the master's duties under the order." This language plainly gives the trial court discretion to determine what the duties and powers of the special master or parenting coordinator should be.
>
> Of course, the court's ability to delegate authority to a special master or parenting coordinator has limits. Most clearly, in this context, a trial court may not abdicate its responsibility to decide the core issues of custody and visitation. By statute, when custody of a child is disputed, the trial court must decide what type of custody arrangement is appropriate. In addition, we have held that it is improper for a trial court to delegate decisions regarding a party's right to visitation. In keeping with these limitations, the Special Master Order specified that the parenting coordinator may "make decisions resolving day-to-day conflicts between the parties that *do not affect the court's exclusive jurisdiction to determine fundamental issues of custody and visitation.*" (Emphasis added.) The Special Master Order further stated, "In the event of a dispute between the parties as to issues significantly affecting their children, the Special Master may make decisions regarding the following *day-to-day issues*." (Emphasis added.) Thus, the order properly acknowledged and preserved the trial court's responsibility to decide the issues of custody and visitation.

Id. at 1157

The *Jordan* court further noted that the district court's citation to Rule 53 in the absence of a specific rule or statute appointing a parenting coordinator was consistent with the course of many courts around the country. *Id.* at 1158.

In the present case, the Court's October 29, 2013 order only grants the parenting coordinator the right to make recommendations regarding issues that do not "involve a substantive change to the shared parenting plan." (*Order For Appointment of Parenting Coordinator*, section 3.1). The Order grants either party the right to seek review of any recommendation of the parenting coordinator on the non-

substantive issues upon which she renders a recommendation. There is no judicial authority to address custodial care of the children passed by the Order from the district court to the parenting coordinator. While the Court does not specifically reference NRCP 53, that rule grants the Court the ability to appoint a parenting coordinator in high conflict cases.

Perhaps more important here, ***the parties*** granted the Court the power to appoint a parenting coordinator, and to resolve any disputed terms of appointment in the conflicting orders presented by the parties. The Court properly exercised that discretion. Kirk's argument that a parenting coordinator should be nothing more than a mediator is contrary to the language of the stipulated parenting plan. The parties agreed that they "shall hire a Parenting Coordinator ***to resolve disputes*** between the parties regarding the minor children." July 11, 2012 Parenting Plan, paragraph 4. Kirk's agreement to a parenting coordinator, and the method for determining the identity and terms for the appointment, estop him from seeking to "nullify" the order appointing one.

Kirk raises for the first time in his current motion that the appointment of the parenting coordinator violates his due process rights. In *Jordan,* the Court analyzed that argument:

> A due process challenge to the sufficiency of procedures requires a two-part inquiry: first, "whether the asserted individual interest [is] . . . encompassed within the [Fifth Amendment's] . . . protection of 'life, liberty, and property'"; and secondly, if such an interest is implicated, "what procedures are required to satisfy due process." The procedural due process requirement is "flexible and calls for such procedural protections as the particular situation demands," varying according to the nature of the interest that is at issue. We balance "(1) the private interests affected by the proceeding; (2) the risk of error created by the jurisdiction's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure
>
> The use of a parenting coordinator under the circumstances presented does not unduly impinge upon Ms. Jordan's "fundamental liberty interest . . . in the care, custody, and management of [her] child[ren]." Ms. Jordan's liberty interest must be reconciled both with Mr. Jordan's liberty interest regarding the children, and with the principle that "a biological parent's liberty interest is not absolute, and must give way before the child's best interest." Although the parenting coordinator may sometimes supersede Ms. Jordan's authority to make decisions regarding her children, the parenting coordinator may exercise that power only in limited circumstances, *i.e.*, where Ms. Jordan has a dispute

> with Mr. Jordan, who also has a liberty interest in making decisions for the children; and where the dispute concerns only a day-to-day issue.
>
> In any event, even assuming that a fundamental liberty interest is implicated, that interest is adequately protected by the procedures available to a parent aggrieved by any decision made by the parenting coordinator.

Jordan, 14 A.3d 1158-1160 (citations and footnotes omitted). *See also, Barnes v. Barnes, 2005 OK 1, 107 P.3d 560, 565 (Okla. 2005)* (holding that appointment of parenting coordinator did not violate procedural due process, and that "[t]he extent to which a parent may be inconvenienced by cooperating with a parenting coordinator is subordinate to the need to protect the child's welfare").

Kirk cites a series of cases that stand for the proposition that a court cannot delegate its power to make custodial decisions for the children. The Court has not done so here; it specifically tailored the order to address the arguments Kirk now makes for the second time to this Court. The Court should deny Kirk's motion, and enter its order directing that Kirk execute Ms. Pickard's retainer agreement so that the parenting coordination agreed by the parties nearly two years ago can begin.

III.

THE COURT SHOULD DENY KIRK'S THIRD MOTION ATTEMPTING TO MODIFY (NOW "NULLIFY) THE "TEENAGE DISCRETION" PORTION OF THE PARENTING PLAN

Kirk's present motion is his third attempt to "nullify" or eliminate paragraph 6 of the Parenting Plan. The Court has denied the previous two motions. It is plain that his purpose of filing the third motion is to bolster the record for an appeal of the Court's previous order (which has not yet been submitted to the Court), and the order arising from this motion. Vivian submits that Kirk cannot in good faith believe that the Court will reverse its previous decisions on this issue.

Kirk cites only two new bases for his third motion on this issue.[2] First, he submits an opinion from Dr. Norman Roitman regarding the "teenage discretion" provision. Dr. Roitman has never met the parties' children, or Vivian. Dr. Roitman previously unethically submitted an opinion diagnosing Vivian and recommending a custodial plan without ever meeting her or the children. *See,* Defendant's Reply to Opposition to Motion for Attorney's Fees and Sanctions, filed September 11, 2013, page 10. Dr. Roitman's latest opinion ignores the mechanism and terms contained in paragraph 6 that protect either parent from abuse of the teenage discretion granted under that paragraph. Like his previous opinion, he renders diagnoses of the parties' daughter Rylee without ever meeting her, and based solely on Kirk's input. In light of the Court's criticism of Kirk's use of Dr. Roitman in this manner in the divorce action (*See,* Findings, Conclusions, and Orders, filed February 10, 2014, page 23), it is logical to conclude that Kirk's submission of the opinion is for purposes of bolstering his record on appeal, not any good faith attempt to persuade the Court.

Dr. Roitman also does not contemplate the essential facts present at the time of the entry of the agreement. As set forth in Vivian's prior oppositions to this same motion, Brooke did not want to be in her father's care, and Vivian did not believe that Kirk's constant disparagement of Vivian was healthy for the children. She proposed, and the parties agreed to, a plan designed to relieve the pressure upon Brooke and Kirk that would result from disputes regarding her desire to spend more time with Vivian by granting her the right to occasionally choose to spend time with her (or with Kirk) outside the constructs of the normal weekly visitation. She proposed, and the parties accepted, a mechanism to monitor those requests and have an outlet for objection.

---

[2] Kirk repeats a series of arguments he has previously offered either directly or indirectly in his first two motions. Vivian's pleadings relating to those motions adequately address those arguments, and for the purpose of judicial economy are incorporated as if fully set forth herein. *See,* Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent Child Issues, etc., filed October 17, 2013, and Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision, filed December 6, 2013.

Moreover, the language of the plan specifically prohibits the over 14 year old child from modifying the normal visitation plan, and allows conflict resolution first through a parenting coordinator to address any abuse of the provision, or a request by the child to modify her visitation or custody. Vivian's goal was to place the parties' disputes in a forum that would be less expensive, trying and time consuming than the massive litigation that Kirk had continuously engendered and engaged in during the custody action.

Dr. Roitman predictably renders no opinion whether the multitude of motions Kirk has filed seeking to undermine the parenting plan have had a negative effect on the parties' relationship and ability to solve problems, and ultimately upon the children. Kirk and Dr. Roitman seem to suggest that the ideal forum for resolution of any dispute between the parents, or the children and the parents, is lengthy, repetitive and scathing court filings.

Kirk's second basis not addressed in his previous motion is his false assertion that Brooke has misused the "teenage discretion provision." Specifically, Kirk mischaracterizes the ***only*** use of the teenage discretion provision by Brooke in the months since his last motion was heard as "retaliation" for his scolding her about spending too much time at Vivian's home when retrieving their belongings.[3] On the contrary, Brooke's desire to be in Vivian's care Thursday evening February 27, 2014 stemmed from her fear of dental surgery that she was to undergo the following day, March 1. Friday March 1 was an exchange day when Brooke would normally transfer to Vivian's care, and so Brooke stayed the night at Vivian's home, underwent dental surgery, and returned to Vivian's home. Brooke's desire to be with Vivian in this circumstance was predictable; Vivian has always been the parent that took the lead role in arranging for and attending the children's medical care. As the Court may recall, Kirk's involvement in

---

[3] Contrary to Kirk's conjecture, Vivian does not encourage the children to take additional time at her home, does not engage them in conversation, is at times not even present when they come to the home, and encourages them to retrieve their things and not keep Kirk waiting. This, of course, is the kind of issue that could be best addressed with the help of a parenting coordinator.

the medical care of Brooke included refusing to leave Brooke alone in the room with the doctor after Vivian advised him that Brooke wanted to speak privately to the doctor about her first menstrual cycle. Vivian was not involved in "adversarial positioning" when Brooke asked her "Mom, can I stay with you tonight, I'm scared about the surgery," and she agreed.

The Court should again deny Kirk's current motions designed to renege on his agreements that were a fundamental part of Vivian's agreement to enter into the parenting plan granting the parties joint physical custody. Kirk's continued claims that he did not understand that the children, after age 14, would have discretion to make small alterations to the custodial schedule at their discretion makes little sense. Paragraph 6.1 of the parenting plan 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 part or at either parent's home." [Emphasis supplied]. Under that provision a child may request an adjustment **"AND" make an adjustment**, **"OR"** simply **make an adjustment.** The language cannot logically be read any other way, and is thus not subject to interpretation.

Nevertheless, Kirk claims that the use of the construction "and/or" in paragraph 6 is "patently ambiguous" and that "all of the authorities agree." (*Motion*, page 11). Apparently not all of the authorities agree – the Nevada Supreme Court has used, and continues to use, that construction in its decisions. *See, e.g., Wingo v. Government Employees Insurance Co.,* 130 Nev. Adv. Rep. 20, 321 P.3d 855, n.2 (March 27, 2014)("The district court dismissed based on Geico's alternative argument that, under *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007), Wingco did not have a private right of action **and/or** that primary jurisdiction over the dispute lay with the Nevada Department of Insurance."); *Huckaby Properties, Inc. v. NC Autoparts, LLC,* 130 Nev. Adv. Rep. 23 (March 27, 2014)("[W]e conclude that the factual nature of an underlying case is not an appropriate measure to

evaluate whether an appeal should be dismissed for violations of court rules **and/or** orders."). The language of the agreement is plain, clear, and unambiguous. The Court should deny Kirk's third request to "nullify" paragraph 6 of the parties parenting plan.

IV.

THE COURT SHOULD ORDER KIRK TO PAY THE ATTORNEY'S FEES AND COSTS INCURRED BY VIVIAN OPPOSING THE PRESENT MOTIONS, AND SHOULD ENTER AN ORDER SANCTIONING KIRK TO DETER HIS REPEATED FILINGS OF MERITLESS MOTIONS

The Court may grant attorney's fees under EDCR 7.60 when a party files a frivolous claim, or "unnecessarily multiplies the proceedings" in a case. Kirk's repeated filings and attacks on Vivian, the parties' children, and the Court's orders evidence why Vivian requested a system of counseling and parenting coordination in the parties' stipulated parenting plan. Vivian thought she was agreeing to a mechanism by which she could resolve day-to-day issues without having to constantly answer numerous motions, address opinions from experts, and avoid the continued cost of being involved in a case with Kirk. Vivian has spent hundreds of thousands of dollars addressing Kirk's continuously virulent and disparaging allegations that are almost uniformly only supported by his uncorroborated allegations or opinions (or those that he has helped prepare). Vivian believed that when Kirk signed the parenting plan that he did so in good faith and would allow that mechanism to proceed. He, instead, has done everything in his power to "nullify" those terms of the agreement that he does not like.

Parenting coordination is not a new idea, and Vivian and her counsel used what they believed was a standard agreement. The Court modified that agreement pursuant to Kirk's objection. The teenage discretion provision was explained, negotiated and revised by Kirk's experienced counsel. Nevertheless, nearly two years after the entry of the stipulated parenting plan, there have been no sessions with a parenting coordinator, and Kirk continues to stall the process through repetitive filings.

Kirk's latest motion can be fairly characterized as a challenge to the entire system of alternative dispute resolution to which he agreed. If Kirk has a general problem with the notion of parenting coordination, that is an issue for the legislature, not the basis to file another motion for which Vivian is required to respond and incur costs.

Kirk has again filed a wholly meritless motion designed to undermine the system that was a fundamental part of Vivian's agreement to joint physical custody. The Court should indicate its direction to award Vivian fees, and allow Vivian to submit a memorandum of fees and costs for review by the Court. NRCP 54.

Dated this 7 day of April, 2014

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Vivian Harrison

CERTIFICATE OF SERVICE

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

I served the foregoing document described as:

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES, etc.; COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

on March 31, 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 enclosed in a sealed envelope, return receipt requested, addressed :

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F: (702) 699-7555
Attorney for Plaintiff

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An employee of Radford J. Smith, Chartered

EXHIBIT "A"

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VIA FACSIMILE
Margaret Pickard, Esq.

April 7, 2014

Re: Harrison Parenting Coordination

Dear Margaret:

I reviewed the engagement letter (the redlined version) contained in your email your assistant sent to me last Thursday. You have apparently revised your engagement letter at Ed Kainen's request. Part of that revision includes, as you state in the accompanying letter to Mr. Kainen you copied me, an agreement that you will not interview the parties' children.

The Court's orders do not prevent you from speaking to the children, and instead require it under certain circumstances. Ms. Harrison objects to any limitation on your ability to do so in your Agreement for Parent Coordination Services. Paragraph 4.7 of the Order Appointing Parenting Coordinator reads:

> The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others.

Further, the parties' stipulated parenting plan reads:

> 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.
>
> 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).

Thus, far from any limitation on the Parenting Coordinator contacting the children, the Court's orders grant the Parenting Coordinator the right to speak to any third party that the Parenting Coordinator "deems to have relevant information" and ***expressly grant the children the right to speak to the Parenting Coordinator*** under certain circumstances. There is no reasonable reading of these orders that would limit your right to speak to the children.

I would ask that you amend the Agreement for Parent Coordination Services in one of two ways:

1) Take all of the references to powers and procedure for parenting coordination out of the Agreement (leaving only the agreement regarding payment of fees) and simply reference the Order Appointing Parenting Coordinator; or,

2) Add back in your right to interview the children.

Ms. Harrison would like to see this process begin. Let me know if you need anything further from my office.

Regards,

RADFORD J. SMITH, CHARTERED

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

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

Hello All,

I have received your communications regarding the court's October 29, 2014 *Order for Appointment of Parenting Coordinator*. There appears to be some uncertainty regarding whether the *Order* permits the PC to:

1. Interview the parties' children;
2. Speak to third parties; and/or
3. Review reports the Court's Confidential Reports, including reports of mental health providers and evaluators.

It is customary for the Parenting Coordinator to interview the parties' children, speak to third parties and review the Court's Confidential file. If I am unable to do so, I will not be able to properly serve the parties or their children. Having access to the reports that have been filed in this matter, coupled with speaking to third parties, is insightful in providing an accurate reflection of what is occurring and allows me to get up to speed on the family dynamics in order to appropriately and effectively address issues which arise.

The purpose of a Parenting Coordinator is to monitor compliance with the Court's Orders and assist the parties in resolving issues that arise. Ultimately, my goal is to minimize the parties' conflict.

I have attached my Parenting Coordination Agreement which has been revised, per your request, to address only the parties' financial obligations; I will agree to proceed with the current *Order* as written. However, my interpretation of the Order is that Section 4.7 does, in fact, allow me to proceed with child interviews, interviewing third parties and reviewing the Court's Confidential Reports, absent any other subsequent Orders to the contrary, although I have not been provided the file in its entirety.

I am sure that you can appreciate that I have spent considerable time trying to find a resolution to the terms of my appointment, but if the parties are not able to reach agreement on this first issue, my ability to assist them to move forward may be very limited and the PC process may not be the appropriate avenue for them to proceed.

Margaret

Margaret E. Pickard, Esq.
Mediator
Parenting Coordinator

Adjunct Faculty
University of Nevada, Las Vegas
Duke University
University of California, Davis

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Mediation – Parenting Coordination

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EXHIBIT "B"

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 5/09/2014
Time Printed: 4:53PM
Printed By: JHOEFT

Date 3/14/2014 Time 4:58PM 12:00AM Duration 0.00 (hours) Code Case Related
Subject Harrison Parent Coordination Agreement Staff Radford J Smith
Client Vivian Harrison MatterRef Harrison adv. Harrison MatterNo D-11-443611-D
From Margaret Pickard <nevadamediator@gmail.com>
To ed@kainenlawgroup.com; tjs@standishlaw.com; Radford Smith; gary silverman <silverman@silverman-de
CC To
BCC To
Reminders (days before) Follow Done Notify Hide Trigger Private Status

Custom1 Custom3
Custom2 Custom4

Hello All,

I have included everyone on this email to make sure that all attorneys receive the same information with respect to the above matter. Once the Parent Coordination process begins, I will generally communicate with the parties directly; they are, of course, welcome to share any communications with their respective attorneys at any time.

I received a call from Ed regarding my standard Parent Coordination Agreement. Specifically, the Court's Order of Appointment does not provide for the children to be interviewed; therefore, I have removed this provision.

The remainder of the agreement is intended to track the Order of Appointment; I have removed the temporary decision making authority provision as that is also beyond the current Order in this case.

The other provisions of the Agreement primarily define the fees and costs, as well as collections, if that becomes necessary. As you can imagine, Parent Coordination cases involve extremely conflictual personalities and therefore it is vital to clearly set forth the expectations of my appointment.

Please let me know when everyone is ready to move forward with the Parenting Coordination process.

All my best,

Margaret

Margaret E. Pickard, Esq.
Mediator
Parenting Coordinator

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EXHIBIT "C"

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2013

PHILADELPHIA, TUESDAY, JULY 9, 2013

An ALM Publication

Family Law

Parenting Coordination Eliminated in Pennsylvania

BY KELLEY L. MENZANO
Special to the Legal

Effective May 23, the Pennsylvania Supreme Court adopted Pennsylvania Rule of Civil Procedure 1915.11-1, titled "Elimination of Parent Coordination," which states:

"Only judges may make decisions in child custody cases. Masters and hearing officers may make recommendations to the court. Courts shall not appoint any other individual to make decisions or recommendations or alter a custody order in child custody cases. Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective. Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective."

This rule prohibits judges from delegating their authority to make decisions in child custody cases. Custody masters and hearing officers may continue to make recommendations, but all custody decisions are ultimately subject to judicial approval. Thus, the parenting coordinator role in Pennsylvania has been eliminated.

PARENTING COORDINATION IN PENNSYLVANIA

Parenting coordination in Pennsylvania began approximately five years ago. The creation of the parenting coordination program was intended to allow the court to appoint a third party to decide custody disputes promptly and without judicial involvement. Parenting coordination was meant to be used in the context of custody conflicts between parents who were unable to resolve even minor custodial issues such as vacation planning, make-up parenting time, scheduling conflicts, a child's extracurricular involvement and other such issues that would become the subject of endless special relief petitions. Such issues, which often have more to do with the inability of parents to compromise and plan than a child's best interest and welfare, seemed to be a safe zone that could be appropriately delegated to individuals with some experience in family law. As parenting coordination developed, lawyers, psychologists, psychiatrists and other mental health professionals began to fill the parenting coordinator role.

In 2008, the Pennsylvania Superior Court decided the case of *Yates v. Yates*, 963 A.2d 535 (Pa. Super. 2008). Through the *Yates* opinion, parenting coordination was established in Pennsylvania. In this case, the father appealed a custody order from the Bucks County Court of Common Pleas that granted shared legal custody of the minor child to him and to the mother, awarded him primary physical custody and appointed a parenting coordinator to assist both parties in effectuating the custody order. The Superior Court first addressed the issue of parenting coordination as the trial court had "relied upon the appointment of the parenting coordinator to bolster its decision to grant mother shared legal custody."

The Superior Court recognized that parenting coordination was a novel concept in Pennsylvania and described parenting coordination as a method to "shield children from the effects of parenting conflicts and to help parents in contentious cases comply with custody orders and implement parenting plans." On appeal, the father argued that the trial court lacked authority to appoint a parenting coordinator because the appointment of a parenting coordinator was an improper delegation of judicial decision-making authority. The Superior Court disagreed and found that the trial court had limited the role of the parenting coordinator, had "empowered the parenting coordinator to resolve only ancillary custody disputes" and had specifically addressed the majority of the details surrounding physical and legal custody. The trial court also specifically provided for a de novo review of a parenting coordinator's decision by the trial court at the request of the dissatisfied party. Through this opinion, the legitimacy and scope of a parenting coordinator's role was formally established and *Yates* became the seminal case concerning parenting coordination.

In 2012, the Superior Court was again faced with a parenting coordination issue. In the case of *A.H. v C.M.*, 58 A.3d 823 (Pa. Super. 2012), the Superior Court reiterated a portion of its findings in *Yates*, upheld a dissatisfied party's right to a de novo review of a parenting coordinator's decisions and provided further guidance as to what such a de novo review required.

Despite the Superior Court's recent holdings in both *Yates* and *A.H.*, the Supreme Court overruled the parenting coordination findings reached in both cases by enacting Rule 1915.11-1.

KELLEY L. MENZANO *is an associate in the family law group of Hangley Aronchick Segal Pudlin & Schiller and is admitted to practice law in Pennsylvania and Illinois. Contact her at klm@hangley.com*

POSITIVES AND NEGATIVES

From the outset, parenting coordination in Pennsylvania was controversial. This controversy was recognized by the Pennsylvania Superior Court in both the *Yates* and *A.H.* opinions. While there were many benefits to the parenting coordination program, there were also negative aspects that weighed heavily against those benefits.

The positive aspects of a parenting coordination program include, but are not limited to:

- Promoting judicial economy by reducing the special relief petitions filed and litigated on ancillary custody issues.
- Providing a mechanism for the prompt resolution of time-sensitive custodial issues that may not rise to such an egregious level so as to trigger emergency intervention by the courts but nevertheless require timely resolution.
- Providing ongoing and consistent services to parents and providing those parents with a framework for dealing with future disputes.
- Insulating minor children from the litigation process.
- Allowing parties to avoid the costs of custody evaluations, attorney fees and other costs associated with the preparation for a custody trial.

The negative aspects of a parenting coordination program include, but are not limited to:

- The general confusion as to who is qualified to be a parenting coordinator and the resulting inconsistency with which individuals with varied backgrounds carry out the role.
- The general confusion as to the issues a parenting coordinator may decide and the limits on a parenting coordinator's authority (and/or the improper delegation of judicial authority).
- The general confusion as to the appropriate manner in which to review parenting coordinator decisions.
- The lack of finality of parenting coordinator decisions.

POSSIBLE MODIFICATIONS

Many members of the Pennsylvania domestic relations bar were surprised to learn of the Pennsylvania Supreme Court's decision to eliminate parenting coordination altogether. While most Pennsylvania family law practitioners recognized the multitude of flaws in the parenting coordination program, few expected the Supreme Court to eliminate it entirely.

Several domestic relations bar members believe that the Supreme Court's decision to eliminate the parenting coordination program was prompted by the Luzerne County "kids-for-cash" scandal (involving payoffs to two Luzerne County judges of approximately $2.8 million), as the Supreme Court's rules committee submitted the proposed Rule 1915.11-1 for public comment while this scandal was very much in the news. By eliminating the program, it is possible that the Supreme Court hoped to create "transparency by the judiciary and to hold the judges directly accountable for decisions," thereby addressing some of the concerns the Luzerne County scandal had brought to the public's attention, as Ben Present wrote in a May 7 article in *Pennsylvania Law Weekly* titled "Concern Over Judicial Authority Drove Parent Coordinator Elimination."

Regardless of the Pennsylvania Supreme Court's motivation for propounding Rule 1915.11-1, Pennsylvania should now look to other jurisdictions, as well as the guidelines promulgated by the Association of Family and Conciliation Courts, for direction regarding how to rework the parenting coordination program to eliminate, or at least minimize, the negative aspects and areas of concerns, including the concern over the inappropriate delegation of judicial authority.

For example, the parenting coordination program could, and should, be revamped in the following ways:

- The Supreme Court should specify the minimum qualifications of a parenting coordinator. For example, parenting coordinators could be limited to those who are licensed attorneys with a specific amount of family law experience. Alternatively, parenting coordinators could be mediation professionals with certain degrees, certificates or licenses. Pennsylvania's Erie County had local rules containing such provisions.
- The Supreme Court should require parenting coordinators to acquire and maintain a certain level of competence in the parenting coordination process. For example, a parenting coordinator could be required to attend specific continuing legal education seminars to remain eligible for appointment as a parenting coordinator.
- The Supreme Court should provide a form parenting coordinator order. The form order should specify the manner of appointment, scope of authority and responsibilities of the parenting coordinator and delineate clearly the method of de novo review of a parenting coordinator's decision. The form order should also provide for the method of payment to the parenting coordinator and the apportionment of the parenting coordinator costs between the parties.

Modifications to the parenting coordination program in the above manner would dispel much of the confusion surrounding it.

HIGH-CONFLICT CUSTODY CASES

Although modifications to parenting coordination could have been made, the Pennsylvania Supreme Court chose to eliminate it entirely. There is no indication that the program will be reinstated in the near future.

Therefore, parenting coordinators throughout the state have notified their clients of the change and practitioners and judges may see an influx of special relief petitions, emergency and otherwise, to deal with the types of issues formerly handled by parenting coordinators. Now, family law judges and practitioners must examine other options for dealing with high-conflict custody cases. Perhaps, family law practitioners may continue to use the same individuals who formerly served as parenting coordinators to assist high-conflict families in the dispute resolution process as mediators or arbitrators should the parties so agree. Another option may be to use software such as Our Family Wizard to assist families in reducing scheduling conflicts and planning ahead. Co-parent therapy and parenting classes may be other ways in which to assist clients in obtaining the assistance they need to resolve ancillary custody issues previously decided by a parenting coordinator. Family law practitioners and judges statewide will have to be creative in looking for alternatives to parenting coordination without resorting to increased litigation. •

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

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 OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES, etc.; COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 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 soley 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 ____ day of May, 2014

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer

EXHIBIT "W"

Electronically Filed
05/20/2014 03:57:00 PM

CLERK OF THE COURT

RPLY

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

FAMILY DIVISION

ORAL ARGUMENT REQUESTED

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS

DATE OF HEARING: May 21, 2014
TIME OF HEARING: 10:00 a.m.

COME NOW, Defendant, VIVIAN MARIE LEE HARRISON, through her attorneys Radford J. Smith, Esq., of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria, & Kattleman, and submits the following points and authorities in Reply to Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions.

I.

INTRODUCTION

The core theme of Kirk's multiple motions on the subject of teenage discretion and the appointment of a Parenting Coordinator is that Kirk, a skilled lawyer, and both his lawyers knowledgeable and experienced, did not understand the language or effect of the teenage discretion provision, or the function of a parenting coordinator. Though his attorneys' signatures appear on the stipulated and Court ordered Parenting Plan which appoints a parenting coordinator to "resolve disputes of the parties regarding the minor children," and though Kirk did not or seek rehearing or judicial review of the Court's October 29, 2013 Order Appointing a Parenting Coordinator, Kirk and his counsel now take the unsupportable position that this Court should find that its order appointing a parenting coordinator is an unconstitutional delegation of judicial power that denies Kirk due process. Vivian respectfully submits the Court may find those illogical, unworthy of credence, and not brought in good faith.

II.

KIRK'S CONTINUED MISTATEMENTS IN HIS FILINGS DEMONSTRATE HIS BAD FAITH

Kirk's 14 page Reply and Opposition contain numerous and repeated misstatements (or sometimes misdirection or pure fantasy) that demonstrate that his third motion to eliminate the teenage discretion provision, and his second motion to "nullify" the Parenting Coordinator. Kirk's claims are addressed in the order presented in his Reply:

1) The Attorneys in this Action Did not Express Different Views About the Function of the Teenage Discretion Provision at the time of its Negotiation

Kirk commences his Reply and Opposition by contending that the attorneys have expressed differing views of their understanding of the teenage discretion provision. The notion is that his attorneys did not intend the plain effect of the language of the agreement, that the parties' daughters, at a

certain age, would have the discretion to make minor alteration to the parenting plan to spend more time with either parent. That contention is not supported by the communication between counsel during the negotiation of the provision.

After months of negotiation, on May 25, 2012, Vivian's counsel sent a second[1] proposed parenting plan to Kirk's counsel. (*See,* Correspondence from Radford J. Smith, Esq. to Thomas Standish, Esq. dated 25, 2012, and enclosed draft parenting plan attached hereto as **Exhibit "A"**). In that draft was a "teenage discretion" provision that read:

> 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 amount of time the child desires to spend with each parent, with the understanding that the parents will work together to encourage frequent contact and communication between each parent and the child. 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 amount of time the child desires to spend with each parent once that child reaches 14 years of age.

Mr. Standish, responded to that proposed provision in his letter of May 29,. 2012 a copy of which attached hereto as **Exhibit "B."** In that letter Mr. Standish set forth Kirk's complaints the structure of paragraph 6. Kirk's objections addressed the right of the child to choose a separate custodial structure: "Kirk also believes that it is not in Brooke's best interest to foist the responsibility upon her to choose which parent to live with more than the other parent at a particular point in time." Nothing about that statement suggests any doubt that what Vivian was proposing was to allow the girls to make a choice, not a request.

Vivian clarified her position through counsel by letter dated June 1, 2012:

---

[1] Vivian first provided Kirk with a parenting plan in June, 2011 granting the parties both joint legal and physical custody of the children. That plan formed the basis for the second proffered plan. The primary differences in the plan were the provisions addressing counseling for the children (paragraph 5), a parenting coordinator (paragraph 4), and the teenage discretion provision (paragraph 6).

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.

(**Exhibit "C"** attached hereto [emphasis supplied]). Mr. Standish responded by letter dated June 7 (**Exhibit "D"** attached hereto) that reads in pertinent part:

Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First Kirk proposes that the age for consideration of teenage discretion be **16 years old.**

Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (page 6 beginning at line 10). It would read as follows:

Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator**, 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 amount of time the child desires to spend with each parent once the child reaches 16 years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

[Emphasis in original]. The correspondence is conclusive. Kirk specifically and unequivocally offered to grant the children the right to "exercise such 'teenage' discretion in determining the amount of time the child desires to spend with each parent once the child reaches 16 years of age." That sentence belies Kirk's contention that neither he did not understand that the teenage discretion was anything more than a request, or that he did not understand the provision at all. Logic tells us that Kirk and his counsel fully understood that the import of the paragraph was to grant the children the right to alter the timeshare after a certain age.

Through Kirk's proposed modifications, which grant the Parenting Coordinator the right to object to the exercise of teenage discretion, Kirk and his counsel acknowledged that the parenting coordinator was going to be something more than a mediator. It is inconceivable that Mr. Standish and Kirk never discussed the role or duties of a parenting coordinator as Kirk now falsely contends.

Giving due regard to Mr. Standish's (Kirk's) concerns, undersigned counsel redrafted the teenage discretion provision and send the revised Parenting Plan to Mr. Standish on June 15, 2012. The provision continued to grant discretion to the children at 14, but included: 1) prohibition of the children altering the custodial schedule by use of teenage discretion (a prohibition that is not contained in Mr. Standish's June 7 letter) 2) prohibitions against either parent encouraging the child to exercise teenage discretion (a concern Mr. Standish raised in his letter of May 29, 2012) (paragraph 6.2); 3) safeguards for review of the exercise of the "teenage discretion" through the parenting coordinator or the Court (paragraph 6.3); and, a provision permitting the children to speak to the Parenting Coordinator in regard to their desire to modify custody, but limiting the determination of any custodial change to the Court. What the revised paragraph did *not* do, however, was change the right of the children to exercise discretion - that material element of the agreement was consistent throughout all of the proposals associated with this paragraph, including Kirk's.

Mr. Standish's response to the June 20, 2012 draft was contained in an email dated July 3, 2012 that reads:

> Sorry, I got dragged into a couple of emergencies on other cases, and then left town yesterday on vacation. I should have done a quick e-mail to you earlier than now.
> We did meet with Kirk and I believe that we are settled. The only thing I would add to your stipulation would be the provision that Kirk could remove the girls from school on two Fridays before two of his weekends during the school year, so that he could have two 3-day weekends, since Vivian will effectively have "his" two 3-day weekends with Monday holidays during the year.
>
> Are you the office Thursday and Friday? I have my laptop with me on vacation and I can respond to e-mails. I will also be glad to have somebody take a shot at revising the stipulation if that will help you.
>
> Let me know.
>
> I think it is still vital that we confirm we have a settlement, and then sign the Stipulation as soon as we can, before anybody changes their mind! I hope that Vivian is still on board, and that you will tell her that I apologize for the delay in getting back to you. We are also responding to Gary's letter to assure him that Kirk will be in touch with Brian Boone and we will move forward promptly on those financial issues.
>
> Have a good 4th-- hopefully I can hear from you on Thursday. You can also call my cell if that is helpful. Thanks again for all your perseverance on this.

(**Exhibit "E"**), Mr. Standish expresses only Kirk's concern about the distribution of holidays – he does not take issue with any of the language contained in the revised teenage discretion provision. Mr. Standish was aware of Vivian's intent (through the language in her first draft of the provision) to permit the parties' daughters to make alterations to the parenting schedule at 14 years of age.

Plain construction of the English language informs us that the sentence "[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" (Parenting Plan, paragraph 6.1) means that they could either request **or** make adjustments. As argued by Vivian the first two times she was required to oppose Kirk's newly minted argument that he and his lawyers did not

understand the language, the remainder of the language in paragraph 6 would be entirely unnecessary if paragraph 6.1 were deemed only to allow the child to request a modification.

For example, if the child had only the right to request a change, and, as Kirk demands, he would have the right to deny that request, there would be no reason to include the sentence (found in paragraph 6.2) "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." How could a parent's time be eroded by a request the parent could veto? What need would there be for a parent to bring such requests to the Parenting Coordinator and/or the Court? Most telling, neither Kirk nor his lawyers ever expressed any doubt or objection to the effect of that language, and on the contrary, when Mr. Standish set forth Kirk's view, he granted the children the discretion to modify the parenting schedule, albeit at age 16.

2) **Kirk's Motions are Part of His Continued Attempt to Delay the Process Agreed to in the Parenting Plan.**

Kirk attempts to justify his nearly one year delay in complying with the terms of the Parenting Plan (that require each party to select and provide names of a proposed parenting coordinator and therapist by citing to delays in the response to the proposed Marital Settlement Agreement ("MSA"), and the preparation of a draft order appointing a parenting coordinator. Kirk ignores key facts. First, while the Parenting Plan requires notification of choices for a parenting coordinator and therapist (Parenting Plan, paragraphs 3 and 4) the plan does not require either party to prepare a draft order appointing a parenting coordinator (paragraph 4). His counsel could have drafted an order, but neither party did because they were focusing on the property issues for months, and there were few disputes between the parties that would have required the intervention of a parenting coordinator. Those facts had nothing to do with the MSA, which Kirk fails to note was prepared months late by his counsel.

Moreover, Kirk's contends that his delay in identifying a parenting coordinator was affected by the preparation of the order appointing one, this is not an excuse as to why he would not identify a proposed therapist as required by the agreement. We now know, from the subtext and tenor of his series of post trial motions, that he will do anything to avoid having the parties' daughters interviewed by *anyone* (or having the results of their interview published as in the case of Dr. Paglini). Vivian submits that his delay was designed to undermine the process that he now seeks to "nullify."

3) There is no Evidence that Vivian has Manipulated Brooke into Exercising Teenage Discretion.

Kirk, unable to write any brief without attacking Vivian, claims in his Reply, at pages 2-3, "Vivian materially violated the teenage discretion provision by manipulating Brooke by undeniably prompting and suggesting to Brooke to make adjustments to the weekly schedule as well as making adjustment to permanent custody." That statement is false. As indicated in Vivian's first Opposition to Kirk's Motion to Resolve Parent Child Issues, there are more than adequate reasons (including the extremely close bond the children have with Vivian, and Kirk's use of anger, guilt, and criticism to attempt to control them) that could account for either child's desire to spend more time with Vivian. *See* Opposition to Kirk's Motion to Resolve Parent Child Issues filed on October 17, 2013, pages 5-22.

It is submitted that the pleading reflect that Kirk actively dislikes or abhors Vivian, and it follows that the girls' desire to live with Vivian is fueled by their reluctance to live in a home where they may not openly and unconditionally love their mother. *See* Reply to Plaintiff'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, filed on October 28, 2013, Page 4, lines 24-28, incorporated by this reference.

As indicated before, however, Brooke's exercise of time has had little to do with Kirk, and instead was based upon activities or time that Brooke logically wanted to spend with her mother. *See*

Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8. On most, the schedule was altered only by a few hours, and for are sensible reasons.[2] Brooke has utilized the teenage discretion provision in how it was intended, and consistent with its express terms. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, page 7, lines 2-8. As stated in the present motion, the only time Brooke has exercised the teenage discretion provision in the last several months is when she wanted to spend the night with her mother before scheduled dental surgery the following day.

Vivian submits that Kirk's counsel understood that such minor variations to the parenting plan were predictable, and that Brooke should be granted the latitude to make such decisions to avoid inevitable dissension and conflict that would arise from resistance to those choices. Kirk, however,

---

[2] For example, Brooke exercised teenage discretion on the following times –

(1) The first time when Brooke exercised teenage discretion was when she wanted to be with Vivian when shopping for Ballet point shoes. Brooke exercised discretion for five (5) hours on that day. *See* Kirk's Motion to Modify Order re: Teenage Discretion filed on October 1, 2013, page 7, line 14. Vivian and the children had bought dance shoes together throughout the years that Brooke and Rylee have been in dance.

(2) The second time Brooke exercised teenage discretion was on the day of Brooke's Homecoming Dance (a Saturday) when Brooke desired to be at Vivian's home to dress and do make-up with her friends for the dance. Brooke wanted to be with her mother who is skilled and experienced in applying make-up, and helped her learn how to apply make-up. Brooke was with Vivian for approximately two to three hours. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

(3) The third time Brooke exercised teenage discretion was Brooke exercised overnight stays with Vivian during only one period (a two day timeframe where Rylee was on a separate trip to Catalina, and Brooke could spend alone time with Vivian). *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

(4) The fourth time Brooke exercised teenage discretion was to retrieve from Vivian's home the props, to make shopping bags, wrap presents, and prepare costumes, all for her and Rylee's Winter Recital. Vivian has a craft and sewing room in her home that is equipped with arts, crafts and sewing supplies. Vivian has been the parent that has taken the historical responsibility of preparing the props and costumes for the children's school projects and dance. It is understandable that the children wanted to be with Vivian to help them prepare for the recital. They were with Vivian for approximately three hours. *See* Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees filed on December 6, 2013, pages 7-8.

demands to be in a position of control, and now attacks Vivian, her counsel, the parties' daughters, and the entire system of parenting coordination in unjustified motions that have caused Vivian thousands of dollars to defend.

4) **Kirk is not Seeking to Interpret the Court's Orders, and the Court has Stated its Orders Denying Kirk's Previous Attempts to "Nullify" his Agreement to Appoint a Parenting Coordinator, and Agree to a Teenage Discretion Provision**

Kirk contends in his Reply that his Motions seek only to "interpret" the court's orders (Reply p.3 line 3-4), and that "there has been no ruling on the merits" of his Motions. (Reply, p.3, lines 16-17). Contrary to these false contention, his present motion reads:

> The Court is, respectfully, requested, in the best interest of Brooke and Rylee, to nullify Paragraphs 4 and 6 of the Court's Order Resolving Parent/Child Issues.

(Motion, page 24, lines 4-5). "Interpret" and "nullify" do not have the same meaning. Kirk is seeking to rescind his agreement, not shed light to the meaning of the terms (that are plain).

Further, on December 12, 2013, the Court entered its order from Kirk's first motion (Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief filed October 2, 2013) seeking to modify the "teenage discretion" provision, by stating that the motion was "denied." December 12, 2013 Order page 2 line 8. The Court stated in that Order it would address a Parenting Coordinator and therapist by separate order which it had done by Order filed October 29, 2013. Kirk's filed his second motion, styled "Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision" on November 18, 2013. That motion was heard on December 18, 2013. The minutes contain express statements of the Court denying the Kirk's request that the provision be read to grant no discretion to the children. Kirk contention that his repeated motions were denied without prejudice is false.

5) **Kirk's Contention that Vivian's Lawyers Insisted that he be Excluded from Settlement Negotiations Regarding the Parenting Coordinator Provision and the Teenage Discretion Provision is False**

Kirk claims he was precluded from being part of the negotiations leading to the execution of the Parenting Plan. This claim is demonstrably false. As shown by the drafts exchanged during negotiation, and attached hereto, there was never any further negotiation of the Parenting Coordinator paragraph (paragraph 4 of the Parenting Plan) or the "teenage discretion" paragraph (paragraph 6) after June 15, 2012. The date that Kirk references was the date scheduled for his deposition, July 11, 2012 at which the parties made no changes paragraph 6, and the only change to paragraph 4 was to eliminate the reference to an attached draft order to appoint a parenting coordinator. All counsel involved discussed that the that order appointing a parenting coordinator would be drafted amongst the parties, and that any disputes regarding the agreement would be resolved by the Court

6) **Kirk has not Presented Dr. Roitman's Opinion in Good Faith**

Kirk contends that he solicited Dr. Roitman's opinion to inform the court regarding the evils of the teenage discretion provision. He could have done so as part of his previous two motions, but did not. Kirk could have requested that Dr. Roitman meet the children about whom he was asked to opine, but he did not. Kirk could have sought an opinion from Dr. Paglini, who has had the benefit of speaking to the children, but he did not. Vivian has outlined in great detail how Kirk manipulated Dr. Roitman's opinion of Vivian, and how that opinion was baseless and unethical. *See,* Defendant's Reply to Opposition to Motion for Attorney's Fees and Sanctions, filed September 11, 2013, page 10. Kirk's new contention that Dr. Roitman's original opinion of Vivian followed the diagnosis of her treating physician and subsequent MMPI departs from the truth and reality. Her treating physician (nor any of the experts who ever met Vivian) never found she suffered from Narcisisstic Personality Disorder as

Roitman irresponsibly contended, and her MMPI result was "normal." Even after the Court made findings there was no credible evidence supporting Dr. Roitman's "diagnosis" of Vivian (*See*, Findings, Conclusions, and Orders, filed February 10, 2014, page 23), Kirk continues to suggest that his opinion was valid.

IV.

CONCLUSION

Vivian request the Court stop Kirk from filing repetitive and baseless motions that cost Vivian substantial attorney's fees to address. A simple sanction of attorney's fees will not deter him by reason of his wealth. The Court, under EDCR 7.60, is not limited in an award of sanctions. The Court is requested to enter an order designed to deter Kirk from continuing to litigate in this fashion by requiring him to seek leave to file any further motions and that Vivian be required to oppose such motions only upon an order of this Court that she respond to such issues as they deem necessary.

Dated this 20th day of May, 2014.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
64 North Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

CERTIFICATE OF SERVICE

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

I served the foregoing document described as:

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS on May 20, 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 enclosed in a sealed envelope, return receipt requested, addressed :

Tom J. Standish, Esq.
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
F: (702) 699-7555
Attorney for Plaintiff

Edward L. Kainen, Esq.
10091 Park Run Dr., Suite 110
Las Vegas, Nevada 89145
F: (702) 823-4488
Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

EXHIBIT "A"

RADFORD J. SMITH, CHARTERED
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FACSIMILE TRANSMITTAL SHEET

TO: Thomas Standish, Esq.	FROM: Jolene For Radford J. Smith, Esq.
COMPANY: Jolley, Urga, Wirth, Woodbury & Standish	DATE: MAY 25, 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:

☐ URGENT ✓ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

DOCUMENT(S) ATTACHED:

CORRESPONDENCE WITH STIPULATION AND ORDER ATTACHED

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(702) 990-6448 • FAX (702) 990-6456

RADFORD J. SMITH, ESQ.
DANIELLE TAYLOR, ESQ.
GARIMA VARSHNEY, ESQ.
JOLENE HOEFT, PARALEGAL

SMITH & TAYLOR
Attorneys at Law

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HENDERSON, NEVADA 89074

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

May 25, 2012

VIA FACSIMILE
Thomas Standish, Esq.

Re: Harrison v. Harrison

Dear Tom:

Consistent with our conversation this morning, attached is a draft Stipulation and Order Re: Parenting Plan. Please note that because of the timing of the Agreement, I have included specific dates for the summer of 2012 that Vivian would request to have the children in her care. Vivian plans on taking the children outside of the U.S. during her vacation period, and thus she would request that Kirk cooperate with her to locate the children's passports, or replacing those passports.

Please review and advise.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:
Enc: as stated

cc: Vivian Harrison (via email)
Gary Silverman, Esq. (via email)
Edward Kainen, Esq. (via email)

EXHIBIT "C"

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TO:	FROM:
Thomas Standish, Esq.	Jolene For Radford J. Smith, Esq.
COMPANY:	DATE:
Jolley, Urga, Wirth, Woodbury & Standish	JUNE 1, 2012
PHONE NUMBER:	FAX NUMBER:
699-7500	699-7555
RE:	CASE NUMBER:
Harrison v. Harrison	D-11-443611-D
	TOTAL NO. OF PAGES INCLUDING COVER:
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DOCUMENT(S) ATTACHED: CORRESPONDENCE FROM RADFORD J. SMITH, ESQ., DATED TODAY 6/1/12

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RSMITH@RADFORDSMITH.COM

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

Send Result Report

MFP

TASKalfa 500ci

Firmware Version 2H7_2F00.012.012 2011.07.14

06/01/2012 15:47
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Thomas Standish, Esq.	Jolene For Radford J. Smith, Esq.
COMPANY:	DATE:
Jolley, Urga, Wirth, Woodbury &	JUNE 1, 2012

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JOLLEY URGA WIRTH WOODBURY & STANDISH

ATTORNEYS AT LAW

3800 HOWARD HUGHES PARKWAY
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June 7, 2012

VIA EMAIL
Radford Smith, Esq.
RADFORD J. SMITH CHARTERED
64 North Pecos Road, Ste. 700
Las Vegas, Nevada 89074
Fax: (702) 990-6456
rsmith@radfordsmith.com

Re: Harrison v Harrison

Dear Rad Smith,

The purpose of this letter is to respond to your correspondence dated June 1, 2012.

Summer Vacation:
Kirk is amenable to the girls attending Sewing Camp with Vivian. The camp is approximately 10 days. Kirk, however, would propose that he have the girls each August for the Utah/Lagoon trip that he has taken with them the last two years. This trip typically lasts approximately 7 days and occurs in late August. Outside of those allocations, Kirk proposes that each party have summer vacations with the girls for two weeks each year (either an uninterrupted two week vacation or two one week vacations). In all fairness, to allow both parties to have substantial, equal and meaningful time with the children this summer, Vivian may have to reschedule the dates of her proposed European trip with the girls. As of now, Vivian has the girls scheduled to do dance classes, sewing camp and traveling leaving only a week or two open for Kirk at the end of June.

Timeshare:
Regarding the joint physical timeshare, Kirk has seriously considered the options and because the parties did not agree on the weekday portion of the timeshare, he would now like to propose that the parties observe a week on/week off schedule. This schedule would consist of each party having 7 days with the children with the exchange occurring on Sunday evening.

Teenage Discretion:
Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First - Kirk proposes that the age for consideration of teenage discretion be 16 years old.

Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (Page 6, beginning at line 10). It would read as follows:

Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator,** 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 amount of time the child desires to spend with each parent once that child reaches 16 years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

As always, should you have any questions or concerns, please feel free to contact this office.

Sincerely,

JOLLEY URGA WIRTH WOODBURY & STANDISH

for

Thomas J. Standish, Esq.

TJS/kg

EXHIBIT "E"

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 5/20/2014
Time Printed: 2:17PM
Printed By: GVARSHNEY

Date 7/03/2012 Time 5:28PM 12:00AM Duration 0.00 (hours) Code Case Related
Subject Harrison Stipulation Staff Radford J Smith
Client Thomas J. Standish MatterRef Harrison adv. Harrison MatterNo D-11-443611-D
From "Thomas J. Standish" <TJS@juww.com>
To "rsmith@radfordsmith.com" <rsmith@radfordsmith.com>
CC To
BCC To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

Custom1 Custom3
Custom2 Custom4

Rad:

Sorry, I got dragged into a couple of emergencies on other cases, and then left town yesterday on vacation. I should have done a quick e-mail to you earlier than now.

We did meet with Kirk and I believe that we are settled. The only thing I would add to your stipulation would be the provision that Kirk could remove the girls from school on two Fridays before two of his weekends during the school year, so that he could have two 3-day weekends, since Vivian will effectively have "his" two 3-day weekends with Monday holidays during the year.

Are you the office Thursday and Friday? I have my laptop with me on vacation and I can respond to e-mails. I will also be glad to have somebody take a shot at revising the stipulation if that will help you.

Let me know.

I think it is still vital that we confirm we have a settlement, and then sign the Stipulation as soon as we can, before anybody changes their mind! I hope that Vivian is still on board, and that you will tell her that I apologize for the delay in getting back to you. We are also responding to Gary's letter to assure him that Kirk will be in touch with Brian Boone and we will move forward promptly on those financial issues.

Have a good 4th-- hopefully I can hear from you on Thursday. You can also call my cell if that is helpful. Thanks again for all your perseverance on this.

HARRISON V. HARRISON

CASE NUMBER 66157

CROSS-APPELLANT'S EXHIBITS

T

OF THE DOCKETING STATEMENT

EXHIBIT "T"

Electronically Filed
04/21/2014 04:49:43 PM

CLERK OF THE COURT

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DISTRICT COURT

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: 05/21/2014 Time of Hearing: 10:00 A.M. **ORAL ARGUMENT REQUESTED:** **YES XX NO ___**

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.

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

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS 125C.101(1) to modify the Order Resolving Parent/Child Issues, entered July 11, 2012.

This Motion is made and based upon the papers and pleadings on file herein, the Affidavit of Plaintiff attached hereto, the Affidavit of Edward L. Kainen, Esq., attached hereto as **Exhibit "1,"** the Affidavit of Thomas Standish, Esq., attached hereto as **Exhibit "2,"** the Points and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

DATED this 21st day of April, 2014.

KAINEN LAW GROUP, PLC

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

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NOTICE OF MOTION

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 21st day of May, 2014, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 21st day of April, 2014.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
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Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. It is Indisputably In the Best Interest of the Children To Stop The Adversarial Positioning of the Parties As Soon As Possible

The longer the adversarial conflicts continue the greater the likelihood of causing long term emotional harm to Brooke and Rylee. The continued existence of the "teenage discretion" provision, as advocated by Vivian's attorneys and implemented by Vivian, **creates** adversarial positioning between the parties which places Brooke and Rylee right in the middle of the conflict. Conflicts between the parties regarding custody of any significance were infrequent between the date of this Court's Order Resolving Parent/Child Issues on July 11, 2012 and Brooke's 14th birthday on June 26, 2013.

Only this Court has the judicial authority to determine the meaning of the provision. Kirk was advised the provision, as drafted, provided nothing other than what the law already provided, which is a fourteen year old can simply make a request. That was Kirk's understanding at the time he signed the agreement. On the other hand, Vivian's position is that Brooke can *order* Kirk, her father, at any time to take her to Vivian's house during his custody time and he must *obey* his 14 year old daughter without question or discussion and it is irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to Rylee.

The "teenage discretion" provision creates the adversarial positioning between the parties in which Brooke and Rylee are inextricably enmeshed. The appointment of the parenting coordinator creates the forum to continue the adversarial positioning. Vivian is now insistent the parenting coordinator interview Brooke and Rylee.

Merely memorializing an intention to "intend to allow the children to feel comfortable" is not tantamount to knowingly agreeing that your 14 year old child can issue orders to a parent that must be immediately obeyed without question or discussion. Stating an intention does not equal an agreement. Similarly, a person "to resolve conflicts" is not sufficient specificity to bind a person to a parenting coordinator, as that term has been defined by the Court in its subsequent Order For Appointment of Parenting Coordinator, filed October 29, 2013, and certainly insufficient to compel a person to be bound by the overreaching terms contained in the parenting coordinator's proposed agreements. Both the

teenage discretion and parenting coordinator provisions should be nullified and stricken by this Court for lack of specificity and for the inherent ambiguity in both. Moreover, both provisions should be nullified and stricken because the continued existence of both is clearly contrary to the best interests of Brooke and Rylee.

B. Only This Court Can Make the Judicial Determination of the Teenage Discretion Provision and the Parenting Coordinator Provision

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. The Court denied the motion without prejudice.

Subsequent to this hearing, another incident occurred, where Kirk was deprived of seeing his daughter Brooke **for two weeks** as a result of Vivian's improper implementation of the teenage discretion provision. After that incident, the parties set forth their opposing interpretations of Paragraph 6 in an exchange of letters. It is evident from these letters, there was no meeting of the minds regarding Paragraph 6 and this provision should therefore be nullified and stricken. On that basis, Kirk filed, "Plaintiff's Motion for A Judicial Determination of the Teenage Discretion Provision" on November 18, 2013. Vivian filed an opposition and countermotion on or about December 6, 2013. Kirk filed his reply and opposition to Vivian's countermotion on December 13, 2013. The Court denied the motion without prejudice and indicated its preference to wait until there was a parenting coordinator in place and for Kirk to address the teenage discretion provision with the parenting coordinator.

The Court will see that part of the relief sought herein is for the Court to nullify and strike Paragraph 4 of the Order Resolving Parent/Child Issues on the basis there was never a valid legally enforceable agreement between the parties regarding the appointment of a parenting coordinator. The Court will readily see that it is absolutely black letter law that no agreement was ever made. Therefore, respectfully, the Court must make this important legal determination regarding the teenage discretion provision.

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Moreover, in an effort to assist the Court, an opinion has been obtained from Dr. Norton Roitman regarding the "teenage discretion" provision. More specifically, Dr. Roitman was asked to opine as to the effect upon Brooke and Rylee in the event the interpretation of that provision, which has been advocated by Vivian, were to be adopted by the Court. A true and correct copy of this opinion, dated January 14, 2014, is attached hereto as **Exhibit "3."** Upon the Court's review of Dr. Roitman's opinion, Kirk believes the Court will see the risk to the parties' children is too great and the need for a prompt judicial determination too urgent to wait any longer for the relief sought herein.

Respectfully, Kirk begs this Court to make a prompt judicial determination of the subject teenage discretion provision. Kirk is hopeful that when the Court reads the within motion it will understand Kirk, as a loving and caring parent, had no choice but to cause the motion to be filed, and the Court will further understand it is undoubtedly in the best interests of Brooke and Rylee to nullify and strike the teenage discretion and parenting coordinator provisions.

II. STATEMENT OF FACTS

As the Court is aware, when the custody exchange takes place during the academic year, each parent takes the children to the other parent's home to pick up their things. When Brooke and Rylee pick up their things from Kirk's home, Vivian waits in her car almost always less than 5 minutes and, usually just 2 to 3 minutes. When Brooke and Rylee pick up their things from Vivian's home, for a long time, Kirk was forced to wait 20 to 35 minutes, while Vivian "visited" with Brooke. For several weeks, Vivian was more considerate and Brooke and Rylee have been taking about 15 minutes. On Wednesday, February 27, 2014, Brooke, with Rylee waiting, took about 30 minutes. When they got in the car, Kirk explained there was no reason why it would take less than 5 minutes to get the same items from his home that she was taking 30 minutes to get from Vivian's home. Brooke was upset with Kirk and disrespectfully argued otherwise during the drive home.

Later that night, right after speaking on the telephone with Vivian, Brooke told Kirk she was staying at Vivian's the next night, clearly in reprisal to Kirk telling Brooke earlier it was inconsiderate to keep him waiting in the car for 30 minutes, while she visited with her mother. Brooke, with Vivian's evident guidance, encouragement, and complicity, had the power to punish Kirk for even questioning her behavior. Kirk asked Brooke why she wanted to stay at Vivian's house the following night. Brooke

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said she cannot eat after 6:30 a.m. Friday morning.[1] Brooke then said she can get up earlier at Vivian's house. Kirk responded that he could get her up whenever she needed to on Friday morning. Brooke did not respond, but rather, reiterated she was staying at Vivian's house the next night. Brooke then said that Vivian was going to pick her up from her last dance class on Thursday night and take her to Vivian's house. This revealed that the plan was devised by Vivian and Brooke before Kirk was even made aware of the plan. Kirk said that it was not her decision to make and she should not be making such plans with her mother during her time with Kirk. Brooke said it was her decision and she was staying at Vivian's the following night. Kirk reiterated it was not her decision to make. The conversation ended with Brooke emphatically saying, "Yes it is."

The next night, Kirk drove to the dance studio to pick up Brooke and Rylee after their last dance class. Brooke got in Vivian's car and they drove away. As would be expected, Rylee was visibly upset. Kirk saw the pain in her face. Rylee's eyes were welling up with tears and her head bent over during the drive home. All of this seemed very unfair to the eleven year old child.

As the Court is well aware, this is just the latest disturbing incident caused by the implementation of the "teenage discretion" provision which has unnecessarily disrupted Kirk's time with his children and, much more importantly, created uncertainty and stress for Brooke and Rylee.

III. ARGUMENT

A. The Teenage Discretion Provision Must Be Either Nullified Or Interpreted To Allow A Fourteen Year Old Child To Make *Requests* To The Weekly Visitation Schedule Which Can Reasonably Be Denied By A Parent If The Parent Believes, In Good Faith, It Is Not In The Best Interest Of His Or Her Child Or In The Best Interests Of the Child's Younger Sibling

1. The Continued Existence of The Teenage Discretion Provision, As Advocated by Vivian and Implemented By Vivian and Brooke Is Serious and Ill Advised From A Psychiatric Perspective and, May Well, have Deeply Damaging Impacts Upon Brooke and Rylee

The settlement of a contested divorce proceeding normally terminates the adversarial conflict between the parties, creating the desired stability and certainty for the children. Under a joint custody

[1] Kirk was already aware Brooke had an appointment with an oral surgeon at 12:45 p.m. on Friday, February 29, 2014.

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arrangement, each of the minor children know from week to week the time they will be spending with each parent. Children need stability and certainty in their lives.

During the divorce proceeding, Dr. Roitman advised Kirk to stop the adversarial conflict between the parties as soon as reasonably possible. Dr. Roitman advised the longer the adversarial conflict continued the greater the risk of long term emotional harm to Brooke and Rylee. Kirk responded by settling for joint custody as soon as reasonably possible. By settling for joint custody, Kirk thought he had stopped the uncertainty and conflict for Brooke and Rylee. However, under Vivian's interpretation of the teenage discretion provision, the joint custody agreement between the parties is undermined and too much stress is placed upon a 14 year old child to make a choice between her parents on a weekly basis, which choice, involves leaving her 11 year old sister. The teenage discretion provision, as interpreted by Vivian, **creates** stress for the children, creates opportunities for them to be enmeshed in their parents' conflict, and continues instability and uncertainty in their lives.

Vivian wants the minor children to be interviewed by the parenting coordinator in the context of the teenage discretion provision. This is clearly not in the children's best interest. This Court has previously noted its preference not to embroil minor children in the process, but rather to insulate them from the process, noting, "I don't need a child interview. The less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process. The parties agreed that it was in the best interest of the children to exercise joint physical custody." (Hearing Transcript, 10.30.13 at 10:59:10). Kirk adamantly opposes that the parenting coordinator have authority to interview the minor children, and it is clear the Court also seemed to oppose the children being interviewed given its statements at the hearing on October 30, 2013. Further, there is no language in the Order that provides that the minor children can be interviewed.

The teenage discretion provision, as advocated by Vivian and implemented by Vivian and Brooke, negatively compromises the entire parenting scheme and, may well, have **deeply damaging** impacts upon Brooke and Rylee. This fact cannot be the subject of legitimate debate. To empower the adolescent as the controlling party in such a circumstance is serious and ill advised from a psychiatric perspective.

. . .

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As noted earlier, sometime after the hearing on December 18, 2013, Dr. Roitman was requested to render an opinion under the assumption that the position advocated by Vivian is adopted by the Court, namely the fourteen year old becomes the decider and is granted the authority to order her parent to make changes to the weekly custody schedule, regardless of the lack of wisdom or judgment underlying her choices.

Kirk urges the Court to read this opinion in its entirety. It is, without question, in the best interests of Brooke and Rylee to nullify and strike the teenage discretion provision. This point cannot be the subject of legitimate debate. Dr. Roitman, referring to the Court's responsibility to insure the best interests of the children are met, opines:

> In this regard, to enable the family to achieve its natural balance in the aftermath of divorce, there needs to be minimal third party intermediaries to inject their various values into the family scheme once the asset and custody separation is enacted. Successful families, whether divorced or not, cannot be continuously subjected to the scrutiny of adverse party claims and counter claims without promoting blame and deterioration of the nest-like feeling children need for their own psychological well being (sic) and positive models for their own families once they get older. As soon as possible, after the family separation and breach, the system needs to be encouraged to heal to it's best potential. The only complaints that involve matters that are critical to the well being of the children should reopen the deliberation, and then limited to the least possible intervention. Like a wound in the process of healing, it should not be unnecessarily disrupted.

(Dr. Roitman, 1.14.14 Opinion, p. 3)

The continued existence of this provision, as interpreted by Vivian and implemented by Vivian and Brooke, is not in the best interest of these children. The parenting coordinator would have had a financially vested interest in the continued existence of this provision, as advocated by Vivian, and the continued conflict to which the children would have been unnecessarily and needlessly subjected.[2]

---

[2] The importance of this point cannot be overstated. Under this Court's order appointing the parenting coordinator, filed October 29, 2013, this Court granted the parenting coordinator the same authority of a Discovery Commissioner in State Court and a Federal Magistrate in Federal Court. The parenting coordinator is empowered by this Court's order to render decisions and the standard of review of those decisions ("Recommendations") by this Court is "the Court will overturn a Recommendation of the Parenting Coordinator **only** upon the showing of evidence to the satisfaction of the Court to warrant such a result." (¶4.5 of Order) However, there is a fundamental and constitutional difference between the power granted to a Discovery Commissioner or a Federal Magistrate, as opposed to a parenting coordinator. Only the parenting coordinator has a **financial incentive** in this continued conflict. In contrast, a Discovery Commissioner and Federal Magistrate have no financial incentive to sustain the

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The serious risk to Brooke and Rylee is simply too high and too significant to allow this untenable situation to continue:

> In this matter, the court is being to (sic) asked to rule on the preferences of a fourteen year old and granting her a power over her parents, **and therefore control over her entire family**. The court is in the position to decide to what degree a teenager's wishes should determine her regulations.
>
> * * * *
>
> By empowering a teenager, the court imposes it's values and in so doing it determines how this family will work, despite the familial and religious traditions and family culture.
>
> * * * *
>
> Even in the best of circumstances, the court giving the adolescent decision-making power over the family system [is] of questionable psychological benefit. In the case of this family in particular, her choices are being made in the throws of constant parental dysfunction and allegations of unhealthy influence. **The ruling will effect the parental authority not just regarding this matter of time spent, but to all other issues for the next four years, since the adolescent has basically veto power.**[3] It set up the conditions in which the winning parent will be the indulgent parent and in this way, the youth escapes accountability. **There are no redos when it come to child development and mistakes are irreversible.** Only in delinquency, dependency and divorce is the state, through the court, given parental override.
>
> The willingness of the court to reenter into the fray of custody and it's implications is questionable from a child psychiatric perspective. **Authorizing a non-adult with a vested interest in their own pleasure can intoxicate them with power by undermining the relationship with family authority.** Children need their parents, not a court to chose winners and losers except where the child's health issue is critical and the differences between parents are detrimental and truly irreconcilable. A narrow participation is preferable to a global dictum, such is the case with the teenager discretion ruling.
>
> Instead of promoting the re-empowerment of the child's parental environment after a tumultuous divorce, **inserting the adolescent as the controlling party is an error. To do so is serious and ill advised from a psychiatric perspective. Placing the adolescent in the position of deciding when she is going to be with whom, even with an intact, functional family is a bad idea.** The teen should be granted increasing levels of authority in a step by step fashion so their expanding independence is supervised. At first they should not be given so much latitude that they can make irreversible mistakes. **Healthy families don't allow the child to go with one or another parent on impulse, just because they might be angry, or for some adolescent reason that don't (sic) make sense to the family as a whole.**

(Dr. Roitman, 1.14.14 Opinion, p. 4 & 5)(emphasis added)

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continuation of disputes.

[3] It will actually be for the next seven years as Rylee is just 11 years old.

Dr. Roitman also makes it abundantly clear that the continued existence of this provision will have a devastatingly negative effect upon Rylee:

> A developing adolescent needs to be given discretion over some decisions to foster independence, but it is irresponsible to give to them the key to determine how her family works, the power to reject parents, replace them, set into motion a contest to see who is more apt to grant her wishes, reduce her responsibilities and punish and reward the one who does not frustrate her.
>
> * * * *
>
> Already in turmoil due to the long standing disturbances between parents sustained and serious enough to decide to end the marriage, the exacerbation of the conflict in the conduct of the separation and divorce, the impact of the changes in households and time with parents, **the younger child now sees her sister being able to control parents by coming and going on a whim.** A fourteen year old is not expected to see her role in the life of the sister, especially since very few teenagers have empathy towards their younger siblings.
>
> It is not uncommon for teens in intact families to want to leave their little brothers and sisters and wish they had an alternative place to go. The sibship, though, is effected by these escapes and may take an entirely different course for the rest of their lives. Values in dependency court have turned toward preserving sibling groups. The teenage discretion allowance is 180 degrees opposed to this principle. The stress of giving the responsibility for the bond with her little sister and the impact on their future relationship should not be given, but imposed. **The family unit should be not taken for granted and not be continuously up to negotiations with the teenager making the final decision. Later in life both sisters could regret that the younger one was left behind feeling like a loser, rejected and powerless.**
>
> While the teenager thinks she is just going over to the other parent's house, and it is no big deal, she has no experience making decisions about what is best for her in the long run, the effect on her sister, or how a family should work. **The teenage discretion provision inevitably can negatively affect the younger daughter who does not have this 'right,' but may, as seeing it implemented, long to get it. In her mind she can feel less than the other child. She sees a parent rejected, perhaps in the middle of an argument, demand a ride. She can see disrespect for parental authority and their powerlessness. She can be left by her sister at the drop of a hat and can't depend on long time periods with both families. Modeling on her sister she is encouraged to accept that momentary emotions, temptations and enticements are the basis for decision making. It is never a good idea to allow the teen to abandon the sister or a parent in the middle of a dispute. They need to work out differences and reestablish their bond, and accept the results whether with a sibling or a parent.**

(Dr. Roitman, 1.14.14 Opinion, p. 8)(emphasis added)

Kirk never agreed to the interpretation being advocated by Vivian and respectfully urges the Court to not allow this to happen to their children.

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Dr. Roitman concludes his opinion by writing:

> **I can't envision any scenario where it would be in the best interest of a teenager to be able to order a parent to modify their custody schedule. This is especially true when younger siblings are affected by those decisions.**

(Dr. Roitman, 1.14.14 Opinion, p. 13)

There is no question that it is in the best interests of Brooke and Rylee for this Court to nullify and strike the teenage discretion provision. Kirk respectfully submits that any responsible, loving, and caring parent would readily agree with the wisdom of Dr. Roitman's opinion. Kirk did not and would never agree to a provision, as it has been advocated by Vivian and implemented by Vivian and Brooke. Kirk loves Brooke and Rylee too much to ever subject them to what has been transpiring and will continue to transpire, unless this Court makes the judicial determination it must make. Kirk respectfully urges the Court to see and understand that Kirk could do no less for Brooke and Rylee.

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2. The Language Upon Which Vivian Relies Contains the Phrase "And/Or" And Is Patently Ambiguous

The language which Vivian advocates empowers Brooke to order Kirk to make changes to the weekly custody schedule is the following sentence, "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." (Emphasis added.) Kirk respectfully submits the conjunctive disjunctive form in this context is patently ambiguous. All of the authorities agree. In *In re United Scaffolding, Inc.*, 377 S.W. 3d 685 (Tex. 2012) the trial court was ordered to grant a new trial to resolve the ambiguity created by the use of the phrase "and/or" stating, "Many courts and critics have denounced the use of 'and/or' in legal writing" because it leads to ambiguity and confusion. "**The term inherently leads to ambiguity and confusion.**" S.W. 3d at 689. (Emphasis added) *See, Cannell v. State of Texas*, 2013 WL 6729857 (Tex. App. 2013); *State ex rel. Adler v. Douglas*, 339 Mo. 187, 95 S.W.2d 1179, 1180 (1936) (en banc) ("The use of the symbol 'and/or' . . . should be condemned by every court."); WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE 40 (4th ed. 2000); *see also* BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE 1.80 (2ND ED. 2006).

. . .

A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation. *Margrave v. Dermody Properties, Inc.*, 110 Nev. 824, 878 P.2d 291 (1994) This teenage discretion provision, as evidenced by the previously filed points and authorities, is susceptible to more than one interpretation.

3. Words Matter and the Parties Never Agreed the Children Could Order a Parent to Make Changes to the Weekly Custody Schedule And The Parent Must Obey

For something which is so negatively impactful upon the lives of Brooke and Rylee, it would be error to simply assume the parties have knowingly made an agreement providing the children can order a parent to make adjustments to the weekly custody schedule when they have clearly not done so. Words matter. The literal language **does not** provide that the parties agree or hereby agree that the children **can** request and/or make adjustments to their weekly schedule and the parent must obey without question or discussion. The language merely provides the parties "**intend to allow the children to feel comfortable. . .** in requesting **and/or** making adjustments to their weekly schedule. . ." As stated, Kirk's only intention was that the child would feel comfortable in making requests and/or making adjustments to their weekly schedule with their parents consent and if the child had not been influenced, prompted or suggested by a parent. However, assuming *arguendo*, that Kirk intended to allow the children to feel comfortable in ordering a parent to make weekly changes to the schedule, as advocated by Vivian, Kirk has clearly withdrawn that intention "to allow the children to feel comfortable" as all of the problems have been caused by Vivian's influencing, prompting, and suggesting to Brooke, all in direct violation of the provision. There is no agreement and there never was an agreement between the parties to anything other than a stated intention "to allow the children to feel comfortable. . ." There was never an agreement between the parties that a child would be able to order a parent to make changes to their weekly schedule and the parent must obey, as advocated by Vivian.

4. The Teenage Discretion Provision Must Also Be Nullified As There Was No Meeting Of the Minds, The Provision Is Susceptible To More Than One meaning And Is Therefore Ambiguous, And Vivian Has Violated Every Safeguard Placed In the Provision Which Was Designed to Protect The Children From What Has Already Occurred

As the Court is keenly aware, the teenage discretion provision is reasonably susceptible to more than one interpretation and is therefore ambiguous. A contract is ambiguous if it is reasonably

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susceptible to more than one interpretation. *Shelton v. Shelton*, Nev., 78 P.3d 507 (2003); *Anvui L.L.C. v. G.L. Dragon, L.LC.*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Galardi v. Naples Polaris, LLC.*, 301 P.3d 364, 129 Nev. Adv. Op. 33 (2013) Because it is ambiguous, it must be construed against the drafter. *Moroni Corporate Investments, Intern. v. Edgemon*, 2012 WL 5378151 (2012); *Anvui L.L.C. v. G.L. Dragon, L.LC.*, 123 Nev. 212, 216, 163 P.3d 405, 407 (2007); *Mullis v. Nevada National Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535 (1982). Vivian's attorneys drafted the ambiguous language. Therefore, the provision must be construed as reasonably interpreted by Kirk and Kirk's attorneys, namely, the provision provides the 14 year old can make a request, which request can be either granted or denied by the parent in the parent's good judgment. However, the 14 year old cannot order the parent to make any modifications to the weekly custody schedule, which the parent must obey without question or discussion and without any regard to prior plans or arrangements or the best interest of the other minor child.

The teenage discretion provision is also ambiguous through indefiniteness of expression. *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir. 2009) (quoting *Whiting Stoker Co. V. Chicago Stoker Corp.*, 171 F.2d 248, 251 (7th Cir. 1948). Merely stating the parties intentions utilizing the inherently ambiguous conjunctive disjunction "and/or" is a provision which must fail for indefiniteness of expression.

5. In the Court's Determination Of Whether to Modify A Provision Between the Parties Pertaining to Custody, Nevada Child Custody Law is Controlling, Not The Agreement Between the Parties.

The teenage discretion provision, as interpreted by Vivian, is clearly not in the best interests of Brooke and Rylee.

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

. . .

This "teenage discretion" provision, as interpreted by Vivian, is in contravention of the clearly stated policy of the State of Nevada and NRS 125.460, which provides that it is the policy of the State of Nevada, "To encourage such parents to share the rights and responsibilities of child rearing." This "teenage discretion" provision clearly violates this statute as it has created, in Vivian's mind, a vehicle to pursue a vindictive competition with Kirk, wherein she has convinced Brooke that she should regularly leave Rylee. This provision not only does not "encourage" parents "to share the rights and responsibilities of child rearing", it does the opposite – it encourages a parent, Vivian, to not share the rights and responsibilities of child rearing.

Importantly, this "teenage discretion" provision, as interpreted by Vivian, also violates NRS 125C.010(1)(a) 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." For the reasons previously noted, under this "teenage discretion" provision, the rights of the parties cannot be properly enforced and this "teenage discretion" provision totally disregards the best interests of Brooke and Rylee. This provision creates uncertainty, emotional issues, disrupts the family, causes inconsistency, needlessly instills fear, and facilitates immersing children in their parents' conflict.

Finally, under *Rivero v. Rivero,* 216 P.3d 213 (Nev. 2009), parties are free to contract and the Court will enforce those agreements, provided *they are not unconscionable, illegal or in violation of public policy. Id* at 227. Once a party moves to modify an agreement, however, the Court "must apply Nevada child custody law, including NRS Chapter 125C and case law." *Id.* Kirk has requested modification of the custody order to nullify this provision for teenage discretion at this time and therefore, the Court must look to Nevada law, rather than the parties' agreement. NRS 125C.010(1)(a) specifically provides that visitation must be defined with sufficient particularity. By 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 provision such as the one at issue is in violation of public policy for several reasons. First, as interpreted by Vivian, it delegates parenting rights and decisions to the minor child and needlessly involves them in conflict. Second, it does not allow either party to have a clear understanding of their rights to time (an important enough consideration so as to merit statutory language under NRS 125C.010(1)(a) requiring sufficient particularity). Additionally it

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is important to note that even if Kirk were not seeking to nullify this teenage discretion provision, the Court can only enforce agreements which are not unconscionable, illegal or in violation of public policy. As this provision for teenage discretion violates NRS 125C.010(1)(a) and NRS 125.460 and public policy, the Court should not enforce the provision in any event.

Kirk respectfully urges the Court to avoid the unnecessary emotional gauntlet for the children, to which Vivian has otherwise demonstrated an eagerness to subject them. A truly caring parent would not regularly manipulate a 14 year old child to separate the child from a 11 year old sibling.

In *Fernandez v. Fernandez*, 222 .3d 1031 (Nev. 2010), the parties entered into a stipulation and order that provided the child support obligation was non-modifiable when the father was paying significantly more than the maximum amount under NRS 125B.070. The parties circumstances changed to the point that under NRS 125B.070 that neither party would be obligated to pay child support to the other. However, the trial court refused to modify the child support stating, "the Court is not bound by the provision of NRS 125B.145 where the parties have previously agreed in a stipulation and order modifying the Decree of Divorce that neither party will seek modification of child support." P.3d at 1034. The Nevada Supreme Court disagreed, holding that the parties stipulation was trumped by the Court's authority to review and modify a child support order and held a 'trial court always has the power to modify an existing child support order, either upward or downward, notwithstanding the parties' agreement to the contrary.' P.3d at 1035. The Nevada Supreme Court went on to state that, "Most courts agree that, absent a contrary statutory directive, public policy prevents a court from enforcing a purportedly nonmodifiable child support order, even if the parties stipulate to it." P. 3d at 1036. The same rationale applies here. If the Court adopts Vivian's interpretation of the teenage discretion provision, that provision is clearly contrary to public policy and the best interests of Brooke and Rylee and must be nullified and stricken on that basis.

B. Kirk Never Agreed To A Parenting Coordinator With The Powers Set Forth In This Court's Order, filed October 29. 2013, Nor To The Powers Set Forth In the Parenting Coordinator Agreements Submitted by Margaret Pickard

There is no statutory authority for the appointment of a parenting coordinator in the State of Nevada. Therefore, the only circumstance in which one can be appointed is when the parties agree to such an appointment, and importantly, when the parties agree to the **terms** of the appointment. *Schilder*

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v. Hazelton, 84 Mass. App. Ct. 1131, 2014 WL 288896. It is fundamental that such an agreement must be knowingly made. Vivian's attorneys presented a draft stipulation and order resolving parent/child issues containing paragraph 4, which provides as follows:

> 4. *Parenting Coordinator:* The parties shall hire a Parenting Coordinator **to resolve disputes** between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment. (Emphasis added).

Prior to this matter, Kirk had never heard the term parenting coordinator and was unaware of their role. Kirk had been retained hundreds of times as a mediator **to resolve disputes**. At the time the stipulation was signed, it was Kirk's understanding a parenting coordinator functioned as a mediator. Kirk naturally assumed the term parenting coordinator was used to describe a mediator who specialized in custody issues for Family Court cases. At that time, Kirk was unaware that Family Court would delegate judicial authority to an individual outside of the court system.

Since the signing of the stipulation, Kirk's position has been consistent with his understanding that the parenting coordinator would function as a mediator. Kirk's proposed Order For Appointment of Parenting Coordinator, which Kirk submitted to the Court, empowers the parenting coordinator with all of the powers of a mediator. *See* **Exhibit "4,"** attached hereto, which was also attached as *Exhibit "2"* to Plaintiff's Opposition To Defendant's Motion for an Order Appointing a Parenting Coordinator, filed July 19, 2013. Said opposition is also consistent with Kirk's understanding that the parenting coordinator functioned as a mediator.

When Kirk read Defendant's Motion for an Order Appointing a Parenting Coordinator, filed May 10, 2013, and later, this Court's Order Appointing a Parenting Coordinator, filed October 29, 2013, Kirk felt as though he had been sucker punched. Kirk did not and never would have agreed to allow a third party whom he had never met to make parental determinations involving his children.

On February 20, 2014, Kirk received an email from the office of the parenting coordinator requesting that certain agreements be executed. A follow up email enclosing the same proposed documentation was sent on February 27, 2014. The February 20, 2014, email from the designated

parenting coordinator provided the parenting coordinator has "the judicial authority to resolve parent/child and custody/visitation issues" and enclosed a number of proposed agreements to be executed, which grant the parenting coordinator extensive judicial authority in excess of the authority granted by this Court's Order, filed October 29, 2013. More specifically, the following was provided: (1) Enclosure letter, dated February 20, 2014; (2) An Overview of Parenting Coordination; (3) Agreement for Parent Coordination Services; (4) Party Information Sheet; (5) Credit Card Charge Authorization Form; (6) Authorization for the interviewing of minor children; (7) Release of Information from the Clark County School District, and; (8) Authorization for the Release of Protected Health Information. True and accurate copies of these eight documents are collectively attached hereto as **Exhibit "5."**

The proposed agreements from the parenting coordinator go well beyond the terms of this Court's Order and, frankly, the proposed Agreement for Parent Coordination Services is extremely overreaching, unconscionable, and an unacceptable contract of adhesion. It requires the parties to basically provide a blank check to the parenting coordinator for the next seven years with no relief. For example, the Court's order provides a grievance procedure. However, the proposed parenting coordinator agreement effectively nullifies that procedure by requiring the complaining party to pay 100% of the attorneys fees of the parenting coordinator in defending any grievance. The parenting coordinator can have communications with the parties' attorneys **without** the knowledge of the parties. The parenting coordinator can order a parent to undertake "counseling, anger management, psychiatric and/or medical evaluations, etc." The list of areas in which the parenting coordinator can assert control is only limited by one's imagination. Despite the parties' divorce, the proposed agreement provides the parties are jointly and severally liable for the parenting coordinator's fees. In the event of bankruptcy by the parties the parenting coordinator fees are "in the nature of child support payments, and therefore, are not dischargeable in bankruptcy." Under the submitted agreements, the parents become slaves to the arbitrary whim of the parenting coordinator. The provisions in the proposed documents do not create a relationship with a mediator, facilitator or problem solver, but rather a relationship with a person with almost unrestrained authority, who is free to exercise unilateral control in every facet of the parent-child relationship. Kirk never agreed to such terms, nor would he ever agree to such terms.

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The extremeness of the terms demanded by the parenting coordinator serve to highlight the fact that Kirk never agreed to any of these terms because none of them were set forth in Paragraph 4. In fact, none of the terms set forth in this Court's Order Appointing a Parenting Coordinator were set forth in Paragraph 4. It cannot possibly be argued, at least in good fath, that Kirk agreed to terms he never saw. This is especially true when those terms are so far beyond the terms of any reasonable common sense expectation.

1. No Enforceable Agreement Was Ever Reached Regarding the Appointment of a Parenting Coordinator As There Was No Meeting of The Minds

In order for a contract to be formed there must be sufficient specificity for the parties to understand to what they are agreeing. There was none here. Agreements to agree are not enforceable. Paragraph 4 is too indefinite in its terms to be enforceable.

Parents have a fundamental right in the care and custody of their children. *Troxell v. Granville*, 530 U.S. 57, 65-66 (2000). Therefore, the highest level of scrutiny is given to any contractual provision whereby it is alleged the parents assigned any part of those fundamental rights to a third party.

If the goal of Vivian's attorneys in drafting the parenting coordinator paragraph was to have Kirk agree to have a third party, who he has never met, make parental determinations concerning his children, as reflected in this Court's subsequent Order appointing a parenting coordinator, then Kirk was entitled to be fully informed in making the decision to agree or not agree to such a provision. Kirk was not.[4]

The tactic of having the parties agree to the appointment of a parenting coordinator and blindly agreeing to terms they have never seen is not a binding agreement. The provision provides, "The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties." Provisions such as this are unenforceable. A provision "which leaves an essential term to future agreement is not enforceable." *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968); *Ablett v. Clauson*, 43 Cal.2d 280, 272 P.2d 752 (1954) In the case at bar, **all**

[4] Similarly, if the goal was to have a provision whereby a parent agrees to empower his 14 year old child to order him on a whim to make changes to the weekly custody schedule without regard to prior plans and arrangements and the parent must obey that child without question or discussion, then the parent is entitled to be fully informed of that fact in making such a decision. Kirk was not.

essential terms are left to future agreement. The provision is not saved by the clause, "If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment." Parties must know to what they are agreeing with specificity at the time they make the agreement, otherwise the agreement is unenforceable. Without a crystal ball, Kirk would have no way of knowing what terms the Court would later decide were appropriate at the time the stipulation was signed. For example, it was very important to Kirk that Brooke and Rylee not be interviewed and thus brought into the middle of any conflict. The Court's comments quoted previously indicated the Court was of the same view. However, Vivian argues that in the Order of the Court appointing the parenting coordinator, the Court contemplated that the parenting coordinator could interview the children. This is a critically important term to which Kirk never would have agreed had it been fairly presented to him. It was not.

The law is well settled in Nevada. In *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005) the Nevada Supreme Court made it very clear a settlement agreement is governed by principles of contract law and a court cannot compel compliance when material terms remain uncertain:

> Because a **settlement agreement** is a contract, its construction and enforcement are governed by principles of contract law. Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration. . . . **A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. . . . In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain. . .**

P. 3d at 1257 (emphasis added)

Nevada abides by traditional jurisprudence that agreements to agree are generally too indefinite to enforce as final agreements. *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254, 1257 (2005); *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968). When a provision, such as the parenting coordinator paragraph, "is too indefinite and uncertain to be regarded as a binding agreement and it amounts to a nullity and is unenforceable." *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968) Under these circumstances, this Court must nullify and strike the parenting coordinator paragraph.

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Put another way, the parenting coordinator paragraph is ambiguous through indefiniteness of expression. *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir. 2009) (quoting *Whiting Stoker Co. V. Chicago Stoker Corp.*, 171 F.2d 248, 251 (7th Cir. 1948). Other than being retained "to resolve conflicts" the provision lacks any other terms whatsoever which define the role of the parenting coordinator. As such the provision must fail for indefiniteness of expression.

2. Paragraph 4 Was Drafted Entirely By Vivian's Attorneys And Was Presented As An Offer. As Such, It Could Not Be Accepted By Kirk So As To Form A Contract Unless The Terms Of The Contract Are Reasonably Certain – They Were Not

It is axiomatic that an offer cannot be accepted unless the terms of the offer are reasonably certain when made. "[E]ven though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain." *Rucker v. Taylor*, 828 N.W.2d 595, 602 (2013) quoting the Restatement (Second) of Contracts §33(1) Based upon the language contained in Paragraph 4, it was legally impossible for Kirk to accept the offer contained therein as the terms of the offer were not reasonably certain when the offer was made. Even if Kirk had some idea that a parenting coordinator was generally given judicial authority to make parental custody decisions or recommendations, then it still would have been legally impossible for Kirk to accept the offer as the terms of the offer were not reasonably certain when the offer was made.

This scenario is no different than if a company is in litigation and negotiates a settlement with the opposing party. Part of that settlement is the company agrees to hire a consultant to assist the company, with no discussion whatsoever as to the specific role of the consultant or any other terms of the retention. The only specified term is, "The [Consultant] shall serve pursuant to the terms of an order mutually agreed upon by the parties." There are no terms which provide the expertise of the consultant, the scope of the work for the consultant, the hours the consultant shall work, the duration of the retention, the scope of the consultant's authority, the consultant's duties and responsibilities, the compensation for the consultant, upon what grounds the consultant can be terminated, etc. Under such circumstances, the terms of the contract are not reasonably certain, and therefore the offer cannot be

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accepted so as to form a contract. Similarly, Paragraph 4 absolutely and indisputably fails on the same basis.

3. Courts Across The Country Are Recognizing The Granting of Judicial Authority To A Parenting Coordinator Violates the Due Process Rights of the Parties And Is Therefore Unconstitutional

In Pennsylvania, the concern over the unconstitutional granting of judicial authority to parenting coordinators led to a modification of the State's Rules of Civil Procedure:

> Rule 1915.11-1. **Elimination of Parenting Coordination.**
>
> **Only judges may make decisions in child custody cases.** Masters and hearing officers may make recommendations to the court. Courts shall not appoint any other individual to make decisions or recommendations or alter a custody order in child custody cases. **Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective.** Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective.

(**Exhibit "6"** attached hereto) (emphasis added)

In eliminating parenting coordination, the Pennsylvania Supreme Court decided to stop the practice of trial courts assigning judicial authority to **non judicial** persons. It was determined it was improper to allow judges to pass on their authority to somebody outside of the judicial due process walls of the courthouse.

The rationale is straightforward. A parenting coordinator has a financial incentive to make interpretations which will continue conflict and insure continued parenting coordinator fees. Those persons inside the courthouse, do not have such a conflicting motivation. Quite the opposite is true. Because of case load demands, those individuals with quasi-judicial authority within the courthouse are motivated to expeditiously resolve conflict and interpret matters to stop further conflict.

There are numerous states which agree that a court may not delegate its judicial power to determine the visitation or custody arrangements of the parties. In *Marriage of Stephens*, (Iowa Court of Appeals) 810 N.W.2d 523 (2012), at footnote 3, the court set forth the following listing, which, undoubtedly, is only a partial, and somewhat dated, list: *Pratt v. Pratt*, 56 So. 3d 638, 644 (Ala Civ. App. 2010) ("We also reiterate that [t]he trial court is entrusted to balance the rights of the parents with the child's best interests to fashion a visitation award that is tailored to the specific facts and circumstances of the individual case. That judicial function may not be delegated to a third party."

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(internal citations omitted)); *In re Marriage of Matthews*, 101 Cal. App. 3d 811, 161 Cal. Rptr. 879, 882 (1980); (holding as invalid the provision in the court order authorizing a third party to alter the visitation scheduled in any way she deemed reasonable and necessary);*Larocka v. Larocka,* 43 So.3d 911, 912-13 (Fla.Dist.Ct. App. 2010) (holding it is the responsibility of the court to establish the visitation schedule between the mother and child and may not delegate that responsibility to a counselor);*In re Paternity of A.R.R.*, 634 N.E. 2d 786, 789 (Ind. Ct. App. 1994) (finding the court impermissibly endowed an executive agency with the judicial power to control the frequency of the visitation); *Meyr v. Meyr*, 195 Md. App. 524, 7 A. 3d 125, 138 (Md.Ct. Spec.App.2010) ("[A] court may not delegate to other individuals decisions regarding child visitation and custody."); *In re Marriage of Young*, 370 N.W.2d 57, 65-66 (Minn.Ct.App. 1985 (holding that the court can rely on an expert's opinion, but the court must make the ultimate decision on visitation rights); *Walters v. Walters*, 12 Neb. App. 340, 673 N.W.2d 585, 592 (2004) ("[T]he courts have held that the authority to determine the custody and visitation of a minor child cannot be delegated to a third party, because it is a judicial function"); *In re Marriage of Kilpatrick*, 198 P.3d 406, 410 (Okla.Civ.App. 2008) (striking the portion of the court's order that provided the parenting coordinator's recommendations should be observed as orders of the court because it constituted an improper delegation of judicial power and is contrary to the parent's due process rights); *Chiappone v. Chiappone*, 984 A.2d 32, 39 (R.I.2009) ("The issues of custody and visitation fall squarely within the realm of judicial responsibility and may not be delegated to a therapist, no matter how qualified or well-intentioned the therapist may be.")

There is an undeniable trend for courts not to grant judicial authority to parenting coordinators.

One can argue what judicial authority should or should not be delegated to a parenting coordinator, if any. The bottom line, however, is that Kirk was never given an opportunity to make an informed decision as to what authority would be later given to the parenting coordinator. Under the law, Kirk cannot be compelled to comply with the terms of an agreement to which he never agreed, let alone ever saw. As noted earlier, in Nevada, a court cannot compel compliance to a settlement agreement when material terms were uncertain.

. . .

. . .

IV. CONCLUSION

The teenage discretion provision creates uncertainty and instability for the children and conflict between the parties, within which the children are embroiled. The continued existence of this provision can cause permanent severe emotional damage to Brooke and Rylee. There was no meeting of the minds between the parties regarding its terms. Vivian's material breaches of material and essential terms of this provision, including embedding in Brooke's mind that she has the absolute unfettered right to determine her own custody, has undermined any chance for the provision to be reasonably applied.

The Court is implored, in the best interests of Brooke and Rylee, to revoke this provision in its entirety. In the alternative, the Court is requested to determine that a 14 year old child has the right to request infrequent modifications to the weekly custody schedule, which the parent can, in good faith, either grant or deny, as opposed to Vivian's position that a 14 year old has the absolute right to *order* Kirk, her father, at any time, to take her to Vivian's house during his custody time and he must *obey* his 14 year old daughter without question or discussion and it is irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to Rylee. In the event, this Court decides not to nullify and strike the teenage discretion provision, Vivian will continue to manipulate and embroil the children in conflict.

The Court is also requested to nullify and strike the parenting coordinator provision. Neither Kirk nor his attorneys had any part in drafting this provision. The provision must fail for its failure to provide any of the specific terms necessary for a party to know to what they are agreeing. Therefore, the offer by Vivian could not have been accepted and a contract formed. This is true even if Kirk were to have been told that a parenting coordinator would be granted judicial authority to make parental decisions involving his children.

Kirk desperately wants the adversarial positioning to stop for the benefit of Brooke and Rylee and their entire family, including Vivian. As noted, conflicts between the parties regarding custody of any significance were infrequent between the date of this Court's Order Resolving Parent/Child Issues on July 11, 2012 and Brooke's 14th birthday on June 26, 2013. The continued existence of the teenage discretion provision, as advocated by Vivian, creates and continues the adversarial positioning. The insertion of a parenting coordinator into the process facilitates the continuation of the adversarial

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positioning. The proposed parenting coordinator intends to enmesh Brooke and Rylee further into the conflict by interviewing them. The unnecessary continuation of the adversarial positioning created by the teenage discretion provision poses tremendous risk that Brooke and Rylee will suffer long term emotional harm. The Court is, respectfully, requested, in the best interests of Brooke and Rylee, to nullify Paragraphs 4 and 6 of the Court's Order Resolving Parent/Child Issues. These requests are supported by the Affidavit of Edward L. Kainen, Esq., attached hereto as *Exhibit "1,"* and the Affidavit of Thomas Standish, Esq., attached hereto as *Exhibit "2."*

DATED this 21st day of April, 2014.

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By: _____

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AFFIDAVIT OF KIRK R. HARRISON
filed in Support of Plaintiff's Motion To Modify Order Resolving Paren/Child Issues and For Other Equitable Relief

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 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 Paren/Child Issues and For Other Equitable Relief are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK R. HARRISON

SUBSCRIBED and SWORN to before me this 11 day of April, 2014.

NOTARY PUBLIC in and for said County and State

TAMARA PHILLIPS
Notary Public State of Nevada
No. 10-1880-1
My Appt. Exp. April 8, 2018

KAINEN LAW GROUP, PLLC
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Las Vegas, Nevada 89145
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EXHIBIT 1

AFFIDAVIT OF EDWARD KAINEN, ESQ.
IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

EDWARD KAINEN, ESQ., being first duly sworn, deposes and states:

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. I am an attorney duly licensed to practice law in the State of Nevada, and in that capacity, I am co-counsel for Kirk Harrison.

3. I am familiar with the terms of Paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. I have read the letters from Radford J. Smith, Esq., setting forth his interpretation of this provision, which are both dated November 6, 2013. As set forth in my letter of November 6, 2013, I strongly disagree with the interpretation made by Mr. Smith and it is directly contrary to my own interpretation. All three letters are attached to the prior motions regarding teenage discretion.

4. I have also read the affidavit of Gary Silverman, Esq., wherein he wrote, "Mr. Harrison must know that the teen exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody." As is evident from the letter I wrote on November 6, 2013, and the prior points and authorities I have submitted on this issue, it was never my interpretation of the teenage discretion provision that it could be utilized so that Vivian will have de facto primary custody.

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5. In all of the years I have practiced, I have never seen a teenage discretion provision interpreted in the manner this provision has been interpreted by Messrs. Smith and Silverman and certainly would never advise a client to agree to such a provision, as interpreted by Messrs. Smith and Silverman.

FURTHER AFFIANT SAYETH NAUGHT.

EDWARD KAINEN, ESQ.

SUBSCRIBED and SWORN to before me
this 21st day of April, 2014.

NOTARY PUBLIC in and for said
County and State

CAROL NAVARRO-BARCLAY
Notary Public State of Nevada
No. 92-4000-1
My Appt. Exp. December 27, 2016

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EXHIBIT 2

AFFIDAVIT OF THOMAS J. STANDISH, ESQ.
FILED IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Thomas J. Standish, Esq., being first duly sworn, deposes 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. I am the attorney for Kirk Harrison (hereinafter "Kirk"), the Plaintiff in case number D-11-443611-D. I am employed by the law firm of Standish Law Group, and am duly licensed to practice law in the State of Nevada. I was retained as co-counsel to Edward Kainen, Esq., for Kirk, in June 2011.

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

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

> 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.
>
> 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).

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 children from parental manipulation and abuse.

6. It is evident the bargained-for material provision prohibiting either parent from prompting or suggesting adjustments has been violated by Vivian Harrison. Ms. Harrison's manipulation and prompting of Brooke has undermined the entire Paragraph 6, as it was never intended that a child's wishes to modify the weekly custody schedule would originate with and be prompted by either parent. It also was never intended to empower a 14-year-old child to order her parent as Brooke has done and is continuing to do.

7. The manner in which opposing counsel and Ms. Harrison have chosen to interpret this teenage discretion provision (despite the Court's admonitions to the parties regarding the limited scope thereof) demonstrates that the intent of that provision has been undermined and has been used to prejudice Kirk Harrison. Given that, it is strongly suggested that paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, should be stricken by this court..

8. Kirk had never seen a teenage discretion provision before and did not know what it was. When he read it he expressed concern. I assured him with the changes I ultimately had made, it did not provide anything differently than the law otherwise provides. Kirk questioned if that was the case, then why was the provision necessary. I told him it was because Vivian was aware of teenage discretion and Mr. Smith said he had to have it in the agreement to satisfy his client.

9. I have read Mr. Silverman's affidavit wherein he wrote, "Mr. Harrison must know that the 'teen' exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody."

. . .

. . .

. . .

10. Although I did negotiate the teenage discretion provision with Mr. Smith, I certainly did not expect or anticipate what Mr. Silverman claims Mr. Harrison "must" have known. As written, it was my interpretation of the provision that after the age of 14 years, the child could make a request. It was never my understanding under this provision that a child could order a parent to make a change to the weekly schedule and the parent had to obey without question or discussion, and it would be irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to the younger sibling.

FURTHER AFFIANT SAYETH NAUGHT.

THOMAS J. STANDISH, ESQ.

SUBSCRIBED and SWORN to before me
this 21st day of April, 2014.

NOTARY PUBLIC in and for said
County and State

ALEX MATTER
Notary Public State of Nevada
No. 11-3960-1
My appt. exp. Dec. 9, 2014

EXHIBIT 3

Board Certified Specialist in
*Child and Adolescent
*Adult Psychiatry
Consultation
Forensic and Independent
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Norton A. Roitman, MD, DFAPA

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January 14, 2014

Kirk Ross Harrison v. Vivian Marie Lee Harrison
CASE NO.: D-11-443611-D

I was asked by Mr. Harrison's attorneys to review the documents listed below and prepare a reasoned opinion about the matter at hand (teenage discretion), with emphasis on the facts, allegations and circumstances of his children, Brooke Harrison (DOB June 26, 1999-age 14) and Rylee Harrison (DOB January 24, 2003-age 10).

The primary issue in the documents provided is whether the fourteen year old should be granted the ability to *request*, or the ability to *decide* changes to the weekly custody schedule. It is my understanding that the court has not yet ruled on this issue. For the purpose of my analysis I was asked to assume that, under this provision, the fourteen year old becomes the decider and is granted the authority to order her parent to make custody changes, regardless of the wisdom or judgment underlying her choices.

If the fourteen year old is given the role of decider, the court grants her the unnatural power to order her parents, escape responsibility and avoid chores, tasks and other familial responsibilities. It also puts her in a position to impress upon the younger child the powerlessness of her parents because it establishes her in a position above her parents by turning the family unit upside down.

Documents reviewed

1. Plaintiffs Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief (filed 10.1.13)

2. Defendant's 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 (filed 10.16.13)

3. Plaintiffs Reply in Support of Plaintiffs Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Plaintiffs 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 (filed 10.23.13)

4. Plaintiffs (sic) [DEFENDANT'S] Reply 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 (filed 10.28.13)

5. Order denying both Plaintiffs motion and Defendant's countermotion (filed 12.17.13)

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1. Plaintiffs Motion for a Judicial Determination of the Teenage Discretion Provision (filed 11.18.13)

2. Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees (filed 12.6.13)

3. Plaintiffs Reply in Support of Plaintiff s Motion for a Judicial Determination of the Teenage Discretion Provision and Plaintiffs Opposition to Defendant's Countermotion for Attorney's Fees (filed 12.13.13)

4.

Discussion

The issue of parity and quality of parenting

Much of the material in the motions and counter claims reads as a contest between the parenting parties competing for the parent of the year award. This is an unfortunate artifact of the adversarial process which demands the presentation of evidence and, to some degree, the denigration of the adverse party. While conflict is natural in court proceedings, in therapeutic settings it is discouraged.

In family therapies, each parent is valued and makes a contribution, regardless of who is better at any given function. It doesn't matter if one or the other is better at shopping, running the majority of errands, or picking up the kids at school. Their roles need not be identical, and it is not possible to quantify their contributions.

One parent may perform the most tasks but does so with a lack of empathy or coldness that is not so helpful as the quality of the other parent's relationship. The relative frequency of tasks and contact is not the determining factor in the emotional growth and well being of children. Caring as an emotional communication has impact regardless of the amount of time spent in driving, buying and watching. Unfortunately, the word "care" has both connotations, loving and doing and in adjudication, it can be confused.

Regardless of the strengths and weaknesses of any parent, the functionality of the parental unit is the critical issue. In both intact and divorced families, parental harmony does not have to do with equality. There are wonderful parental environments in which each party makes loving contributions even if one parent travels for work and the other attends to 95% of the care giving tasks.

Sharing parental responsibility is not defined by matching duties and time spent 50-50. Quality parenting is related to how parents compliment each other and through sharing, compensate for each other's weaknesses. The inevitable faults of one party can't be highlighted in the service of the parental contest without detriment to the children's best interests. In natural families, there are conflicts and differences of opinions. With court oversight there is a tendency to emphasize, instead of work through differences. The tendency for one parent to offer constructive assistance is undermined when there are motions and score keeping, which is also not best for children.

Court responsibility to foster cooperative parental relationships despite adversarial pressures

Even though divorce leads to separated households, children need to feel the intactness of the family. At every instance where decisions must be adjudicated, this factor of fostering harmony needs to be considered since harmony is the nature of "Best Interest" advocacy, the province of the judge. Since the adverse parties are not inclined to make the best interest arguments, except as they interpret it from their position, the judge's responsibility is to accept their oversight of the entire divorcing family unit and the ultimate outcome from the empathic perspective of the children. If not the court might as well relinquish the principle of best interests since it is becomes only a catch phrase and a ruse. Ultimately the court has the responsibility that the children's best interests are met.

In this regard, to enable the family to achieve its natural balance in the aftermath of divorce, there needs to be minimal third party intermediaries to inject their various values into the family scheme once the asset and custody separation is enacted. Successful families, whether divorced or not, cannot be continuously subjected to the scrutiny of adverse party claims and counter claims without promoting blame and deterioration of the nest-like feeling children need for their own psychological wellbeing and positive models for their own families once they get older. As soon as possible, after the family separation and breach, the system needs to be encouraged to heal to it's best potential. The only complaints that involve matters that are critical to the well being of the children should reopen the deliberation, and then limited to the least possible intervention. Like a wound in the process of healing, it should not be unnecessarily disrupted.

It is unfortunate when the differences between parents require court interventions. When chronic disharmony or dissemblance of the necessary conditions for adequate child development requires this, it's important for the court to make decisions to revisit the formula it came up with in the first place. The dominant best interest of the children principle should guide whether to disturb the new family system, and not to be distracted by the parental contest, no matter how compelling they seem on the surface. Both parties are injured and it is inevitable they will continue to revisit the divorce, and perhaps frame their fight by referencing the children. On closer look, the origin of the complaint is often obviously not that the child is having a problem so much as the parent is having difficulty parenting under the new split. It takes time to develop new patterns as a single parent and to withstand the absence of children who once filled the house. But loneliness, worry and a sense of abandonment is the fault of the failed marriage, not the former spouse or their parenting.

The decision to reopen the family wound must be decided by the court's estimation of the ultimate effect the matter and the perpetuating dispute will have on the children's growth and development in the long run. Some of the complaints that arise are inevitably due to the consequences of the divorce itself. How couldn't there be problems due to the failed marriage itself and the resulting changes in routines and households? Some complaints are due to this, reframed, often unconsciously as problems with the other's parenting. The court is wise to consider that what is on the surface, manifest in the complaint may not be what is underneath. The dissatisfaction with the divorced lifestyle can cause distress and a search for complaints to legitimize more motions, the most potent being allegations of parental inadequacy or abuse.

Since there is a certain amount of inevitable dissatisfaction that comes after divorce, it behooves the court to discern what are significant complaints in the direct effect on the children. Divorce does not produce monster parents, and what had been safe enough exposure to a married parent can't be converted to unsafe just because the parenting alliance was broken apart. There are always child risks to parents arguing, and the potential benefits should be weighed against more fighting.

It would be better for the court to guide parents toward approaches that foster resolution instead of adversarial attacks during the divorce aftermath. Both parents should be guided to find ways forward to work with each other, even though the divorce itself may have hurt their feelings even more. This is in the best interests of the children, since their parents should be able to go to graduations, awards, sports events, and other child centered hallmarks as soon as possible after the separation. The ability

accept the imperfections of the co-parent rather than picking the brittle union apart about where and how they shop and other trivialities.

There is an emotional cost to every debate, whether the children are privy to it or not. Parents can't make, or keep certain commitments to their children when everything is put up in the air again. The effect of proceedings that necessitate re-confrontation with the unwanted former spouse has on time, financial expense, mental tormented, stress, attitude, fatigue, and unsettled mindset of parents can't be shielded from the children, even if none of the facts are discussed. A new battle has to be worth it to the children, not the parents, since more family pain and debate throw the children's new conditions up in the air, yet again.

The issue of teenagers' custody preference

Cost versus benefit to open this matter in the first place

In this matter, the court is being to asked to rule on the preferences of a fourteen year old and granting her a power over her parents, and therefore control over her entire family. The court is in the position to decide to what degree a teenager's wishes should determine her regulations. I have been asked by Mr. Harrison's attorneys to offer my opinion about his duty when his daughter wants to go over to her mother's house. Brooke thinks she should be get what she wants on demand and her mother agrees. Mr. Harrison would like to reinforce his concept of family unity despite his daughter's desires, a normal and necessary function of a responsible parent.

The first consideration is whether this matter holds the weight necessary to reopen the fighting. As discussed above, does this issue benefit the children enough to restart a battle? How positive will the outcome be to decide to change the way this divorced family has been operating since the dust settled? What are the unforeseen consequences? Will this issue of low significance lead to issues of higher significance in relationship to psychological impacts once this precedent is set? The court must decide if this matter is of sufficient weight before removing the bandage and letting the parties pick at the scab. Is this matter worth it to risk restarting this particularly disruptive conflict?

The domain of the court versus parental traditions and culture

Pertaining to the content of the teenager discretion issue and its consequence, the decision relates to the tricky issue of structured versus laissez-faire parenting. By empowering a teenager, the court imposes it's values and in so doing it determines how this family will work, despite the familial and religious traditions and family culture.

The decision about how much control a child has over their lives and future is poised against how much parents should. Although on the surface the teenager discretion seems to be just about custody time, underneath it effects the organizational structure of both families.

Changing developmental needs

A young child must be told what to do, when and how. The older the child gets the more important it is to gradually lessen their structure and let them exercise their own judgment, witness the consequences of their decisions and prepare them in this manner to eventually assume responsible control over their own lives. Chronological age is not the key factor since it only measure physical

maturity, and even then there is wide variance. The slow transition from child to independent young adult must be individualized. Their capacities across a range of opportunities and responsibilities needs to be observed over time to get an accurate sense of how much they can handle, and what they can't. There needs to be discussion, correction and guidance in conversations about successes, and failings. The better judgment a young person demonstrates, with proper preparation, the more latitude they should be given. They should never be given so much say-so that they could ruin their lives.

A fourteen child is in the in between years. While they are more apt to express what they want and don't want, many are still no more capable of making informed and reasonable decisions than when they were younger. At this age they are likely driven by pubescent impulses and passions. Sometimes in teenage years the level of responsibility and forethought the child had earlier goes down. They are under the influence of their generation's culture and are exposed to peers from diverse family systems and neighborhoods. They are pulled and tugged by their bodies, their friends and the demands of their other activities. Temptations and fear abound.

Context of teenage discretion in this matter in particular and in divorce cases in general

In the matter before the court, along with the above considerations, this fourteen year old may be allowed to disrupt her family system. Even in the best of circumstances, the court giving the adolescent decision-making power over the family system of questionable psychological benefit. In the case of this family in particular, her choices are being made in the throes of constant parental dysfunction and allegations of unhealthy influence. The ruling will effect the parental authority not just regarding this matter of time spent, but to all other issues for the next four years, since the adolescent has basically veto power. It set up the conditions in which the winning parent will be the indulgent parent and in this way, the youth escapes accountability. There are no redos when it comes to child development and mistakes are irreversible. Only in delinquency, dependency and divorce is the state, through the court, given parental override.

The willingness of the court to reenter into the fray of custody and it's implications is questionable from a child psychiatric perspective. Authorizing a non-adult with a vested interest in their own pleasure can intoxicate them with power by undermining the relationship with family authority. Children need their parents, not a court to chose winners and losers except where the child's health issue is critical and the differences between parents are detrimental and truly irreconcilable. A narrow participation is preferable to a global dictum, such is the case with the teenager discretion ruling.

Courts are unlikely to properly substitute for parents in teenage custody discretion and other matters

Instead of promoting the re-empowerment of the child's parental environment after a tumultuous divorce, inserting the adolescent as the controlling party is an error. To do so is serious and ill advised from a psychiatric perspective. Placing the adolescent in the position of deciding when she is going to be with whom, even within an intact, functional family is a bad idea. The teen should be granted increasing levels of authority in a step by step fashion so their expanding independence is supervised. At first they should not be given so much latitude that they can make irreversible mistakes. Healthy families don't allow the child to go with one or another parent on impulse, just because they might be angry, or for some adolescent reason that don't make sense to the family as a whole. A preference is

often expressed and encouraged on certain matters, but not on all. There are often nonnegotiable decisions, such as education and health, some that are discretionary, such as style (within reason) and menu choices, and others that are in the in between area in which their judgment is under development, such as driving, curfew and career choice. Each family decides which decisions belong in which category.

In the developmental domain, the teenager's preferences should be expressed, but it is the parents who make the plans. It is critical for the child's well being to know they are not the boss of everyone, since they are not yet ready. Anxieties often accompany premature authority.

Adversarial positioning is not the best interests of children

Also, in successful families, the child is expected, by both parents, to respect each parent, even if there are disagreements. Psychological structures form in the mind that have implications on self image and future relationships. How many times have counselors heard clients and patients refer to their parents as the determining factor in their current habits and attitudes in their own relationships and their approach to their own children. Human development requires a period of time during which offspring depend on parents to hold opinions, set limits and grapple with differences. What follows this psychological incubation is a gradual relinquishment of parental authority when each individual child becomes ready.

Parents disgracing and fostering doubt towards the other, treating the other with negativity, competing for the children's attention and affection by using their parental authority to satisfy their personal needs causes families to fail, and often leads to the beginning of therapy.

Referring the parents to a court authorized psychologist who is granted decision making powers by proxy instead of the mission to repair the family's faulty controls is very serious and should only be enacted after it is apparent that there is a serious hopeless inadequacy and only after repeated efforts to conduct parents into a functional parenting unit, working out methods and communication, and establishing common ground and interests.

When there is no hope of basic harmony enough to function as a unit, which is an inarguable child best interest position, only then should the court act in ways that amounts to parental substitution, but even then, should not presume it knows what the adolescent is capable for doing from an interview or a letter. The skill to present oneself in a positive and assertive light does not mean the party has responsibility. The definition of character is what a person does when no one is watching, and the Diagnostic Statistical Manual of the American Psychiatric Association, current edition (DSM 5) does not grant the possibility of full character development until a person is eighteen years old.

When the court has no choice other than to assume parental responsibility, to avoid becoming the source of further psychological injury to the children, it needs to conduct itself in manner and tone so as not to further separate parenting parties or to foster, reward or encourage difference. It needs to be focused on the health and wellbeing of the children's family system, which is the life support for them until they are able to make choices.

Unintended consequences of court authorization of teenage discretion
Arbitrary powers

Before the court erodes parental authority, there needs to be sufficient justification, which, in this case, there isn't. Granting parental authority to a fourteen year old sends a message to the youth that what she is doing, how she is feeling, and what she is thinking at fourteen, has reached the age of majority in these matters, and her personal conduct, whether seriously deliberated or not, is sanctioned. This partial parentification opens the door for radical decisions once the novelty and anxiety of her power wears off. This can happen because it supports a false notion of what the child decides is equivalent to adult judgment and power. This risk intensifies unhealthy adolescent entitlement which is already a problem with this age group. Teenage rebellion, opposition, all or none thinking, and a confusion between desire and judgment is prominent. It gives the child the right to tell the parent, "Take me to the other household right now. Why? Because I say so." Giving permission for everything elaborates the narcissistic tendencies older children need to grow out of by the time they are adults.

Interferes with self discipline and frustration tolerance

The most critical developmental task of adolescence is practicing and perfecting self discipline, which is always at the expense of desires. If a person does what they should do, there is no need for any kind of discipline. Commitment is taught and does not arise automatically. It comes from experiencing the benefits of sticking with something a person does not want to do.

Frustrating the deleterious tendencies of teenagers is the most difficult and important parental skill. Counselors tell parents that they can't be their friend, which means they can't please their children and should not compromise what is necessary for their children's health and psychological well being. At first glance stating that parents are supposed to frustrate their children may sound counter intuitive and unloving. On the other hand since everyone can't have what they want outside the family either, it is best for the children to be told, "No," by someone they know loves them. The alternative to frustration is indulgence. Spoiling a child or always giving them what they want which doesn't promote the decision making capacity young adults must have to achieve in college and live independently.

Repeated indulgence and inability to tolerate frustration is associated with self destructive behaviors later in life. If a child doesn't learn what their frustration feels like and how to cope with it, they don't learn to deal with urgency, despair or inner distress. Since the template of their experience is fixated in their early years, they have an unchecked visceral sense that all authorities, like their parents before them, are supposed to serve them for their gratification. Working independently in school or taking supervision at work is more difficult when an 18 year old feels that the social contract is that others are there to fill their needs.

Inability to tolerate frustration is seen in young adults with substance abuse and addiction, immaturity in relationships, antisocial conduct, psychosomatic symptoms, attitudinal problems, promiscuity and delinquency. If not properly shaped within the family, the urgency of emotions is intense and often intolerable. The young adult can't stand not getting what they want, have no psychological strategies to delay gratification, and can't develop long term plans to achieve happiness that comes from work

and planning. Without practice and rehearsing the effort it takes to resist gratification, when faced with the requirement to sustained effort, they seek the kind of instant gratification that comes with drugs, sex, fantasy and impulsive behavior.

Misplaced and inappropriate authority and its affect on family dynamics and sibling well being

A developing adolescent needs to be given discretion over some decisions to foster independence, but it is irresponsible to give to them the key to determine how her family works, the power to reject parents, replace them, set into motion a contest to see who is more apt to grant her wishes, reduce her responsibilities and punish and reward the one who does not frustrate her. The decision of where she is when, subverts the effort and expense of determining the custody arrangement already deliberated with her override, backed by full force and authority of a judge.

The authorization to write and change the custody arrangement on demand is deeply entrenched in, how the family works, and therefore on the family experience of her younger sister. Already in turmoil due to the long standing disturbances between parents sustained and serious enough to decide to end the marriage, the exacerbation of the conflict in the conduct of the separation and divorce, the impact of the changes in households and time with parents, the younger child now sees her sister being able to control parents by coming and going on a whim. A fourteen year old is not expected to see her role in the life of the sister, especially since very few teenagers have empathy towards their younger siblings.

It is not uncommon for teens in intact families to want to leave their little brothers and sisters and wish they had an alternative place to go. The sibship, though, is effected by these escapes and may take an entirely different course for the rest of their lives. Values in dependency court have turned toward preserving sibling groups. The teenage discretion allowance is 180 degrees opposed to this principle. The stress of giving the responsibility for the bond with her little sister and the impact on their future relationship should not be given, but imposed. The family unit should be not taken for granted and not be continuously up to negations with the teenager making the final decision. Later in life both sisters could regret that the younger one was left behind feeling like a loser, rejected and powerless.

While the teenager thinks she is just going over to the other parent's house, and it is no big deal, she has no experience making decisions about what is best for her in the long run, the effect on her sister, or how a family should work. The teenage discretion provision inevitably can negatively affect the younger daughter who does not have this 'right,' but may, as seeing it implemented, long to get it. In her mind she can feel less than the other child. She sees a parent rejected, perhaps in the middle of an argument, demand a ride. She can see disrespect for parental authority and their powerlessness. She can be left by her sister at the drop of a hat and can't depend on long time periods with both families. Modeling on her sister she is encouraged to accept that momentary emotions, temptations and enticements are the basis for decision making. It is never a good idea to allow the teen to abandon the sister or a parent in the middle of a dispute. They need to work out differences and reestablish their bond, and accept the results whether with a sibling or a parent.

Allowing the adolescent discretion over her stay not only rewards impulsivity, it gives her the power to control her parents. Although currently she expresses her wish to be with her mother, in the future she may reverse this, especially as she gets older and has even more of a mind of her own. Her mother may regret this. It also sets the situation of parental rejection, causing the child to chose to leave in an argument.

Choosing parental messages

In this situation, the fourteen year old tried to avoid having her father being present during parent observation of a dance class in which the child thought the dancing was provocative. Her efforts were rewarded by the other parent. His daughter was anxious about what he would think, and her mother helped her dismiss her father's input. The approach to the child's best interest would be to preserve her father's role and participation in her life. Regardless of the unpleasantness, every child needs to hear from the opposite sex parent about certain matters such a social appropriateness. The other parent should not colluded with the child's tendency to bypass her father's opinion and guidance. The more he is discounted, the less his credibility, and a girl will go to other males to reflect their sexuality. Divorce problems should be mitigated by the court, not exacerbated. Permitting a child to avoid the moral guidance of either parent is not a best interest outcome. Both parents, whether the child likes it or not, needs to be constructive in the child's developing morality and religion.

Differences between the parents in this and other matters need to be heard in order for the teen to receive the benefit of having two parents, especially if they are not identical. Psychological research shows that sexual identity is often determined by the regard and attitude of the opposite sex parent in combination with the modeling of the other. Since this is in the process of being set, father should not be discounted. How many teens ask to be restricted and advised in more conservative ways? If they can reject his guidance on this matter, they can erase the other parent and leave themselves open to temptation, indulgence and unhealthy freedoms. This situation allows for the other parent to loosen their morals to get the child to be with them, creating a race to the bottom. A teen can be allowed to threaten, reward and punish parents with her decisions, turning parental authority upside down. It can result in parents feeling lonely for their daughter, or acting on behalf of the other child, to contemplate how to entice their daughter.

Interference with the repair of the emotional breach caused by the divorce

Instead of preparing divorced parents for the more difficult tasks ahead, sanctioning the momentary decisions of an older child can inflame continuous competition, rejection and resentment that the parents should be helped to go beyond. At some point every party needs a new set of unchanging circumstances if they are going to feel resolve. Instead this provision put everything in flux and does not allow anything to be taken for granted. Although proposed as a remedy, encouraging the child to take part in the court proceedings by expressing her wishes to the court encourages a third party to try to influence the court, further complicating the lines of authority and deliberation, especially as she gets older and more sophisticated.

Not allowing an issue to close, especially that as sensitive to the family system as custody, perpetuates the contest between parents who can use this as an opening to act out the inevitable anger and disappointment that comes with compromise.

Children both need time to know and learn from each parent. It is also important for children to witness their parents having their own problems. Children need to see how their parents deal with problems and rectify mistakes, and sometimes apologize. If allowed to escape every time they are upset, the child is more likely to leave instead of address inevitable issues in their future relationships.

Fluctuating terms of visitation and custody and ill effects on character development

Although underappreciated, the terms of a visit home is important. In so many ways life experiences are segmented into minutes, hours and days. Greetings, welcomes, adjustments and sustained periods are the nature of home, school and times with friends and family. Every experience has a beginning, middle and end. Children especially should be able to anticipate a visit and mentally and in other ways prepare themselves, their things, greet and adjust. Near the end of a stay, children start to transition and say their goodbyes. When parents are well coordinated they facilitate the children's routines.

After the transition, a certain amount of time is needed for the family to form and function before preparing for the next transition. Without regularity the child can internalize a sense of chaos, often experienced as anxiety. Humans relate to each other through these units of time and to some degree, everyone goes through the three stages of experiences, and find it disruptive when there are sudden changes. Well constructed separations are vital experiences. The good byes are as important as the visit and the greeting, all part of what help people become civil and graceful. This is especially challenging with many adolescents who fall so deeply into one or another experience in a moment, distracted by medial and devices, they depend on the adults to construct and maintain the structure of their lives. When they can't immediately get what they want they learn the importance of planning and priorities. While they go in and out, they need the parents and adults to reinforce the hellos, stays and goodbyes, helping them in nonverbal ways to incorporate what relationships are about and how they are facilitated. When a child is permitted to leave on demand the regularity is disrupted. Experience can become disorderly, hasty and confused, triggered in an instant from a variety of sources, not always within the family system. It is not unusual for a teenager to become irritated and seek some relief. When they have the power to require their parent to drive them to the other parent, when they feel powerless for any reason they can resort to this remedy.

Long term psychological impacts on teenagers manifesting when they become adults

Another psychological consideration in the matter of teenage discretion release from parenting on demand policy is the after effect of guilt the child can experience later in life. She may realize when she is older, after the negative energy of the divorce and earlier conflict laden childhood dissipates, that she doesn't really know her father. Once they are more experienced with their own lives and meet more people, they come to realize that they had a perfectly good father who they never got to know well because they were given the authority to reject him. She could wonder why she was given this decision to undermine their relationship. Often in therapy, adults talk about how being spoiled in childhood was a handicap.

Getting what they wanted didn't help them develop their skills. They regret that they were given the parent role instead of the healthy constructive limits they needed at a critical juncture of their childhood. They feel a special kind of regret when they feel like they are missing the ability to work

things out with their partners, spouses or deal with their own children because the program they needed was never installed. Tolerance, forbearance, patience, communication and forgiveness are part of any successful relationship. Indulgence is often at the expense of growth.

Interference with preparation for the future

Hopefully resolve will allow each parent to pick up the pieces of their family and stop looking for faults that undermine the other parent's rights. Accepting the divorce on a profound psychological level and living out the inevitability that the family will have to live out the aftermath of a failed marriage stops claims and counter claims that makes the divorced situation much worse. The sooner acceptance and resolve can occur the more likely a functional divorced family system will develop, instead of moving the goal posts and rules all the time.

Sometimes with therapeutic assistance, divorced parents can look forward to prepare for unavoidable sharing, family celebrations, weddings, graduations, the birth of grandchildren and grand parenting in a way that gives their children and their grandchildren an example of success, instead of perpetuating failure and dysfunction that can continue through the generations.

Giving an adolescent, even a mature one, the ability to continually split the parents who then register and record complaints will not help them develop the vision of how to work everything out for the sake of the children and their children and in laws. While some sharing means taking turns, there is sharing that must be done together. Grace and experiences of good coordination is most likely to create the positive future, and allow the children to concentrate on themselves and their lives, instead of being distracted by the issues and complaints of their parents.

Principles of adjustment and interference of court interventions after divorce

Although it is referenced repeatedly as a guiding principle, children's happiness is not the goal of parenting. Developing sound, resourceful and responsible adults is the purpose of parents and family so one day they can make themselves happy with sound choices and intelligent conduct. When making a child happy today interferes with happiness tomorrow, a wise parent's choice should be for tomorrow, even if they have to witness some tears and some anger. When the court is directing the parents, they should consider the same.

Child rearing needs to instill sustaining nutritional traits while happiness is fleeting and is difficult to discern from pleasure. In many ways it is the job of children and teenagers to seeking happiness and pleasure, while parents guide them and deal with unhappiness so that they can do the right thing without so much distress and invest their efforts to a positive future. The end of childhood should be the emergence of functional adults, not just indulgent memories and the sense that the best time in their lives is over.

Unobvious motivations for teenage discretion contrary to child's best interest principle

Although a teenager's request to go to the other parents house seems simple on the surface, it is actually a demand, with the power of the court behind them. They establish when and where a law is to be enacted, and can cause their parent to be in violation. They are then reporters to authority on the wrong doing of their parent, just because a parent wants the family to get through an unpleasant

dinner or a family dispute. Beneath the surface of the teenage discretion principle is a practice that is fraught with psychological challenges, not all of which are always immediately obvious. As an example, often children are under the control of the most expressive, most fragile parent because they feel they are the source of the parent's happiness and pain. The other parent, they sense, will be okay without them. The more intact and forgiving parent is easier to hurt.

The most intense parent can dominate a child's mind as they become preoccupied with anticipating the impact their decisions have on the more angry, volatile or unstable parent. Over focus on the intense and emotional parent set up sacrifices the child's emotional growth. A court making its decisions based on what a child says she wants may make this situation worse. The judicial process doesn't lend itself to the nuances of this sort. Regardless of instant preferences, a reasonable budget of time with each parent so she can remain close with both and benefit form their parental contributions is less apt to make mistakes than giving the process over to emotions.

Psychoanalysts discuss keeping a lid on the pot to let it simmer to produce a great tasting meal. They use this as an analogy to a family since it is necessary for them to have problems and find ways to work them out. Children are not always willing be properly parented. Many have to be held back from poor choices ranging from diets, tattoos and piercings and social activities. Teenagers are normally rebellious and often view parents as unreasonable and unnecessarily strict. Giving them the latitude to escape a parent's limits does not permit the youth's character to mature and deepen because the lid can be removed from the pot whenever it becomes uncomfortable. Skittish impulsivity should not be supported. Commitment should be encouraged. This guidance distinguishes a child's wishes from their best interests.

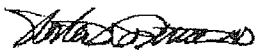
It is not in the best interests of teenagers to be given the authority to decide when and where to spend time with their parents, especially when they are undergoing such tremendous changes themselves. Once they are young adults, they are allowed to drive, drink alcohol, vote, incur debt and enter into contracts, live alone and make the decision about who to visit and when. There is no scenario I can imagine in which giving children the right to direct their parents over matters as important as custody and visits not only because it allows for escape from being parented, but because of the wide implications of the dissolution of parental authority and the adjustments the entire family undergoes as a result.

This grant is especially egregious when a younger child is exposed to the unsound and narrow decision making of an older sibling. The sister can see an older sister be self absorbed, reward and punish parents, indulging her momentary feelings, and the chaos that results when children are allowed to parent their parents.

Conclusion

In the best case scenario teenage discretion over custody on demand is ill advised and poor parenting. In the worst case, it is deeply damaging. It is impossible to predict based on the status of a fourteen year old because once implemented and enforced, all parties can be changed by this to the deficit of all parties.

Unless the situation is extreme, the court should not override its own deliberated custody arrangements by giving the youth, who can at this age be moody and inconsistent, a blank check to do whatever they want. When the situation is so bad, the court should determine the custody arrangement based on the knowledge and wisdom derived from the judicial process. On face value it is only custody, but the impact of what amounts to a get-out-of-the-house-free card is a court sanctioned runaway and negatively compromises the entire parenting scheme. I can't envision any scenario where it would be in the best interest of a teenager to be able to order a parent to modify their custody schedule. This is especially true when younger siblings are affected by those decisions.



Norton A. Roitman, MD
www.NRoitmanMD.com
Board Certified in Developmental and General Psychiatry
Clinical Professor of Psychiatry and Pediatrics
University of Nevada School of Medicine
Distinguished Fellow of the American Psychiatric Association

Qualification: The above report was developed from materials sent by the referring party only, there were no examinations of the parties involved. These opinions are offered based on the understanding of the issue gained from the review of records. This report does not constitute the start of treatment. The materials sent by Mr. Harrison and this report are the only documents in the file held by this office for this aspect of expert consultation to Mr. Harrison. Additional discovery could lead to a reconsideration of these findings.

EXHIBIT 4

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

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

ORDER FOR APPOINTMENT OF PARENTING COORDINATOR

The Court having considered all of the pleadings on file herein, and good cause appearing, does hereby Order the appointment of a Parenting Coordinator under the following terms and conditions:

. . .

. . .

. . .

1.0 AUTHORITY OF PARENTING COORDINATOR

1.1 This Court is not and shall not delegate any judicial authority to a Parenting Coordinator in this matter. This or any subsequent appointment of a Parenting Coordinator is not made pursuant to NRCP 53(a) and is not intended to be a delegation of judicial authority pursuant to said Rule.

1.2 Notwithstanding anything elsewhere contained in this Order, the Parenting Coordinator, upon the request of one or both parties, shall have the authority to make non-binding recommendations to the parties concerning custody matters and, upon the mutual assent of the parties, informally mediate custody matters with the parties. The Parenting Coordinator shall have no authority whatsoever to make binding decisions which affect the parties custody of their children.

1.3 In the event either party believes it to be in the best interest of the children or either one of the children, that party may, at any time, seek an order from this Court regarding a custody issue or issues, irrespective of whether the Parenting Coordinator has not addressed the issue, is presently addressing the issue, or has already addressed the issue.

1.4 In the event this Court addresses a custody issue or issues previously addressed by the Parenting Coordinator, this Court's analysis and determination shall be *de novo* and shall not give any deference whatsoever to any recommendation or recommendations previously made by the Parenting Coordinator.

1.5 The Parenting Coordinator is a neutral jointly retained to assist the parties to mutually and expeditiously resolve custody issues by making non-binding recommendations to the parties, and when the parties first agree, to informally mediate custody disputes. As a neutral in an advisory capacity, the Parenting Coordinator will not provide testimony or any written reports to the Court.

1.6 The Parenting Coordinator may make non-binding recommendations, upon a request by a party or both parties, concerning disputes regarding the implementation of the parenting plan, the schedule, or parenting issues.

1.7 The Parenting Coordinator may make non-binding recommendations, upon a request by a party or both parties, concerning the implementation of the parenting plan, including, but not limited to, issues such as:

(a) transitions/exchanges of the child including date, time, place, means of transportation and transporter;

(b) holiday sharing;

(c) summer or track break vacation sharing and scheduling;

(d) communication between the parents;

(e) health care management issues, including choice of medical providers and payment of unreimbursed medical expenses (including dental, orthodontic, psychological, psychiatric or vision care), pursuant to the Court's order for payment of said expenses;

(f) education or day care including but not limited to, school choice, tutoring, summer school, and participation in special education testing and programs;

(g) child's participation in religious observances and religious education;

(h) child's participation in extracurricular activities, including camps and jobs;

(i) child's travel and passport issues;

(j) purchase and sharing of child's clothing, equipment and personal possessions, including possession and transporting of same between households;

(k) child's appearance and/or alteration of child's appearance, including haircuts, tattoos, ear, face or body piercing;

(l) communication between the parents including telephone, fax, e-mail, notes in backpacks, etc. as well as communication by a parent with the child including telephone, cell phone, pager, fax, and e-mail when the child is not in that parent's care;

(m) contact with significant other(s) and/ or extended families.

2.0 PROCEDURES AND RELATED REQUIREMENTS

2.1 All written communications by a party to the Parenting Coordinator shall be copied or provided to the other party, concurrently.

2.2 In the event it is reasonably deemed necessary by the Parenting Coordinator, after a request for a non-binding recommendation by one or both parties, the parties and the Parenting

Coordinator shall each use their respective best efforts to schedule a meeting and/or appointment with the Parenting Coordinator. The Parenting Coordinator shall reasonably determine in each instance whether an issue warrants an in person meeting with the parties. Telephonic conferences are encouraged when reasonably sufficient.

2.3 In the event both parties agree to informally mediate an issue with the Parenting Coordinator, the parties shall participate in good faith in an initial mediation/conflict resolution process with the Parenting Coordinator in an effort to resolve a dispute. Should mediation result in an agreement, the Parenting Coordinator shall prepare a simple "Agreement" on the subject for signature by each party and the Parenting Coordinator. The Parenting Coordinator shall send a copy of the Agreement to each party; the parties shall each sign the Agreement, have it notarized, and return their copy to the Parenting Coordinator within two weeks.

3.0. NO PARENTING COORDINATOR CONFLICTS

3.1 The Parenting Coordinator may not serve as a custody evaluator, investigator, neutral negotiator, psychotherapist, counselor, attorney or Guardian ad Litem for any party or another member of the family for whom the Parenting Coordinator is providing or has provided parenting coordination services.

4.0 SCHEDULING:

4.1 Each parent is responsible for contacting the Parenting Coordinator within ten days after the appointment of the Parenting Coordinator to schedule an initial meeting.

5.0 EMERGENCY COMMUNICATION WITH THE COURT:

5.1 Upon request, the Parenting Coordinator shall work with both parents to resolve conflicts and may make non-binding recommendations for appropriate resolution to the parties and their legal counse. However, the Parenting Coordinator shall immediately communicate in writing with the Court without prior notice to the parties, counsel or a guardian ad litem, in the event of an emergency in which:

5.1.1 A party or child is anticipated to suffer or is suffering abuse, neglect, or abandonment.

5.1.2 A party or someone acting on his or her behalf, is expected to wrongfully remove or is wrongfully removing the child from the other parent and the jurisdiction of the Court, without prior Court approval.

5.2 A copy of the written communication to the Court shall be submitted to Metro, CPS, and to the parties, by the Parenting Coordinator.

6.0 PARENTING COORDINATOR FEES/EXPENSE SHARING

6.1 Hourly fees for the services of the Parenting Coordinator shall be mutually set by the parties and the Parenting Coordinator pursuant to a written agreement, but said fees shall not exceed such fees as are customary in Southern Nevada for such services. All fees shall be advanced equally by the parties. The Court reserves jurisdiction to re-allocate said payments between the parties.

7.0 APPOINTMENT

7.1 _____ _____, is hereby appointed as Parenting Coordinator in this matter under the terms and conditions set forth herin . The Parenting Coordinator's full name, title, mailing addresses and phone numbers are as follows:

Name: _____

Street Address: _____

City: _____ _____ State: _____ Zip: _____

Telephone #: _____ _____ Fax # _____

E-mail: _____

8.0 TERMS OF APPOINTMENT

8.1 The Parenting Coordinator is appointed until discharged by the Court. The Parenting Coordinator may apply directly to the Court for a discharge, and shall provide the parties and counsel with notice of the application for discharge. The Court may discharge the Parenting Coordinator without a hearing.

8.2 Either party may move this Court at any time to discharge and/or replace any Parenting Coordinator who is appointed hereunder. The Court may discharge and/or replace the parenting coordinator upon good cause shown, or, alternatively, in the event good cause is not shown, but, in the

sole discretion of the Court, the Court concludes it will be in the best interest of the children and/or the parties.

8.3 In the event that the Parenting Coordinator is discharged, the Court will furnish a copy of the Order of termination of the Parenting Coordinator to counsel.

Dated this _____ day of _____, 2013.

_____
DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
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 5

Kirk Harrison

From: Mary Jo Nyitrai [mjnyitrai@yahoo.com]
Sent: Thursday, February 20, 2014 1:09 PM
To: kharrison@harrisonresolution.com; vivianlharrison@aol.com
Subject: Parenting Coordination with Margaret Pickard
Attachments: Welcome Letter - Parent Coordination.pdf; PC Agreement.pdf; Parenting Coordinator Consultation Form.pdf; Credit Card Authorization Form.pdf; Release_for_Child_Interviews MEP.pdf; CCSD School Release - Harrison.pdf; HIPAA.pdf

Kirk and Vivian,

Our office was notified that Margaret Pickard was appointed by Judge Duckworth to serve as your Parenting Coordinator. The Court refers child custody cases for Parenting Coordination when there are ongoing issues regarding child custody. The Courts have provided Parenting Coordinator's with the judicial authority to resolve parent/child and custody/visitation issues. Margaret is an attorney, author, and educator, specializing in family mediation and high conflict custody cases. She currently serves as a Special Master/Parent Coordinator and Family Law Mediator for the Las Vegas Family Courts and provides weekly UNLV Cooperative Parenting seminars for Family Court litigants, as well as continuing legal education courses on high conflict custody for Nevada Family Court judges.

The primary goal of Parent Coordination is to provide parents with a forum for resolving child-related disputes outside of the courtroom. The responsibilities of a Parent Coordinator include providing parents with problem-solving and conflict management services, monitoring compliance with court orders, and providing parents, attorneys and the court with recommendations for new or modified parenting time provisions and/or other child related issues, as necessary.

The information attached will assist you in beginning the Parent Coordination process. Please review these documents, sign them, and send them back to our offices with a retainer of $2,000.00 from each party. The releases will be kept on file for use if and when they are needed.

Once the client intake documents and retainer is received, we can schedule your initial consultation with Margaret.

Please feel free to contact us if you have any questions.

Regards,

--
Mary Jo Nyitrai
Paralegal to Margaret Pickard, Esq.

MARGARET PICKARD PLLC

10120 S. Eastern Avenue, Suite 140
Henderson, Nevada 89052

(702) 595-6771 Office
(702) 605-7321 Fax

Mediator and Parenting Coordinator
NevadaMediator@gmail.com
www.MargaretPickard.com

MARGARET PICKARD | PLLC

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Mediation – Parenting Coordination
NevadaMediator@gmail.com

An Overview of Parenting Coordination

The Court refers child custody cases for Parenting Coordination when there are ongoing child related disputes. The primary goal of Parenting Coordination is to provide parents with a forum for resolving these disputes outside of the courtroom. The responsibilities of a Parenting Coordinator include monitoring compliance with court orders, resolving minor custodial issues and providing the court with recommendations on child related issues when the parents are unable to reach an agreement.

The information enclosed will assist you in beginning the Parenting Coordination process. Please review these documents, sign them, and send them back to our offices with your retainer.

READ CAREFULLY PRIOR TO THE INITAL CONSULTATION

Parenting Coordination Goals

The goal of parenting coordination is to assist the parties with the following issues:

i. Facilitate the resolution of disputes regarding the implementation of the parenting plan, the schedule, or parenting issues, provided such resolution does not involve a substantial change to the shared parenting plan, as defined by the Court's Order.
ii. Direct as necessary, one or both parents to utilize community resources, such as counseling, anger management, psychiatric and/or medical evaluations, etc. with the Parenting Coordinator to have access to the results of any psychological testing or other assessments of the child and/or parents.
iii. Implement non-substantive changes to, and/or clarify, the shared parenting plan, including but not limited to issues such as:
    1. Transition/exchanges of the child including date, time, place, means of transportation and transporter;
    2. Holiday sharing;
    3. Summer or track break vacation sharing and scheduling;
    4. Communication between the parents
    5. Health care management issues, including choice of medical providers and payment of unreimbursed medical expenses, pursuant to the Court's Order for payment of said expenses;
    6. Education or daycare;

7. Child's participation in religious observances and education;
8. Child's travel and passport issues;
9. Purchase and sharing of child's clothing, equipment and personal possessions, including possession and transporting items between homes;
10. Child's appearance and/or alteration of child's appearance including haircuts, tattoos, ear, face, or body piercing;
11. Communication between the parents;
12. Contact with significant others or extended families;
13. Requiring the signing of appropriate releases from each parent to provide access to confidential and privileged records, including medical, psychological or psychiatric records of a parent or child;
14. Reporting to the Court compliance with the parenting coordination process which could include recommendations to the Court about how to more effectively implement the parenting coordination process;
15. Reporting to the Court the extent of the parent's compliance with other Court orders (therapy, drug tests, child therapy, behavior orders) with or without providing a recommendation on what should be done regarding any lack of compliance;
16. Individually communicating with, and providing information to, persons involved with, or providing services to, the family members, including but not limited to, the custody evaluator, lawyers, teachers, and school officials, physical and mental health providers, grandparents, stepparents, significant others, or anyone else the Parenting Coordinator determines have a significant role in the life of the family; and
17. All additional responsibilities/authority granted pursuant to the court order.

Parenting Coordinator Recommendations

In the event an agreement cannot be reached, the Parenting Coordinator will, based upon the directives of your *Order for Appointment of Parenting Coordinator*, make a formal *Recommendation* to the Court. Prior to making a *Recommendation*, the Parenting Coordinator will notify the parties in writing that an agreement could not be reached and I will, therefore, be submitting a *Recommendation* on the issue to the judge. Once a *Recommendation* is filed, each party has 10 days to file an *Objection* to the *Recommendation* with the Court. If one party files an *Objection*, it is recommended that the other party notify the Court of his or her position with regard to the Recommendation. If no *Objection* is made, the Court has the authority to sign the *Recommendation* to make it a formal *Order* of the Court after 10 days have passed with no *Objection* on the record.

Co-Parenting Tips

- ***Custodial Exchanges:*** Minimize parental exchanges and exchange through school and daycare when possible.

- ***Communications:*** Limit communications to emails except for last minute exchanges or emergencies. Emails should be limited to 4 sentences (20 words per sentence) and must only (1) request information or (2) provide information.

- ***Parenting Coordinator Involvement***: If a dispute arises which you are unable to resolve with your co-parent, please notify me by email at MargaretPickard@aol.com and I will address the issue with both parties within 48 hours.

- ***Email Notification***: All email communications sent to my office MUST be simultaneously copied to the other party; emails which are not copied to the other party will returned and not be considered by my office.

Filing Motions with the Court

In the event either party files a *Motion* with the Court regarding a custodial issue or any issues related to Parenting Coordination, a copy must be provided to the Parenting Coordinator. The Parenting Coordinator will review the Motion and provide a *Recommendation* or *Response* to the Court if child related issues are addressed.

Confidentiality

The Parenting Coordination process is transparent and there is no confidentiality between the parties and the Parenting Coordinator. This means that there is no privilege which protects the Parenting Coordinator's communications with either party. Therefore, all of written communications sent to the Parenting Coordinator must be copied, by the sender, to both parties.

By moving forward and participating in Parenting Coordinator services with Margaret Pickard, PLLC, I acknowledge that I have read and fully understand the preceding statements and conditions of service and I have had the opportunity to discuss these provisions with my attorney.

Acknowledged this _____ day of February, 2014.

_____	_____
Mother's Signature	Father's Signature
_____	_____
Mother's Printed Name	Father's Printed Name

Attachments: *Parenting Coordination Agreement*
Parenting Coordination Intake Forms

MARGARET PICKARD | PLLC

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Henderson, Nevada 89052

(702) 595-6771
(702) 605-7321 FAX

Mediation – Parenting Coordination
NevadaMediator@gmail.com

Agreement for Parent Coordination Services

Margaret E. Pickard, Esq.

1. ***Appointment:***

   Judicial Appointment: Judge Duckworth, Department Q, appointed Margaret E. Pickard, Esq. as the Parent Coordinator in the case entitled *Vivian Harrison vs. Kirk Harrison.* The appointment was made pursuant to NRCP 53(a) and is intended to be a delegation of quasi-judicial authority pursuant to this rule.

2. ***Authority of Parent Coordinator:***

   a. ***Role:*** The primary goal of Parent Coordination is to provide parents with a forum for resolving child-related disputes outside of the courtroom. The responsibilities of a Parent Coordinator include providing parents with problem-solving and conflict management services, monitoring compliance with court orders, and providing parents, attorneys and the court with recommendations for new or modified parenting time provisions and/or other child related issues, as necessary.

   b. ***Authority:*** The parties recognize that the pursuant to the judicial appointment, the court has provided the Parent Coordinator with the judicial authority to resolve parent/child and custody/visitation issues, in order to:
      i. Facilitate the resolution of disputes regarding the implementation of the parenting plan, the schedule, or parenting issues, provided such resolution does not involve a substantial change to the shared parenting plan, as defined by the Court's Order.
      ii. Direct as necessary, one or both parents to utilize community resources, such as counseling, anger management, psychiatric and/or medical evaluations, etc. with the Parenting Coordinator to have access to the results of any psychological testing or other assessments of the child and/or parents.
      iii. Implement non-substantive changes to, and/or clarify, the shared parenting plan, including but not limited to issues such as:
         1. Transition/exchanges of the child including date, time, place, means of transportation and transporter;
         2. Holiday sharing;
         3. Summer or track break vacation sharing and scheduling;
         4. Communication between the parents
         5. Health care management issues, including choice of medical providers and payment of unreimbursed medical expenses, pursuant to the Court's Order for payment of said expenses;
         6. Education or daycare;
         7. Child's participation in religious observances and education;
         8. Child's travel and passport issues;

9. Purchase and sharing of child's clothing, equipment and personal possessions, including possession and transporting items between homes;
10. Child's appearance and/or alteration of child's appearance including haircuts, tattoos, ear, face, or body piercing;
11. Communication between the parents;
12. Contact with significant others or extended families;
13. Requiring the signing of appropriate releases from each parent to provide access to confidential and privileged records, including medical, psychological or psychiatric records of a parent or child;
14. Reporting to the Court compliance with the parenting coordination process which could include recommendations to the Court about how to more effectively implement the parenting coordination process;
15. Reporting to the Court the extent of the parent's compliance with other Court orders (therapy, drug tests, child therapy, behavior orders) with or without providing a recommendation on what should be done regarding any lack of compliance;
16. Individually communicating with, and providing information to, persons involved with, or providing services to, the family members, including but not limited to, the custody evaluator, lawyers, teachers, and school officials, physical and mental health providers, grandparents, stepparents, significant others, or anyone else the Parenting Coordinator determines have a significant role in the life of the family; and
17. All additional responsibilities/authority granted pursuant to the court order.

c. ***Responsibilities:*** The parties hereby recognize, consent, and agree that the Parent Coordinator shall have the following rights and responsibilities:

i. Temporary decision-making authority to resolve minor disputes between the parties concerning shared parenting decisions until such time as a Court order is entered modifying the decision. Such decision-making services provided by the Parenting Coordinator shall apply to both substantive and non-substantive changes to the parenting plan.
ii. Make recommendations to the Court concerning modifications to the shared parenting plan including but not limited to, parenting time/access schedules or conditions, including variations from the existing parenting plan.

3. ***Scope of Parent Coordination:*** The scope of Parent Coordination is limited to matters concerning your child.

a. ***Process:*** The Parent Coordinator will set up an initial meeting with each party individually, either in person or via telephone conference. At the discretion of the Parent Coordinator, joint parent sessions may be scheduled, to facilitation direct resolution of pending issues.
   i. ***Child Involvement***: Children are not to be involved in the legal issues before the Court or the Parent Coordinator. However, if the Parent Coordinator deems it necessary to interview the child, for purposes of understanding the child's perspective regarding the issues, the parties agree to make the children available to the Parent Coordinator.
   ii. ***Agreements***: In the event a written agreement is reached by the parties, the parent coordinator will prepare a Stipulation and Order for each party's signature, as well as for review and approval by all attorneys of record. Once the Stipulation is signed by the parties, the Parent Coordinator will submit it to the Court to be incorporated into and adopted as an Order.

4. ***Fee/Expense Sharing***: The parties shall share equally the cost of the Parent Coordinator's fees, which shall include reviewing documents, meeting with the parties and their children, speaking with third parties, including counselors and other professional providers, teachers, and family members, as well as others not specifically designated herein, court hearing attendance and preparation, preparing communications to the parties and/or the judge, preparing notes of meetings, preparing documents for the parties and/or the court, including agreements, recommendations, and decisions.

   a. ***Hourly Rate:*** The hourly fee for Parent Coordination services is $300.00, to be shared equally by the parties. The court may re-allocate the fees and payments at its discretion.
      i. ***Allocation of Fees:*** The court will be informed if one party incurs excessive fees and, as appropriate, the Parent Coordinator, will make recommendations to the court regarding allocation of the fees.
      ii. ***No Insurance Reimbursement:*** Insurance companies do not reimburse parties for Parent Coordination services and neither party should anticipate such reimbursement.

   b. ***Retainer:*** Prior to Parent Coordination services beginning, the parties shall pay a retainer of $4,000.00, with each party paying $2,000.00 before the Parent Coordinator begins services, unless otherwise ordered by the Court. Each party will receive a monthly account statement. All account balances are due within 30 days of receipt, with each party to pay ½ of the monthly balance due, after each party's retainer has been applied.

   c. ***Joint and Several Liability:*** The parties are jointly and severally liable for the fees and costs of the Parent Coordinator. In the event one party fails to pay all or a portion of their bill, the other party shall be liable for the unpaid amount and may seek a judgment for this amount from the Court.

   d. ***Cancellations:*** In the event a party needs to reschedule or cancel an appointment with the Parent Coordinator, s/he must notify the Parent Coordinator more than 48 hours prior to the scheduled appointment, otherwise, each party acknowledges and agrees that they will be billed for a one hour consultation of $250.00. In the event that one parent does not appear for a scheduled appointment and has not given 48 hours advanced notice and the other parent appears or is prepared to appear, the parent who does not appear shall be responsible for both parent's fees.

   e. ***Challenge to Parent Coordinator Decision:*** If either party challenges a Decision of the Parent Coordinator, and the Court determines that the challenge is without substantial basis, or not made in good faith, the party challenging the decision shall be responsible for all costs, including the reasonable attorney's fees incurred by the other party.

   f. ***Judgment for Unpaid Fees:*** The parties consent that the Court issuing the *Order for Appointment of Parenting Coordinator* may issue a judgment for amounts that are unpaid on the account for Parenting Coordination services, pursuant to N.R.C.P 53 (a)(1) and that Special Master/Parenting Coordinator shall be entitled to a Writ of Execution for unpaid or delinquent amounts.

   g. ***Bankruptcy:*** The parties consent that the Parenting Coordinator fees due under this contract are in the nature of child support payments, and therefore, are not dischargeable in bankruptcy.

   h. ***Court Appearances:*** In the event a Special Master/Parenting Coordinator Recommendation or Status Update is prepared, the Parenting Coordinator will appear at the court hearing(s) on the Recommendation/Status Update to provide clarification for the Court and the parties shall be equally responsible for the costs associated with the appearance, including but not limited to travel and waiting time.

5. ***Confidentiality***: Parent Coordination is not a confidential process and no attorney/client privilege attaches. All communications with the Parent Coordinator by either party may be shared with the other party.

   a. ***Third Party Consultations***: By signing this Consent, both parties agree that the Parent Coordinator can participate in communication with the court and with all attorneys involved in the case without either party being present or having notice of such communication. In addition, each party hereby consents to allow the Parent Coordinator to communicate with therapists, teachers, physicians, law enforcement officials, and other professionals who have relevant information about either parent or a child, without either parent being present or receiving notice of such contact.

      i. ***Release***: In the event a third party requires a Release to be signed by any individual or professional the Parent Coordinator deems it necessary to interview, each party agrees to sign all releases necessary to allow the Parent Coordinator to speak with these individuals or professionals.

   b. ***Court Testimony***: The Parent Coordinator may be called to testify concerning actions, communications, and responses of either party, or their children. In the event the Parent Coordinator is called to testify, any information shared with the Parent Coordinator by either party or their child(ren) may be disclosed and discussed during the sessions, and in any testimony required at a later date.

      i. ***Cost Assessment for Testimony***: The party who subpoenas the Parent Coordinator for testimony shall be solely responsible for all fees and charges associated with the time involved for the Parent Coordinator to prepare and testify for the court hearing. The Parent Coordinator shall not testify for or on behalf of either parent but shall truthfully testify regarding the acts, communications, and information received during the Parent Coordination process.

      ii. ***Disclosures:*** There are some situations that may be compel the Parent Coordinator to disclose information without consent or authorization to parties not involved in the court proceedings. This Agreement constitutes authorization for release of records and information:

         1. If a government agency is investigating allegations of abuse;
         2. If a party files a claim or lawsuit against the Parent Coordinator;
         3. If the Parent Coordinator believes a parent presents a risk of imminent or serious harm to another person, or to him/herself. Disclosures may include contacting family members, law enforcement, or the court.

   c. ***Tape Recording***: Neither party may tape record his or her conversations, or those of a third party, with the Parent Coordinator. The Parent Coordinator will not tape record individual or joint sessions unless directed by the Judge and only after informing all parties present in the session.

6. ***Communication Between the Parties:*** Written communications between a party and the Parent Coordinator will be shared with the other party at the discretion of the Parenting Coordinator, in the event that the Parent Coordinator determines that the written communications are or may be perceived as inflammatory by either party. The parties agree that in the event the Parent Coordinator determines, in their sole discretion, that a written communication is likely to be counter-productive to negotiations

and/or communications and sharing such communications would not be productive, the parties agree that the Parent Coordinator may withhold such communications from the other party. However, all substantive communications will be shared with both parties. Further, it is the responsibility of the parties to ensure that the other party is copied in all written communications with the Parent Coordinator.

7. ***Grievances:*** Pursuant to the *Grievance* Section 10.0 of the Order for Appointment of Parenting Coordinator, if Margaret Pickard, Esq. is required to retain the services of an attorney to defend against any grievance, professional complaint, or legal action filed against her regarding her duties as a Parenting Coordinator, the party bringing the action is contractually obligated to be financially responsible for 100% of Margaret Pickard, Esq.'s legal fees to respond to and defend such action.

8. ***Service By Electronic Mail:*** The parties hereby agree that service of documents shall be allowed to be effectuated by electronic mail (Email).

9. ***E-mail Communications:*** The transmission and content of E-communication cannot be guaranteed to be secure or error-free. Therefore, Margaret Pickard, Esq., cannot represent that the information in E-communication is complete, accurate, uncorrupted, timely or free of viruses, and cannot accept any liability for E-communications that have been altered in the course of delivery.

I have read and fully understand the preceding statements and conditions of service and I have had the opportunity to discuss these provisions with my attorney. I enter into this contract with the full understanding and agreement that if we, the parents, cannot resolve conflicts between ourselves, Margaret E. Pickard, Esq., shall have the authority to make decisions and recommendations regarding the provisions set forth in 2(b), above and we will each abide by those decisions.

_____ _____
Vivian Harrison's Signature Date

_____
Vivian Harrison's Name (Printed)

_____ _____
Kirk Harrison's Signature Date

_____
Kirk Harrison's Name (Printed)

_____ _____
Margaret E. Pickard, Esq. Date
Parent Coordinator

MARGARET PICKARD | PLLC

10120 S. Eastern Avenue, Suite 200
Henderson, Nevada 89052

(702) 595-6771
(702) 605-7321 FAX

Mediation – Parenting Coordination
NevadaMediator@gmail.com

PARTY INFORMATION SHEET – Parent Coordinating

YOUR INFORMATION:

Name: _____

Address: _____ City: _____

State: _____ Zip Code: _____

Phone Numbers: Home: _____ Work: _____

Email: _____

Cellular: _____ Facsimile: _____

Date of Birth: _____

Issue you need to discuss today:

_____

_____

Are you currently represented by counsel? _____ If yes, name and phone number of attorney:

_____

How did you hear about this office?

_____

Co-Parent:

Name: _____

Address: _____ City: _____

State: _____ Zip Code: _____

Phone: Home: _____ Work: _____

Email: _____

Date of Birth: _____

CHILDREN OF YOURS WITH THE ADVERSE PARTY:

CHILD'S COMPLETE NAME	AGE	DATE OF BIRTH	Mother's Timeshare	Father's Timeshare

CUSTODY AND VISITATION: Please provide Current Order for Custody and Visitation

_____

Physical Custody Arrangement: Joint _____ Mother _____ Father _____

Visitation Arrangement:

_____

_____

What are the current arrangements regarding education or daycare requirements of the child(ren)?

_____

Please explain your current transition/exchanges of the child(ren) including dates, time, place, and means of transportation and transporter: _____

_____

Are there any changes that are being requested in the transition/exchange of the child(ren)?

_____

_____

MEDICAL INSURANCE/PROVIDERS

Who provides medical insurance for the child(ren) at issue?

Mother _____Father _____Both _____

Are there any unreimbursed medical expenses? Yes _____No _____

If yes state amount $_____

Current arrangement regarding choice of medical providers and payment of unreimbursed medical expenses: _____

OTHER CHILDREN OF YOURS OR OF THE ADVERSE PARTY:

CHILD'S COMPLETE NAME	AGE	DATE OF BIRTH	SOCIAL SECURITY NUMBER	WHO CHILD IS CURRENTLY LIVING WITH

ARE THERE NOW, OR HAVE THERE BEEN ANY OTHER COURT ACTIONS IN THIS OR ANY OTHER STATE?

If so, please state: _____

_____

I understand and agree that this consultation does not create an attorney/client relationship and that Margaret Pickard has been appointed as the Special Master/Parenting Coordinator in my case, to serve at the direction of the Court. I accept the terms of her appointment and the provisions set forth in the "Agreement for Parenting Coordination Services," which I have reviewed and signed.

_____ _____

Party Date

Margaret Pickard, Esq.
10120 S. Eastern Avenue, Suite 200
Henderson, Nevada 89052
Phone: 702-595-6771
Fax: 702-605-7321
Email: nevadamediator@gmail.com

Credit Card Charge Authorization Form

CARD HOLDER INFORMATION

Name on Card: _____

Credit Card No.: _____

Expiration Date: _____

Security Code: _____

Billing Address: _____

_____

Amount: _____

Type of Card: _____

Telephone: _____

Email Address: _____

Name on card must be the same as person signing this form.

I wish to authorize Margaret E. Pickard, Esq. to charge the above referenced Credit Card the amount identified in this Credit Card Charge Authorization Form. I agree that I will pay for this purchase and indemnify and hold Margaret E. Pickard, Esq. harmless against any liability pursuant to this authorization. I understand that my signature on this form will serve as an authorized signature on the credit card charge slip.

_____

Signature of Credit Card Signatory and Authorized

_____ _____

Printed Name Date

MARGARET PICKARD | PLLC

10120 S. Eastern Avenue
Suite 200
Henderson, Nevada 89052
(702) 595-6771 Phone
(702) 605-7321 Fax
NevadaMediator@gmail.com

AUTHORIZATION
FOR THE INTERVIEWING OF MINOR CHILDREN

This Authorization provides a release by the below signed parents and/or guardians to allow Margaret Pickard, Esq. or one of her agents to interview the following minor child(ren) for the purpose of obtaining information regarding the child(ren)'s physical and emotional well-being, desires and concerns regarding the current and future living environment, school placement/attendance, parental influences, and all other information necessary for the Court and/or its agents, including Margaret E. Pickard, Esq., to assess the emotional and physical needs of the children and make appropriate determinations to determine the custodial arrangements which are in the child(ren)'s best interests pursuant to N.R.S. 125.480(4)(a).

CHILD'S NAME: _____

CHILD'S DOB: _____

INTERVIEW DATE/TIME: _____

CHILD'S NAME: _____

CHILD'S DOB: _____

INTERVIEW DATE/TIME: _____

We, the Parents of _____, authorize Margaret Pickard, Esq., Parenting Coordinator, access to interview the above referenced child.

The information gathered may be disclosed to the Court, to be used in a Status Reports or the Special Master/Parenting Coordinator's Decisions.

We understand and agree that we are providing our authorization to Margaret Pickard, Esq. to interview the above referenced child. It is agreed that a photocopy of this Authorization is to have the same force and effects as the original.

Agreed and Accepted:

Father: _____

Signature: _____ **Date:** _____

Address, City State and Zip Code: _____

Mother: _____

Signature: _____ **Date:** _____

Address, City State and Zip Code: _____

RELEASE OF INFORMATION

We, Kirk and Vivian Harrison, the parents of _____, hereby authorize the Clark County School District, school officials, faculty members, and/or teachers to release/discuss with Margaret Pickard, Esq., serving in her capacity as Parenting Coordinator appointed by the Eighth Judicial Court, Las Vegas, Nevada, information concerning our child's educational records and information, including IEP, conduct, attendance, disciplinary actions, and any pertinent matters related to the status of receiving services.

We agree and do hereby release from liability and to indemnify and hold harmless the Clark County School District, and any of its employees or agents representing or related to the district as regards to the release of this information.

This release will remain in effect until revoked in writing by both parents.

Father: _____

Signature: _____ Date: _____

Street Address: _____

City, State, Zip Code: _____

Mother: _____

Signature: _____ Date: _____

Street Address: _____

City, State, Zip Code: _____

MARGARET PICKARD | PLLC

10120 S. Eastern Avenue
Suite 200
Henderson, Nevada 89052
(702) 595-6771 Phone
(702) 605-7321 Fax
NevadaMediator@gmail.com

AUTHORIZATION FOR THE RELEASE OF PROTECTED HEALTH INFORMATION

This Authorization authorizes the release of Protected Health Information pursuant to 45 CFR Parts 160 and 164.

PROVIDER: _____

PATIENT NAME/DOB: _____

PATIENT NAME/DOB: _____

The Parents of _____, the Patient, authorize the above-named provider ("Provider") to release any and all information (including billing statements) regarding the Patient's condition when under your observation or treatment, including history, findings and observations, conclusion, x-ray readings and diagnosis, and your prognosis as to subsequent or future development. You may also release any and all myelograms, x-rays, CAT Scans, or MRI images for independent examination.

The information may be disclosed by employees or business associates of Provider. The information may be disclosed to Margaret E. Pickard, Esq. Disclosure may be made orally or in writing and you may allow them to photocopy the Patient's records.

We understand and agree that the information to be disclosed may include medical or mental health records of the patient, including treatment, diagnosis, evaluations, or recommendations that are otherwise protected under Nevada or other federal law.

This authorization will expire in the event that Margaret E. Pickard, Esq. is released as the Parent Coordinator in the case *Vivian Harrison vs. Kirk Harrison.*

We hereby acknowledge: (I) that we have the right to revoke this authorization at any time, and (II) that we understand that we may revoke this authorization only in a writing sent by certified mail to the Provider at the address above. The revocation will be effective only upon receipt, except (I) to the extent the Provider has acted in reliance on the authorization, or (II) the authorization was obtained as a condition of obtaining insurance coverage and the insurer wishes to use the protected health information to lawfully contest a claim. Further information on the right to revoke may be provided from time to time in the Provider's Notice of Privacy Practices.

We understand that treatment by the Provider is not conditioned on my signing this authorization. It is agreed that a photocopy of this Authorization is to have the same force and effects as the original.

Agreed and Accepted:

Father: _____

Signature: _____ **Date:** _____

Address, City State and Zip Code: _____

Mother: _____

Signature: _____ **Date:** _____

Address, City State and Zip Code: _____

EXHIBIT 6

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2012

PHILADELPHIA, TUESDAY, MAY 7, 2013

An ALM Publication

Concern Over Judicial Authority Drove Parent Coordinator Elimination

BY BEN PRESENT

To many family law practitioners, the Pennsylvania Supreme Court's decision to eliminate parenting coordinators in custody matters was a reasonable measure to keep decision-making in the purview of the state's judges.

But several attorneys questioned whether the practice, which on May 23 becomes a thing of the past in Pennsylvania custody cases, could have survived with some tweaking. Attorneys said the practice, with proper oversight, was a suitable enterprise for refereeing situations such as "mom's sister's wedding on dad's Saturday" in high-conflict custody cases. The courts, lawyers said, simply do not have time for such minor issues.

In other words, it seemed that while most attorneys had seen parenting coordinators work in many cases (though some had seen it go terribly), all recognized that the Supreme Court was trying to be cognizant of instances where courts are abdicating their authority to nonjudicial entities and, in turn, limiting that practice where it could.

And they said they couldn't knock the court for that.

As parenting coordination developed in Pennsylvania, it had been lawyers, psychologists and psychiatrists filling the role. Attorneys said the justices may have felt compelled to change the law as the latter two had grown accustomed to interpreting, and sometimes even changing, a court's custody order.

Others said the move was in response to the Luzerne County judicial scandal and recent scrutiny directed toward the Lackawanna County guardian ad litem program, whose central figure is now facing federal tax-evasion charges.

David L. Ladov, co-chair of the family law practice group at Obermayer Rebmann Maxwell & Hippel, summed up

David L. Ladov

the high court's sentiment:

"Before it happens in another area of the law — parent coordinators — why are we allowing judges to abdicate their authority?" Ladov said. "Why are we letting judges pass on their authority to somebody outside the judicial due process situation?"

Ladov is vice chair of the Pennsylvania Supreme Court Domestic Relations Procedural Rules Committee, but said he was not speaking in his capacity as a rules committee member. Instead, he said he was speaking as an "experienced family law practitioner."

The word spreading through the family law practice bar, according to attorneys, is that the Luzerne County scandal and the stain it left on Pennsylvania's judiciary compelled the domestic relations rules committee and the justices to do away with parent coordinators.

The timeline seems to fall in line with that school of thought.

Fox Rothschild family law practitioner Natalie L. Famous pointed out the Supreme Court submitted the rules committee's proposal to The Pennsylvania Bulletin for public comment in November 2010, right around the time the Luzerne County scandal, which involved allegations of two judges taking $2.8 million in kickbacks from the co-owner and the builder of a private juvenile prison, was still very much in the news.

Famous, who was the first parenting coordinator in the state, said the court made the decision to do away with parent coordinators in favor of transparency by the judiciary and to hold the judges directly accountable for decisions.

Meanwhile, the Lackawanna County guardian ad litem program has come under scrutiny as attorneys have questioned a system in which one person was handling an overwhelming majority of the guardian work in that county. That one person, attorney Danielle M. Ross, awaits trial on federal tax-evasion charges.

"I would have to think that, with 'kids-for-cash' in the background, the failure of the guardian ad litem program in Lackawanna County, it has to be in the back of the justices' minds in considering whether continuing to grant quasi-judicial powers to people such as parenting coordinators is an appropriate remedy in resolving such delicate custody matters," said Jonathan T. Hoffman, an attorney in Klehr Harrison Harvey Branzburg's family law practice group. "I would think it would have to be relevant here."

For Ladov, though, regardless of whether lawyers viewed the decision to nix parent coordination as a positive or negative one, it was not a monumental event.

For one thing, most litigants can't afford a parent coordinator. Additionally, most cases don't rise to the level of conflict that warrants the appointment of one — a level Ladov characterized as featuring "repeated offenders" or "repeated litigators."

Ladov said a judge would be inclined to appoint a parent coordinator only if a case gets back in court three times, maybe even six times, after a judgment is entered.

"There's probably one parent coordinator in every 1,000 cases," Ladov said.

But in cases where it was successful, others said it helped clear the dockets and ease tensions.

"In the cases where it helped, it was a godsend," said Mary Cushing Doherty of High

The Legal Intelligencer

Swartz. "In cases where the parent coordinator was going beyond what was their responsibility, what the parents thought was their responsibility, the Supreme Court is pulling back and saying, 'we are not delegating judicial responsibility.'"

"The problem is, how do you draw that magic line?" Doherty added.

Hoffman also said the right parenting coordinators had proven to be an "excellent resource."

"It took people who were clogging up the dockets and turned their cases around really quickly," Hoffman said.

The net effect in most cases, according to Hoffman, was that children who were suffering got relief in the midst of continuing conflict between their parents.

'BALLS AND STRIKES'

In interviewing a handful of family lawyers, more than one used the phrase "calling balls and strikes" in outlining the work of parent coordinators over the last four years — the lifespan of the practice — in Pennsylvania.

For example, if a custody order required divorced parents to split their child's birthday but provided no further elaboration, a parent coordinator could interpret the ruling and implement a game plan.

Blue Bell, Pa., solo practitioner Maria E. Gibbons, who had been devoting much of her practice to parent coordination, further provided the example of an ex-husband who won't give up his Saturday so his ex-wife could take their daughter to her sister's wedding.

Gibbons said that by the time a judge would be able to hear the issue, the wedding would be long past. Plus, dragging the parties into court for such a small issue, in Gibbons' view, is a waste of judicial resources, which are scarce to begin with in many counties throughout the state.

"A judge shouldn't be wasting their time hearing that," she said.

Those were the type of day-to-day decisions a parent coordinator could make on the spot.

Another part of Gibbons' job, as she described it, had been helping parents settle for alternatives when their custody order didn't seem to help either party in a particular dispute.

Saying, "Go back and settle so I don't have to make this ruling," would often incite parents to swallow their pride and resolve whatever their dispute was without forcing a ruling from the coordinator, Gibbons said.

Referring to a hypothetical custody order, Gibbons added: "If you make me rule, whether I like it or not, I have to rule the way this paragraph is written."

PSYCHOLOGISTS' INVOLVEMENT

Licensed psychologists and psychiatrists sometimes didn't seem to understand the letter of the law, according to attorneys interviewed, a possible impetus for the justices' rule change.

Every attorney interviewed expressed concern with psychologists filling a position that, to some degree, involves the interpretation of a court decision and an application of the law.

Lynne Z. Gold-Bikin, chair of the family law practice group at Weber Gallagher Simpson Stapleton Fires & Newby, was the most outspoken lawyer in favor of ridding the court system of the position. Gold-Bikin said she was "delighted" the court put an end to parent coordinators, particularly where psychologists were making decisions.

"Every time the psychologists get involved, they take over because they say the court system and the lawyers don't know what they're doing," Gold-Bikin said. "Even though they don't know the law, they take over."

The longtime family law practitioner said the therapists had "carved out an area to make money" and ended up costing litigants more money than they did help them with their conflicted cases.

Hoffman and Famous also said there was a real sense of concern that psychologists and psychiatrists were acting in place of the courts.

While Gold-Bikin used the psychologists' body of work in bidding farewell to the coordinators as a whole, other attorneys questioned whether the parent coordinator position could have survived with some tweaking.

Gibbons, the parent coordinator, said the Supreme Court could have crafted an order that narrowed the practice to only licensed attorneys, removing unauthorized practice of law questions from the equation. She said decisions were always appealable, but that only happened once.

"I think it's short-sighted," Gibbons said. "I think that the ones who made the decision didn't necessarily talk to the people in the trenches who it affects day to day."

The court's April 23 rule change says that only judges may make decisions in custody cases and that masters and hearing officers may continue to make recommendations. Other than that, the courts may not appoint someone to "make decisions or recommendations or alter a custody order in child custody cases."

"Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective," the court's rule said. "Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective."

Most attorneys agreed that language did not call for the vacating of parent coordinators' decisions to date, but rather called for them to be taken off their respective cases.

Moving forward, Hoffman said his first order of business approaching the rule change's effective date is to notify his clients of the change.

Hoffman said he would be informing his clients who have parent coordinators that dispute resolution is going to have to go through court.

In wealthier counties such as Montgomery, Chester, Delaware and Bucks, Hoffman said the courts should prepare for increased filings and more backlog.

"It leaves families in tremendous limbo," Hoffman said.

Doherty, although she was not surprised the Supreme Court took the action, did not see a viable alternative to fill the upcoming void.

"Am I shocked the Supreme Court has done this? No," Doherty said. "But do I think we have a solution yet? No."

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Co-counsel 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. Q Date of Hearing: 5/21/14 Time of Hearing: 10:00 a.m.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22nd day of April, 2014, I deposited a true and correct copy of the "*Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief*" in the United States Mail, first class, postage prepaid thereon, to the following:

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

Carol Nan

An Employee of KAINEN LAW GROUP, PLLC

HARRISON V. HARRISON

CASE NUMBER 66157

CROSS-APPELLANT'S EXHIBITS

P-S

OF THE DOCKETING STATEMENT

EXHIBIT "P"

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11/14/2013 02:12:46 PM

CLERK OF THE COURT

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DISTRICT COURT

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

ORAL ARGUMENT REQUESTED:
YES XX NO ___

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.

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

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

This Motion is made and based upon the Points and Authorities submitted herewith, the Affidavits attached hereto, the Exhibits attached hereto, and upon the oral argument of counsel at the time of hearing.

DATED this 14 day of November, 2013.

KAINEN LAW GROUP, PLC

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

NOTICE OF MOTION

TO: VIVIAN MARIE HARRISON, Defendant; and

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

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

DATED this 14 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, Nevada 89145
Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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II. ARGUMENT

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

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

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

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

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

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

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

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

1. The Difference in the Proposed Decrees of Divorce

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Bank of America account ending in 8682 – Kirk has had this account since he was in high school. The account was originally with the Pioche Office of Nevada National Bank. Nevada National Bank was later acquired by Security Pacific Bank. Security Pacific Bank was subsequently acquired by Bank of America.

2. Nevada Bank & Trust account ending in 2713 – this was a joint account Kirk had with his father, with full right of survivorship, prior to his marriage to Vivian. When Kirk's father passed away on October 30, 1990, he became the sole owner of the account.

3. Nevada Bank & Trust account ending in 1275 – the account ending in 2713 is a non-interest bearing checking account. Therefore, Kirk purchased a certificate of deposit at Nevada Bank & Trust with most of the funds in that account and thus created this account.

4. Wells Fargo account ending in 8032 – Kirk opened an account at First Interstate Bank on November 29, 1990, to deposit all monies he received from his father's estate and all monies he received from the lease and sale of Kirk's parents' family home, which Kirk and his sisters inherited from their mother when she passed away in 1983. Kirk's father lived in the family home until the time of his death. The home was subsequently leased and sold. Sometime after all monies were received from his father's estate and the family home was sold, Kirk purchased a certificate of deposit at FIB with all of the funds in that account and thus created this account. Wells Fargo subsequently acquired First Interstate Bank.

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

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

REQUEST FOR PRODUCTION NO. 11:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See the following documents submitted herewith:

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

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

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

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

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

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

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

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

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

> Documents evidencing source of funds have been previously provided in response to a prior request for production. See, Bates-stamped nos. PLTF000798 - PLTF000809 and PLTF000812 - PLTF000828. The following additional documents are being produced herewith:
>
> 1. Letter dated June 29, 1992 from Minnesota Title Ins. to Kirk R. Harrison Re: Escrow No. 23-86407-KO ..... **PLTF010061 - PLTF010064**
>
> 2. Monthly statements for Nevada Bank & Trust account # 1802792 (July 31, 1992 through January 31, 1995) ..... **PLTF010065 - PLTF010101**
>
> 3. Copy of the cashier's check, in the amount of $11,100.00 made payable to Northern Nevada Title, from First Interstate Bank, dated December 29, 1994 ..... **PLTF010102**
>
> 4. Copy of personal check, in the amount of $51,000.00, made payable to Walther Key Trust Account, drawn on account number ending 4040, and copy of Cashier's Check, in the amount of $19,000.00, dated March 18, 1998, made payable to Walther Key Trust Account, drawn on Wells Fargo Bank **PLTF010103**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. *All furniture and furnishings from Tahnee's room.* Both Kirk **and Vivian** agreed that all of the furniture and furnishings in each of the children's bedrooms was their property.

2. *All of the furniture and furnishings from Whitney's room, except for the glass chandelier.* Again, both Kirk **and Vivian** agreed that all of the furniture and furnishings in each of the children's bedrooms was their property.

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

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3. *Almost all of the DVDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." Kirk only took the dvds he purchased.

4. *Rug from the library.* Kirk's proposal provided, "Kirk will receive the furniture, rugs, and accessories in the following rooms: library loft, pool table room, and master bedroom."

5. *Linens (only linens Kirk left are a few towels which had Vivian's initials monogrammed on the left).* This assertion is not accurate, as many linens were left behind, including towels without Vivian's initials monogrammed on them.

6. *Almost all sheets, comforters, cashmere blankets.* This assertion is not accurate, as many of these items were left behind. Kirk, generally took those sheets, comforters, and cashmere (75% wool) blankets which he had purchased. He also took a comforter his mother made for him. There was only one California King bed in the home, which was in the master bedroom. There was a small blue comforter and a small grey comforter – Kirk bought these at Costco probably fifteen years ago to keep in the vehicles. There was bedding for five queen beds in the house. Kirk rightfully took three of those queen beds – his parents', Tahnee's (which was already in California with Tahnee) and Whitney's. He took about 3/5s or 60% of the queen bedding. The two queen beds remaining are Joseph's and Brooke's. Joseph still has all of his bedding and Brooke has all of her bedding. The single bed remaining is Rylee's. Rylee still has all of her bedding.

7. *Almost all CDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." It also provided, "Vivian shall receive all of the artwork, collectibles, books, cds, and dvds that Vivian personally purchased." Kirk only took the cds which he had purchased.

8. *All Photo albums, loose photographs, photo screens.* [Already addressed by the Court in the Decree, p. 26, l. 23-28; p. 27, l. 1-8]

9. *Spode Christmas China and Glassware.* Kirk's proposal provided, "Kirk shall receive the brown wood handled steak knifes in the marital residence and all of the Spode Christmas dinnerware, glasses and related accessories." None of the Spode Christmas China and Glassware was itemized on any proposal from Vivian. Kirk and Vivian bought the initial Spode Christmas China and Glassware together. Kirk has bought most of the accessories during after Christmas sales. Kirk generally sets these items out each year. Every year, Kirk washes, drys, and puts these items away.

10. *Christmas ornaments.* It is noteworthy that on Vivian's A/B list, she proposed that she and Kirk equally share all of the 'Holiday Decorations." Kirk's proposal provided, "Vivian shall receive all of the Christmas ornaments gifted to her by her mother and grandfather and grandmother, all of the Christmas outside lighting, and the lighted Christmas tree. Vivian shall receive all of the Christmas ornaments she personally purchased." Most of the Christmas ornaments were left behind, including those Vivian received from her family. Kirk took only those ornaments he had received as gifts and those he had purchased. Tahnee and Whitney took their personal ornaments. Kirk left the Christmas tree, all of the Christmas decorations, and all of the Christmas lighting.

11. *Kitchen bake ware.* The vast majority of the kitchen bake ware was left behind. There are cupboards full of kitchen bake ware. Kirk only took a few items. There were four large green casserole pans, three large red casserole pans, and two small yellow casserole pans. Kirk took the three large red casserole pans and one small yellow casserole pan.

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Kirk took one of several cookie sheets.

12. *Dyson vacuum cleaner.* On Vivian's A/B list, she referenced the "cleaning supplies, vacuum, etc." as being non-applicable to the A/B list, without identifying it being either belonging to the husband or wife. There is a built-in vacuum cleaner in the marital residence. In addition, there was a Dyson vacuum cleaner and a Dirt Devil full size vacuum cleaner. Vivian hires people to do the vacuuming in the marital residence and rarely vacuums herself. Kirk does his own vacuuming.

13. *Dumb bells from the workout room.* Kirk's proposal provided Vivian receive "dumbbells (silver)" and Kirk receive "Dumbbells (rubber)." Vivian proposed in her A/B list that Kirk – who she intended to get the B list – would get the "Rubber Head Dumbbells." She proposed she would get the "Chrome Dumbbells" – which she had already removed from the marital residence. This is precisely what occurred. Kirk took the Rubber Head Dumbbells and Vivian took the Chrome Dumbbells.

14. *Almost all the sporting goods from the garage cabinets such as golf clubs, baseball gloves, etc.* Kirk's proposal provided, "Kirk shall receive all of his hunting gear, fishing gear, camping gear, boating gear, golf clubs and gear, bows & arrows, tennis rackets, and similar sporting type items." Kirk took all of his golf clubs, baseball glove, and tennis rackets. Kirk also took the golf clubs he purchased for Brooke and Rylee. Kirk also took all of the tennis rackets and balls he had purchased for his children. Vivian does not play any sports including, golf, tennis, baseball, or softball. Vivian does not play any sports with the children.

15. *Bikes for Brooke, Rylee and Vivian.* When the Harrisons moved to Boulder City in 1993, Kirk bought new bikes for Vivian, Tahnee and Whitney. Kirk taught Tahnee, Whitney, and Joseph how to ride a bike. Vivian rarely rode her bike and, probably, has not ridden a bike since 1994 – over 18 years ago! As the children grew older, the bikes were passed down. Vivian's bike became Tahnee's bike, Tahnee's bike became Whitney's bike, and Whitney's bike became Joseph's bike. When Tahnee, Whitney and Joseph out grew the bikes and stopped riding them all together, Kirk took all three bikes to the ranch and put them in storage. Kirk retrieved these three bikes from the ranch when he started teaching Brooke and Rylee to ride a bike. Vivian doesn't ride a bike and has not participated in Kirk's efforts to teach Brooke and Rylee to ride a bike. Kirk took all of these bikes to the ranch for the winter. Kirk was later told that Vivian wanted "her" bike returned. The first opportunity Kirk had to go to the ranch he retrieved "Vivian's bike" as well as the road bike Kirk had given Vivian many years ago and delivered them to the marital residence. Kirk also retrieved Vivian's mother's bed, which Vivian had identified she wanted in her A/B list proposal, and delivered it to the marital residence as well.

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

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

. . .

. . .

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

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

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

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

DATED this 14 day of November, 2013.

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EXHIBIT "Q"

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

FAMILY DIVISION

DEFENDANT'S OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES

DATE OF HEARING: December 18, 2013
TIME OF HEARING: 11:00 a.m.

VIVIAN MARIE LEE HARRISON ("Vivian"), through her attorneys Radford J. Smith, Esq. of the firm of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria & Kattleman, requests that Plaintiff, KIRK ROSS HARRISON's ("Kirk") Motion for Judicial Determination

of the Teenage Discretion Provision be denied in its entirety. Vivian countermoves for attorney's fees under EDCR 7.60 for Kirk's unnecessary multiplication of these proceedings.

This Opposition and Countermotion are based upon the papers and pleadings on file, the Points and Authorities and oral arguments of counsel to be adduced at the time of the hearing.

Dated this 6 day of December, 2013

RADFORD J. SMITH, CHARTERED

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I.

STATEMENT OF FACTS

On October 1, 2013, Kirk moved to eliminate the "teenage discretion" provision from the parties' stipulated parenting plan. Vivian opposed that motion, and the Court denied Kirk's request. Unsuccessful at eliminating the provision, Kirk now moves to emasculate it.

The "teenage discretion" provision, section 6 of the July 11, 2012 stipulated order ("Parenting Plan"), permits either of the parties' minor children (after age 14) to alter the "weekly schedule" under the parenting plan "from time to time" to spend time with one parent. (Parenting Plan ¶6.1). The provision contains safeguards to prevent exercising discretion from "unduly eroding" the timeshare of one parent. (Parenting Plan ¶6.3)

Kirk now requests that the Court ignore or alter the language granting discretion, and find that a child older than fourteen may only ***request*** a modification, leaving the parent with absolute control. This was not agreed by the parties. There would be no point to include in a parenting plan a separate provision

that allows a teenager to "request" modifications of the parenting plan; any child can ask to spend more time with one parent regardless of the language in any parenting plan. The provision does what its title implies – it grants "discretion."

Kirk has filed a second motion because he is unsatisfied with the Court's order that denied his first. The present Motion, like all he has filed, attacks Vivian. He claims that in violation of the teenage discretion provision, Vivian has improperly influenced Brooke to spend time with her during his scheduled custodial time. She has not. The few times that Brooke has exercised discretion to be with Vivian have been reasonable and predictable. Kirk multiplied these proceedings by the filing of a second motion which presents no theory or legal argument he could not have presented in the first motion, which the Court denied.

Vivian addresses-Kirk's claims that Brooke's exercise of teenage discretion has undermined Kirk's timeshare in the facts set out below and affirmed by her Affidavit. Vivian submits the facts show Brooke exercised teenage discretion on four occasions for rational reasons consonant with a teen's life and growth, but only once for an overnight period (a two day timeframe where Rylee was on a separate trip to Catalina and Brooke could spend alone time with Vivian). Brooke-used the teenage discretion provision in the way that it was intended, and consistent with its express terms.

II.

THE PLAIN LANGUAGE OF THE PARENTING PLAN GRANTS TEENAGE DISCRETION

1. The Teenage Discretion Clause

Vivian fully discussed the genesis of the provision in her October 17, 2013 Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues: Brooke's adamant objection to spending equal time in Kirk's care. **Specifically, she re-avers** that in June 2012, Vivian had two options – seek primary custody, or develop a way that Brooke could choose to spend more time with Vivian or

Kirk "from time to time" without altering a plan of joint custody--that is not alter the legal boundary of "custody" as the cases define it. Vivian proposed a plan of "teenage discretion" that is contained in the parenting plan. Vivian also wanted to give time to Kirk to improve his relationship with Brooke in the year before her 14th birthday, and with a therapist that was envisioned under the parenting plan. (*See* Letter from Radford J. Smith, Esq. to Thomas J. Standish, Esq. dated June 1, 2012, attached hereto as Exhibit "A").

Kirk's relationship with Brooke deteriorated over the past year, but Kirk, contrary to the specific provisions of the parenting plan, did not propose a therapist over that year, and then sought to eliminate the teenage discretion provision. As Kirk's relationship with Brooke deteriorated over time his incentive to torpedo the teen discretion clause increased. (*See,* Vivian's October 17th Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, pages 17 through 22).

Kirk's claim, in part, is the Parenting Plan is ambiguous. The relevant language of the Parenting Plan (Para 6.1): "[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 part or at either parent's home." [Emphasis supplied]. Under that provision a child may ask for an adjustment or, simply, take an adjustment--ask or act. The child may *request* an adjustment **"AND"** ***make*** **an adjustment, "OR"** simply **make an adjustment.** The language cannot logically be read any other way, and is thus not subject to interpretation. A settlement of pending litigation is a contract, and is subject to general principles of contract law. *Grisham v. Grisham,* 289 P.3d 230 (2012). If there is no ambiguity, there is not need for interpretation. Kirk's request that the Court look to what he claims was the "intent" of the parties to alter the plain meaning of the unambiguous provision is contrary to well established principles of contract law. Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, "since all prior negotiations and agreements are deemed to have been

merged therein." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

Kirk's next claim is that the Parenting Plan allows the children "unfettered" right to modify the Court's order. The use of the teenage discretion is limited to "weekly visitation," and is to be only exercised "from time to time." Parenting plan, ¶6.1. The provisions specifically prohibit the child from using discretion to permanently alter the *timeshare* ("The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent"). *Id.* Further, the provisions grant the remedy of intervention by the Parenting Coordinator or the Court if either party believes Brooke, or Rylee (after she turns 14), uses the teenage discretion provision to "unduly erode" the timeshare of either party. Parenting Plan ¶6.2. Indeed, the provisions distinguish between modifications "from time to time" and the intent or desire of the child to change custody. Paragraph 6.4 of the Parenting Plan reads:

> 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).

This distinction between the child's ability to "from time to time" exercise discretion to visit with the other parent is made apparent by the distinction in ¶6.4: the parties intended to allow discretion to a point, but not allow the child to dictate her schedule with the other parent. If the child desired to change custody, the parties developed a plan to ensure that the child received counseling through the therapist or parenting coordinator, and allowed the parties a non-judicial means for addressing any dispute regarding a child's desire to change custody. Again, the unambiguous "teenage discretion" provisions were designed to discourage litigation by allowing some flexibility and independence for teens, and develop a system of

non-judicial intervention to resolve disputes. Kirk's has undermined that goal by first refusing to submit his choice of therapist, and then by filing two motions designed to eliminate the provision or its effect.

On October 30, 2013, the Court found the teenage discretion provisions (¶6 of the Parenting Plan) to be valid and enforceable. They are an integral part of the plan that contemplated the children's strong preference to spend additional time with Vivian, but the provision is neutral, and Vivian understands that the children can use that same discretion to spend time with their father. Indeed, this is how she and her counsel designed the provisions. *See* Letter from Radford J. Smith, Esq. to Edward Kainen, Esq. dated November 6, 2013, attached hereto as Exhibit "B."

Vivian never advised Brooke, as Kirk has suggested, that Brooke could permanently alter her custody or timeshare. Specifically, Vivian did not advise Brooke that Brooke would have an "unfettered absolute right to order changes in the agreed to custody schedule,"[1] and Vivian has not taken that position in discussions with Kirk's counsel. Unfettered means "without restraint," but here the plain language of the provisions set forth criteria for the exercise of such discretion, and provides two separate methods for a party to object to a child's use of teenage discretion that "unduly erodes" that parties timeshare. Vivian today is forced to repeat the position she took in her October 17th Opposition to Kirk's Motion to Resolve Parent Child Issues that there are more than adequate reasons (including the extremely close bond the children have with Vivian, and Kirk's use of anger, guilt, and criticism to attempt to control them) that could account for either child's desire to spend more time with Vivian. Here, however, Brooke's exercise of time had little to do with Kirk, and instead was based upon activities or time that she logically wanted to spend with her mother.

[1] *See,* Kirk's Motion for a Judicial Termination, page 5, line 16, and Vivian seriously doubts that Brooke has ever indicated to Kirk, as Kirk has also suggested, that she, Brooke, could alter custody when she turned 14.

2. Brooke's Limited and Predictable Exercise of Teenage Discretion

Since turning 14 on June 26, 2013 (almost 6 months ago), Brooke has exercised teenage discretion on four occasions. On three of those occasions, the schedule was altered only by a few hours, and for what Vivian submits are sensible reasons. Brooke exercised overnight stays with Vivian during only one period (a two day timeframe where Rylee was on a separate trip to Catalina, and Brooke could spend alone time with Vivian). Brooke has utilized the teenage discretion provision in the way that it was intended, and consistent with its express terms.

The first time Brooke exercised teenage discretion was on August 24, 2013 when Brooke wanted to be with Vivian when shopping for ballet point shoes on a Saturday she was scheduled to be in Kirk's care. Brooke exercised discretion for five (5) hours on that day. *See* Kirk's Motion to Modify Order re: Teenage Discretion filed on October 1, 2013, page 7, line 14. Vivian and the children had bought dance shoes together throughout the years that Brooke and Rylee have been in dance. Brooke told Vivian that she wanted Vivian to take her shopping.

The second time Brooke exercised teenage discretion was on the day of Brooke's Homecoming Dance (a Saturday) when Brooke desired to be at Vivian's home to dress and do make-up with her friends for the dance. This request by Brooke is not surprising. Brooke wanted to be with her mother who is skilled and experienced in applying make-up, and helped her learn how to apply make-up. On that day, Brooke and her friends planned to go from one mother's home to another when preparing for the dance. Brooke and her friend's mother told Vivian about the plan the day before; Vivian did not prompt Brooke nor organize any aspect of the plan. The plan involved the girls traveling to three different homes for different events (hair and make-up at Vivian's home, other events at two other homes). Brooke was with Vivian for approximately two to three hours.

The third time Brooke exercised teenage discretion caused Kirk to file his current motion. This was the only time when Brooke spent overnights with Vivian. On November 6, 2013, Vivian dropped Rylee off to attend school trip to Catalina Island. After dropping Rylee off for the trip, the normal parenting schedule called for Brooke to be in Kirk's care from November 6 through November 8. Without prompting, Brooke expressed her desire to be with Vivian while Rylee was away.

The fourth time Brooke exercised teenage discretion (if it can be called that since both children wanted to go to Vivian's house for necessities for dance) was on November 16. On Wednesday, November 13, Brooke and Rylee attended their musical theater class. Their instructors advised them at that class that they needed to have their props and two costumes for two scenes in the upcoming Winter recital. They were in Kirk's care the following Thursday and Friday. Both Brooke and Rylee requested that they be allowed to go to Vivian's home on Saturday, November 16 to retrieve the props, to make shopping bags, wrap presents, and prepare costumes, all for their Winter Recital. Vivian has a craft and sewing room in her home that is equipped with arts, crafts and sewing supplies. Vivian has been the parent that has taken the historical responsibility of preparing the props and costumes for the children's school projects and dance. It is understandable that the children wanted to be with Vivian to help them prepare for the recital. They were with Vivian for approximately three hours.

Vivian submits that all of these four (including the children's need to gather material for the winter recital) instances of exercise of teenage discretion are reasonable and predictable (spend "one-on-one" time with her, shopping for dance clothes, putting on make-up for a dance, sewing costumes.

The standard for review of Kirk's motion is contained in the parties' contract: Has Brooke's exercise of Kirk's claim that Brooke's exercise of discretion "unduly eroded" Kirk's timeshare. In light of the few instances in which she has exercised discretion, Kirk's claim is ludicrous. Kirk's claim that Brooke's exercise of discretion caused her to be outside Kirk's care for two weeks does not fully inform

the Court of the parties timeshare surrounding that period. Kirk did not tell the Court that Kirk had Brooke and Rylee in his care for two prior consecutive weekends, including the extended Nevada Day weekend. Brooke and Rylee did not have school on Monday after Nevada day due to "staff development day." As a result, Kirk had the children with him for four consecutive days on that weekend. Below is a list of dates that Kirk and Vivian had the children from October 16 through November 17.[2]

Kirk had the children on the following days -

In October -

16, 17, 18, 19, 20, 23, 24 (Staff Dev day-no school), 25 (Nevada day- no school 4 day weekend), 26, 27, 30, 31

In November -

13, 14, 15, 16, 17

Total number of days for Kirk = 17 days

Vivian had the children on the following days -

In October -

21, 22, 28, 29

In November -

1, 2, 3, 4, 5, (6, 7 Brooke decided to spend these days with Vivian instead of with Kirk) 8, 9, 10, 11, 12

Total number of days for Vivian = 16 days (including the two days that Brooke choose to be with Vivian instead of with Kirk)

As shown above, even after Brooke exercised teenage discretion, Kirk had more days with the children than Vivian during that period. Brooke's exercise of discretion could not possibly be fairly characterized as eroding his time with the children.

[2] I am using the 30 day time period from October 16 through November 17 as a point of reference to show the Court the custodial arrangement Kirk for the past 30 days prior to the Thanksgiving Holiday schedule.

3. **Why the Children Continue to Express Their Desire to Spend More Time with Vivian.**

Inherent in Kirk's Motion is his false narrative that the only reason the children want to be with Vivian is that she has improperly coached them as part of her competition with Kirk. Kirk's claim is not supported by any evidence.

There are only three ways to evaluate the "improper coaching" claim:

First, the Court could ask Vivian. Vivian denies that she has lobbied or encouraged the children to be with her during Kirk's time.

Second, the Court could review the reasons other than Vivian's encouragement that would explain why the children want to spend additional time with Vivian. Here, there is substantial and adequate reasons why the children have formed a close bond with Vivian, and desire to be with her. In sum:

a. Vivian read extensively with and to Brooke and Rylee. As a result, both Brooke and Rylee were able to read and write before entering Kindergarten. Vivian reads and prays with them every night before they go to sleep. Both children have reading awards for number of pages or minutes read during a specific school year. Before the time that the children could read independently, Vivian read all of those pages with the children.

b. Vivian is very active with the children's school. She volunteers regularly and has received awards for her involvement in their classroom and school activities. Vivian supplied numerous additional declarations of witnesses attesting to various activities in which Vivian had participated with Brooke and Rylee. *See* Vivian's October 17th Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, pages 8 through 9.

c. Vivian has volunteered weekly in the past for Rylee's Church related activities. Vivian encourages Brooke and Rylee to volunteer and help with various charitable events such as Special

Olympics, the Humane Society, school fundraisers and rummage sales, Brooke's class's Carson City trip, at lemonade stands, etc.

d. The children and Vivian have common interests. They enjoy sewing, cooking, dancing, make-up, hair, and fashion. They have taken sewing classes, quilting classes, cooking classes, crochet classes, knitting classes, special art project classes at Michaels and Joann's, and have made projects together. Vivian taught at a fashion design school, and Brooke is very enthusiastic about fashion. Vivian alters and makes costumes for dance performances and school plays for both Brooke and Rylee. She also does their hair and make-up for the performances

e. Vivian works with the children on their homework and school projects. The children have received mountains of awards based on academics. With some encouragement and help from Vivian, the children have achieved the World Traveler Award, Nevada Citizenship Award, and Great American Award.

f. Vivian registers Brooke and Rylee for sports activities (soccer, basketball, volleyball, tee ball, and swimming). She also has and continues to arrange for their private lessons in dance, piano, guitar and drum (they not currently taking guitar and drum) gymnastics and voice. In the past, Vivian has scheduled and attended all of the children's doctor's appointments, hair appointments, and nail appointments

g. Vivian lives in the marital residence Brooke and Rylee were born and raised in that home. They have several very close friends in the neighborhood who they like to visit when they visit Vivian.

Vivian's activities with Brooke and Rylee are no different that her activities with the parties three adult children during their childhood. Those children (All-state in sports, Miss Teen Nevada, top of their class in school, great colleges) were incredibly successful in their endeavors, and so are Brooke and Rylee. The *facts* show why Brooke and Rylee are close to her, and want to spend time with her.

The third and final way the Court could determine whether Vivian has inappropriately encouraged or influenced Brooke to spend time with her is to ask Brooke. As previously stated in her first opposition to Kirk's motion to eliminate the teenage discretion provision, Vivian welcomes such an interview.

When the Court stated it did not want to hear from the girls, the field of fire was opened up for Kirk--he could conjure any facts he wanted to support his claim Vivian was campaigning to dissasociate and isolate the girls from him. His reasoning that "because Brooke does not want to spend every second to which she is entitled with me, Vivian is campaigning and alienating her" is illogical and is given the lie because he points to no other recognized external, objective alienation factor arising in either girl, e.g., becoming withdrawn and dependent in all aspects of life, psychosomatic symptoms, e.g., eating or sleep disorders, etc.

III.

THE COURT SHOULD DENY KIRK'S MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION, AND CONFIRM THE PARTIES' TEENAGE DISCRETION PROVISION TO BE CONSISTENT WITH NEVADA LAW

Kirk's present Motion again argues that the teenage discretion provision is contrary to Nevada law. Vivian addressed Kirk's argument at length in her previous brief. *See,* Opposition filed October 13, 2013. The Court denied Kirk's motion to eliminate the teenage discretion provisions. The Court should again deny Kirk's repetitive motion to accomplish the same goal, find it vexatious and award fees and other appropriate relief.

VI.

THE COURT SHOULD ORDER KIRK TO PAY VIVIAN'S ATTORNEY'S FEES AND COSTS EXPENDED TO RESPOND TO THE PRESENT MOTION

At the hearing on October 30, 2013, Court denied Kirk's first request to eliminate the "teenage discretion" provision from the parties' stipulated parenting plan. Perhaps believing the Court did not

understand the issue, but in any case unsatisfied with the Court's order denying his first request, Kirk has filed a second request seeking to emasculate the teenage discretion provision. Given the arguments replicate themselves and come on the heels of the very motion they copy, the Court can find the pending Motion from Mr. Harrison to be frivolous. It is legitimate to ask why it is not.

EDCR 7.60 permits a Court to order a party that files a frivolous motion, or a party that unnecessarily multiplies the proceedings in a case to pay the attorney's fees and costs of the other party. The Court should exercise that discretion here.

V.

CONCLUSION

Vivian requests the Court's Order denying Kirk's Motion for Judicial Determination of the Teenage Discretion Provision, and awarding awarded attorney's fees for having to respond to Kirk's frivolous motion.

Dated this 6 day of December, 2013.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

DECLARATION OF VIVIAN MARIE LEE HARRISON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

VIVIAN MARIE LEE HARRISON, declares:

1. I am the Defendant in the above-entitled matter. I have personal knowledge of the facts contained or incorporated herein, and I am competent to testify thereto

2. I make this Affidavit based upon facts within my own knowledge.

3. I have reviewed the foregoing Opposition and Countermotion and can testify that the facts contained therein are true and correct to the best of my knowledge. I hereby reaffirm and restate said facts as if set forth fully herein.

I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT.

VIVIAN MARIE LEE HARRISON
Date: 12-6-13

CERTIFICATE OF SERVICE

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

I served the foregoing document described as "

DEFENDANT'S OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES

on this 12 day of December, 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
F: (702) 699-7555
Attorney for Plaintiff

Edward L. Kainen, Esq.
10091 Park Run Dr., Suite 110
Las Vegas, Nevada 89145
F: (702) 823-4488
Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

EXHIBIT "A"

RADFORD J. SMITH, ESQ.
DANIELLE TAYLOR, ESQ.
GARIMA VARSHNEY, ESQ.
JOLENE HOEFT, PARALEGAL

SMITH & TAYLOR
Attorneys at Law

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

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 "B"

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JOLENE HOEFT, PARALEGAL
KENNETH F. SMITH, PARALEGAL
KELLYE BLANKENSHIP, PARALEGAL

VIA FACSIMILE
Edward Kainen, Esq.

November 6, 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.

> 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.

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.

0001

DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

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 OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES

Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 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 soley 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 6TH day of December, 2013

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer

EXHIBIT "R"

Electronically Filed
12/13/2013 11:11:45 AM

CLERK OF THE COURT

RPLY
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DISTRICT COURT

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: December 18, 2013
Time of Hearing: 11:00 a.m.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION
AND
PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the STANDISH LAW GROUP, and EDWARD L. KAINEN, ESQ.,

. . .

. . .

. . .

. . .

of the KAINEN LAW GROUP, PLLC, and hereby submits his Reply to Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision and his Opposition to Defendant's Countermotion for Attorney's Fees.

DATED this 13 day of December, 2013.

KAINEN LAW GROUP, PLC

By: _____

EDWARD L. KAINEN, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Contrary to Vivian's false assertions, the within motion was filed because: (1) Vivian's butchered explanation of Section 6 to Brooke resulted in Kirk losing the only two days he otherwise had with Brooke during an entire two week time period; (2) Vivian's attorneys' correspondence revealed their extremely illogical interpretation of Section 6, which is contrary to the explicit language contained in Section 6, which explicit language is consistent with the best interests of the children; (3) a judicial interpretation is required, which can only be made by the Court, and; (4) Kirk is entitled to seek that judicial interpretation by the Court pursuant to Section 6.2, which provides an aggrieved party under Section 6 can seek relief with "the Court." Contrary to Vivian's false assertion, Kirk has not unduly multiplied these proceedings. Kirk is, without question, trying to eliminate a provision which, as a consequence of Vivian's material breaches, is causing unnecessary instability, uncertainty, and undue stress in the lives of Brooke and Rylee.

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Vivian's "statement of facts" attempt to gloss over the core issue, by falsely asserting that section 6 "permits either of the parties minor children (after age 14) to ***alter*** the "weekly schedule" under the parenting plan "from time to time" to spend time with one parent." (Opposition, p. 2, l. 21-22) (emphasis added). In contrast to this representation, the actual language provides:

> "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. . . The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and the shall each encourage the children to follow the regular schedule."

(Section 6.1 & 6.2)

As a consequence of Vivian's material violations of this provision, Vivian's informing Brooke she has the absolute unfettered right to **order** changes to the custody schedule and Brooke's resentment of Kirk if he does not immediately obey her **directives**, and Vivian's overt continued manipulating Brooke to **order** changes in the agreed to custody schedule, Section 6 must be stricken. There is no question that it is in the best interests of the children that Section 6 be stricken as this provision creates an environment of instability and uncertainty, and motivates a manipulative and vindictive parent to further embroil the children in continued unnecessary conflict between the parents.

If for some reason this Court is unwilling to strike Section 6 under these circumstances, the issue, as set forth in Kirk's moving papers, is whether the children have the unfettered right to **order** a change in the agreed custody schedule, as advocated by Vivian, or whether they have the right to **request** a change in the custody schedule, as advocated by Kirk. Kirk respectfully submits that in the Court's interpretation of this provision, the Court should make an interpretation which supports and is consistent with the agreed custody schedule between the parties -- as opposed to an interpretation that undermines and erodes the agreed custody schedule -- and is in furtherance of maintaining stability, continuity and certainty in these children's lives.

Vivian's opposition, pursuant to EDCR 5.25(b) was to be filed and served on or before December 5, 2013. However, true to form, Vivian failed to file and serve her opposition until 4:47 p.m. on December 6, 2013. Throughout this litigation, Vivian's attorneys have shown no respect for the rules of this Court or this Court. Kirk, respectfully, requests the Court to strike said opposition as untimely.

. . .

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II. ARGUMENT

Vivian's argument ignores all of the blatant material breaches of Section 6 by Vivian which have effectively nullified the critical safeguards contained in Section 6. Those material breaches where Vivian not only told Brooke of the provision, but butchered the explanation of the provision by telling Brooke she had the *absolute right to dictate changes* to the agreed custody schedule at any time and without any reason.

Vivian's interpretation is so extreme and turns the parents' right to jointly determine custody, which they did, on its head. There is an agreed custody schedule between the parties, but according to Vivian, it is rendered meaningless by the whim of a highly manipulated 14 year old child. The Court, respectfully, should have zero tolerance for such an extremely absurd position, which is so patently contrary to the best interests of the children, the agreed custody schedule between the parties, common sense, and NRS 125.510(5), NRS 125C.010, and NRS 125.460.

A. Continuing the Pattern Exhibited In Prior Briefs, Vivian Makes One False Assertion to the Court After Another

Vivian avers that she considered seeking primary custody. In light of Vivian's neglect and abandonment of these children over a period of years, that was never going to happen. Vivian avers that, "Vivian proposed a plan of "teenage discretion" that is contained in the parenting plan." (Opposition, p. 4, 2-3) Contrary to Vivian's erroneous rendition of "her" teenage discretion provision, Section 6, as clearly evidenced by the Affidavit of Thomas J. Standish, attached as Exhibit 4 to the within motion, was a negotiated provision with critical safeguards. The provision described by Vivian may have been what she wanted, but it does not exist. Unfortunately, it is the provision which *does not exist* that is the one Vivian explained at length to Brooke, and that Vivian asserts gives Brooke the absolute unfettered right to **order** changes to the agreed custody schedule that Kirk must immediately **obey** without question or discussion.

Vivian disingenuously represents to the Court, "Vivian also wanted to give time to Kirk to improve his relationship with Brooke before her 14th birthday. . ." (Opposition, p. 4, l. 3-4) Contrast this ridiculous assertion with the fact that after Brooke was with Vivian for 14 uninterrupted days immediately after her 14th birthday, Brooke announced to Kirk that she wanted to live with Vivian full

time. And this is in the context of the safeguard in Section 6, which provides, "Such adjustments shall not be prompted or suggested by either parent. . ." Again, contrary to the explicit provisions of Section 6 and the law, Vivian erroneously concluded and thereafter erroneously advised Brooke that after Brooke turned 14 years old she could unilaterally, without any Court involvement whatsoever, decide, dictate and order that she would live with Vivian full time. Vivian's material breaches of the provision, Vivian' erroneous explanations of the provision to Brooke, and Vivian's manipulation of Brooke have created an undeniably untenable situation for these children. Vivian's false assertions to the Court fly in the face of common sense and undisputed facts, and are an insult to the intelligence of everyone involved.

The singular nonsensical conjunctive/disjunctive "and/or" language in paragraph 6.1, is totally inconsistent with *all* of the other language and provisions contained in Section 6. It makes no sense whatsoever that the child would have the right to **request** – which is consistent with all of the other language – but would *also* have the right to **order.**

The bottom line is that Vivian is asserting the following: the parties, the parties' respective attorneys, and the Court have ordered and agreed to a detailed custody schedule, which sets forth in detail each parent's custody on a daily basis, including the specific time of transfer during school and when not in school, including vacation and holiday time, duly considering, at least in theory, the best interests of the children. Under this provision, according to Vivian, all of that can be nullified by the whim of a 14 year old child, who after Vivian's prompting and suggesting, informed Kirk, on August 25, 2013, that Kirk has to take her to Vivian's house *any time she wants* and she, Brooke, has the *right to stay as long as she wants*. Respectfully, this is utter nonsense!

Kirk urges the Court to strike Section 6. In the, hopefully, unlikely event the Court chooses to not strike Section 6, Kirk does not request the Court to "alter" Section 6 as Vivian asserts, but simply to make a common sense interpretation of the explicit language which is in the best interests of the children, that the provision, read as a whole, contemplates that the children can make ***a request*** to changes in the agreed custody schedule, but cannot **order** such changes.

. . .

. . .

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Vivian erroneously asserts, "Kirk's next claim is that the Parenting Plan allows the children "unfettered" right to modify the Court's order." (Opposition, p. 5, l. 3-4) Kirk's position is just the opposite – Kirk's position is that the child has the right to make *a request*. It is Vivian's position that the child has the unfettered right to **order**.

During the hearing on October 30, 2013, this Court made it clear on the record its preference to wait to have a Parenting Coordinator in place before the Court dealt with Section 6. Kirk's motion was not denied with prejudice. However, this did not stop Vivian from falsely asserting, "On October 30, 2013, the Court found the teenage discretion provision (¶6 of the Parenting Plan) to be valid and enforceable." This Court made no such finding.

B. The Unequivocal and Explicit Section 6.1 Language Providing, "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent" Is Controlling and Is Outcome Determinative Of Any Reasonable Interpretation and Construction Of Section 6.1 – the 14 Year Old Child Has the Right to Make A Request and Not the Right to Make an Order

Vivian's argues the language "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent." only precludes a child from permanently making changes to the agreed custody schedule and is not applicable to changes in weekly visitation. (Opposition, p. 5, l. 5-8) This argument is patently wrong. This critical language is the first sentence contained in Section 6.1, which contains the conjunctive/disjunctive language – the sole basis of Vivian's argument that a 14 year old child has the absolute right to **order** changes to the agreed custody schedule. Any reasonable common sense construction of Section 6.1 leads to the inescapable conclusion that any interpretation of the intent of the conjunctive/disjunctive language is in the context and within the parameters of this language. The logical interpretation, therefore, is that the child does **not** have the right to *order* changes in the weekly agreed custody schedule. Based upon the explicit language contained in Section 6.4, which addresses permanent custody, it is evident, that the subject language which Vivian asserts only applies to permanent changes in custody, ironically, only applies to changes in the weekly agreed custody schedule and not to a permanent change in custody, as Section 6.4 is clear that permanent custody will ultimately be decided by the Court.

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C. Brooke's Orders To Kirk Regarding Changes To the Agreed Custody Schedule Prior to Wednesday, November 6, 2013

For whatever reason, Vivian has felt compelled to discuss the prior occasions where Brooke ordered Kirk to make changes in the agreed custody schedule. (Opposition, p. 7) Kirk has previously addressed these incidents in detail in the prior motion and will not belabor the true facts surrounding those incidents again. *See* Motion to Modify Order, filed 10.1.13, p. 6-8) However, it must be noted that because of summer vacations, as a practical matter, the **orders** from Vivian/Brooke could not have started six months ago, but only since the start of school. It is only since the start of school, that Vivian has forced Kirk to wait in the car for 20 to 35 minutes at a time while she visits with Brooke and Rylee; Vivian has now convinced Brooke and Rylee to not return Kirk's texts or speak to him on the telephone while they are with her, and to **order** Kirk to lose time with the girls during his custody time to do such things as shop for dance shoes when Kirk has taken them to buy dance shoes in the past and Vivian could have taken Brooke to get dance shoes shortly before or shortly after that time during her own custody time.

All of this is part of Vivian's self-created vindictive competition with Kirk. It is not out of Vivian's desire to do what is in the best interests of Brooke and Rylee. Given the fact that Vivian regularly absented herself from the minor children by spending months in Europe and Asia delusionally pursuing her "soul mate" and other love interests without any regard whatsoever for Brooke and Rylee, and that she lived behind a closed door in their home for years, intentionally isolating herself from Brooke and Rylee and the rest of the family, a loss of two days may not be much to Vivian, but Vivian knows it is a very big deal to Kirk.

Vivian and Vivian's attorneys now argue that the provision was never intended to erode Kirk's custody time with the girls and Kirk is over reacting. This argument is yet another in a long line situational baseless arguments made by Vivian. The Machiavellian intent of this provision by Vivian has been previously revealed. The Court will recall Mr. Silverman's affidavit wherein he opined that this provision will be utilized so that "**it is Vivian who will have de facto primary custody.**" (Exh. S to Vivian's opposition to Kirk's countermotions re attorneys' fees, p. 9, l. 16-17)

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D. Vivian Misleads the Court Regarding The Relative Time Each Parent Has With the Children

Kirk has previously advised the Court that Dr. Roitman advised Kirk it was critical to end the contentious divorce to avoid significant emotional damage to Brooke and Rylee. At that point, Kirk had given up on his attempts to get Vivian into therapy – which was clearly in the best interests of the children and Vivian. Although he did not believe it was in Brooke's and Rylee's best interest to have joint custody given Vivian's condition and past behavior, based on Dr. Roitman's strong advice he felt he had no other choice but to allow Vivian to have joint physical custody. As a penalty for Kirk to do what was best for Brooke and Rylee, Vivian insisted that she have all four of the major national holidays with Brooke and Rylee – "1) Martin Luther King Day; 2) President's Day; 3) Memorial Day; and 4) Labor Day, VIVIAN shall have the children in her care both that Monday holiday and the preceding weekend," (Section 7.6 of the custody agreement.) In contrast, Kirk only gets Brooke and Rylee for one three day weekend during the school year that he can take them out of town – Nevada Day. In addition, Vivian gets the children for 3 more days than Kirk during the summer – 10 days for sewing camp versus 7 days for the Utah/Lagoon trip. (Section 7.1 of custody agreement)

Based upon the foregoing, each year, Vivian will have Brooke and Rylee with her more than Kirk will have Brooke and Rylee with him. Therefore, Vivian's attempt to have the Court only focus upon just one 33 day period of time, to suggest that Kirk's loss of two days with Brooke is no big deal is disingenuous. As noted previously, the two days wrongly and inequitably taken from Kirk were the only two days Kirk was going to see Brooke during an entire two week period.

Vivian makes much to do about a 33 day time period where Vivian had Brooke and Rylee for **16 days** and Kirk had Brooke and Rylee for **17 days**, arguing that Kirk is unreasonable and implying there must be something wrong with Kirk for complaining he lost two days with Brooke. (Opposition, p. 8, l. 27-28; p. 9, l. 1-28) Vivian attempts to impugn Kirk's character with this window of time asserting Kirk "does not fully inform the Court of the parties timeshare surrounding this period." (Opposition, p. 8, l. 28; p. 9, l. 1) And further, "Brooke's exercise of discretion could not possibly be fairly characterized as eroding his time with the children." (Opposition, p. 9, l. 23-24)

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First, as a consequence of Vivian's/Brooke's **order**, Kirk lost the only two days he had with Brooke during an entire two week period. Kirk respectfully submits that any time lost with his children is precious time he will never get back, unless this Court orders the return of those days. Second, consistent with what Vivian has done, Kirk could direct the Court's attention to the time period between Friday, November 22, 2013 through Tuesday, January 7, 2013. During this time period, Brooke and Rylee will be with Vivian for a total of **32** days compared to being with Kirk for **14** days, with each party sharing Christmas Day! Although this relative time sharing will generally be the opposite next year, it highlights that those two days wrongly taken from Kirk absolutely eroded Kirk's time with Brooke.

Kirk respectfully submits, that to be deprived of spending any time with his children for the entirety of two weeks is a very big deal. The parties' agreed custody schedule provided he could spend those two days with Brooke. However, those days were wrongly taken from him in Vivian's effort to obtain **"de facto primary custody."**

E. The Circumstantial Evidence is Overwhelming That Vivian Is Coaching Brooke and Rylee To Spend More Time With Vivian

Vivian falsely asserts "[t]here are only three ways to evaluate the "improper coaching" claim. None of the three ways identified by Vivian is the irrefutable circumstantial evidence already before the Court. These are the facts: Brooke was with Vivian for 21 straight days and the very next day announced to Kirk and Whitney that she now had the *right* to decide where she lives. Brooke was then with Vivian for 14 straight days and within one day of her return to Kirk, crying and distraught, announced she wanted to live with Vivian full time, thus leaving her little sister for one-half the time. Vivian and Heather Atkinson have both been telling Brooke and Rylee that "girls are supposed to live with their mommies."

The sum and substance of Vivian's most recent volley is a rehash of the same misrepresentations that was in her prior opposition. Vivian's involvement with the girls, as described, is only since mid-September of 2011. Vivian was missing in action during the years prior to that time.

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Until mid-September of 2011, Kirk was the only consistent parent Brooke and Rylee had on a daily basis for many years, beginning in February of 2006. From late 2008 until mid-September of 2011, Vivian was a parent in name only. Kirk did everything for and with Brooke and Rylee during that time period.

Since mid-September of 2011, Kirk has continued to be an attentive parent. As the Court is aware, between February of 2012 until July of 2012, Kirk had Brooke and Rylee during the entire school week. It was Kirk – not Vivian – who was exclusively helping Brooke and Rylee with their homework, just as he had done for many years prior to that time. During the approximately one-half the time Kirk has Brooke and Rylee since this Court's order in July of 2012, Kirk has continued to care for Brooke and Rylee in the same manner. Brooke is now a Freshman in high school and predictably rarely requires any help with homework. However, Kirk continues to help Rylee with homework, when she needs help.

Vivian continues to make absurd representations of fact which have no basis in reality. Vivian represents, "Vivian lives in the marital residence. Brooke and Rylee were born and raised in that home." (Opposition, p. 11, l. 22) First, Brooke and Rylee were both born at Sunrise Hospital. Second, Brooke was born on June 26, 1999. The Harrisons did not even acquire the marital residence until October 24, 2001 and did not move into the house until a couple of months thereafter. Third, beginning in February of 2006, Kirk – not Vivian – primarily raised Brooke and Rylee in that home, and from the fall of 2008 until mid-September of 2011, Kirk exclusively raised Brooke and Rylee in that home. Vivian would not even sit down and have a meal with these little girls for months at a time when she wasn't in Europe or Asia.

Vivian's history of manipulation of Brooke and Rylee has been well documented. *See* Motion for Custody, filed 9.14. p. 30-33. Since the service of the Motion for Custody, Vivian has been doing a lot of things with the girls that she had not done for years.

The quoted language attributed to Kirk on page 12, lines 7-8 of the Opposition, was never said by Kirk. The argument that follows is nonsensical.

It is the "girls are supposed to be with their mommies" indoctrination by Vivian, similar manipulative antics, and Vivian's material breaches of Section 6.1 whereby she has convinced Brooke she has the absolute right to order changes in the agreed custody schedule, which are currently causing

the problems. If the Court strikes Section 6, Vivian will be substantially less motivated to so callously manipulate these minor children.

Again, if this Court has any appetite whatsoever to interview anyone in an effort to seek out the truth, it is not going to be gleaned from interviewing a highly manipulated 14 year old child. The Court will, however, gain true incite from interviewing Tahnee and Whitney, the parties' adult children, who are eyewitnesses to what actually occurred.

F. There is Absolutely No Basis Whatsoever To Award Vivian Attorney's Fees

As previously noted, the Court made it abundantly clear on the record that the prior motion was denied because the Court wanted the parties to have a Parenting Coordinator in place before addressing the issues in the motion. The prior motion was denied without prejudice.

Kirk was unable to wait for the Parenting Coordinator to be in place for the following reasons: (1) Vivian's butchered explanation of Section 6 to Brooke resulted in Kirk losing the only two days he otherwise had with Brooke during an entire two week time period; (2) Vivian's attorneys' correspondence revealed their extreme interpretation of Section 6, which is contrary to the explicit language contained in Section 6, which is consistent with the best interests of the children; (3) a judicial interpretation is required, which can only be made by the Court, and; (4) Kirk is entitled to seek a judicial interpretation by the Court pursuant to Section 6.2, which provides an aggrieved party under Section 6 can seek relief with "the Court." Kirk is most certainly an aggrieved party as a consequence of conduct occurring **after** the prior motion was essentially postponed by the Court.

III. CONCLUSION

For all of the reasons stated, the most important of which is the best interests of these children, Section 6 should be stricken. Vivian's material breaches of the critical safeguards contained in Section 6 has prospectively rendered them meaningless. Those safeguards were intended to avoid the very scenario the parties now find themselves – a 14 year old child adamantly believes she has the absolute right to **order** her father to immediately, without notice, and without consideration of prior plans or the interest of anyone else, including her little sister, change the agreed custody schedule on a weekly basis. According to the 14 year old child, her mother, and her mother's attorneys, the father must immediately **obey** this order without question and without discussion. This is nonsensical, contrary to the most

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elementary common sense, and renders meaningless the detailed custody schedule derived by the parties and ordered by this Court. It is also, without question, in direct violation of NRS 125.510(5), NRS 125C.010, and NRS 125.460.

If the Court does not strike Section 6, regardless of this Court's interpretation, Vivian will continue to be motivated to improperly manipulate these children. However, if the Court refuses to strike Section 6, there is no question the proper construction and interpretation of Section 6 results in this Court ordering that under Section 6 the minor child has the right to **request** a modification of the agreed custody schedule, but does not have the right to **order** a modification of the agreed custody schedule. The controlling operative language in this determination is from the very section pertaining to changes to the agreed *weekly* schedule, "***The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent.***" Vivian's attorneys', Vivian's, and Brooke's interpretation of this same section, namely that Brooke, at 14 years of age, has the absolute right to **order** changes to the weekly schedule and Kirk, her father, must immediately **obey** without any question or discussion, is obviously contrary to this controlling language.

Kirk respectfully begs the Court, for the sake of his children, to strike Section 6. The uncertainty about the future for minor children is one of the horrors of divorce litigation, particularly protracted litigation. 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. Under the circumstances in this case, the continued existence of Section 6 unnecessarily disrupts the stability, certainty and continuity in these children's lives. It is in the best interests of Brooke and Rylee for the Court to make the judicial determination that the "teenage discretion" provision is stricken.

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Kirk also respectfully requests the Court to order that Kirk be given the four custodial days that have been wrongly taken from him – two days for November 6 & 7 and two days for July 31 & August 1. Kirk also requests the Court impose an additional penalty upon Vivian as a deterrent to Vivian to wrongfully attempt to take custodial days from Kirk in the future.

DATED this 13 day of December, 2013.

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DECLARATION OF KIRK R. HARRISON IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION AND PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES

I am the Plaintiff in the above-entitled matter and I make this Declaration in support of my *Reply in Support of Plaintiff's Motion for A Judicial Determination of the Teenage Discretion Provision And Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees.*

That I make this Declaration based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true. I have read the foregoing Reply and Opposition and hereby declare that the facts contained therein are true and correct to the best of my knowledge. I reaffirm and restate said facts as if set forth fully herein. I am requesting that the Court grant my Motion, deny the Defendant's Countermotion in its entirety and award me attorney's fees for having to respond to same.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 13th day of December, 2013.

/s/ Kirk R. Harrison
KIRK R. HARRISON

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DISTRICT COURT

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: 12/18/2013 Time of Hearing: 11:00 a.m.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the "*Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision and Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees*" on December 13, 2013, by electronic transmission to the following e-mail address, and by placing a copy in the United States Mail, first class, postage prepaid, to the following address:

Radford Smith, Esq.
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
rsmith@radfordsmith.com

An Employee of
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EXHIBIT "S"

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DISTRICT COURT

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: December 18, 2013 Time of Hearing: 11:00 a.m.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO ALTER, AMEND, CORRECT AND CLARIFY JUDGMENT
AND
PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION TO CLARIFY ORDERS

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the STANDISH LAW GROUP, and EDWARD L. KAINEN, ESQ.,

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of the KAINEN LAW GROUP, PLLC, and hereby submits his Reply to Defendant's Opposition to Motion To Alter, Amend, Correct and Clarify Judgment and his Opposition to Defendant's Countermotion to Clarify Orders.

DATED this 16th day of December, 2013.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The desire to have this contested matter prolonged and cost as much money as possible is evident with every one of Vivian's delaying tactics and with almost every motion. Kirk's counsel provided a proposed marital agreement to Vivian's attorneys on February 19, 2013, reflecting the in-Court settlement from December 3, 2012. Vivian's attorneys, in writing, promised to provide a written response. No response was forthcoming until after this Court ordered a response in its Order of September 19, 2013. Kirk filed a Motion to Enter Decree on May 13, 2013. Vivian was required to file an opposition, pursuant to EDCR 5.25(b) within 10 days. As of September 4, 2013, Vivian's attorneys had failed to file an opposition to Kirk's Motion to Enter Decree for ***one hundred fourteen (114) days***. Left with no alternative, Kirk's counsel filed a Motion for Scheduling Order on September 4, 2013.[1] Under these circumstances, Vivian's attorneys now have the temerity to argue to the Court that all of this delay was because, "Kirk failed to meet and confer." (Opposition, p. 3, l. 14)[2] These type of disingenuous tactics are absolutely outrageous and cannot be condoned by this Court.

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[1] Attached to that motion were the many letters sent by Kirk's counsel in their repeated efforts to illicit a response. The motion also notes the consistent pattern of conduct of totally disregarding the rules of this Court throughout this litigation.

[2] Kirk's counsel immediately responded to Vivian's attorney's letter, dated May 8, 2013, with a letter, dated May 9, 2013, a true and correct copy of which is attached hereto as **Exhibit "4."**

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Vivian's opposition, pursuant to EDCR 5.25(b) was to be filed and served on or before December 5, 2013. However, true to form, Vivian failed to file and serve her opposition until 5:07 p.m. on December 11, 2013. Throughout this litigation, Vivian has shown no respect for the rules of this Court or this Court. Kirk, respectfully, requests the Court to strike said opposition as untimely.

II. ARGUMENT

A. Vivian's Much Belated End Run Attempts To Wrongly and Inequitably Obtain One-Half Of Kirk's Separate Property Accounts Must Fail

Vivian concedes account ending 8278 with $46,000 is Kirk's separate property. In her Opposition[3], Vivian concedes Bank of America account ending 8278 with a balance of approximately $46,000, is Kirk's separate property.

Accordingly, there are now only three accounts at issue:

1. **Bank of America account ending in 8682** – Kirk has had this account since he was in high school. The account was originally with the Pioche Office of Nevada National Bank. Nevada National Bank was later acquired by Security Pacific Bank. Security Pacific Bank was subsequently acquired by Bank of America.

2. **Nevada Bank & Trust account ending in 2713 and 1275**

   (a) Account **2173** was a joint account Kirk had with his father, with full right of survivorship, prior to his marriage to Vivian. When Kirk's father passed away on October 30, 1990, he became the sole owner of the account.

   (b) Account **2713** is a non-interest bearing checking account. Therefore, Kirk purchased a certificate of deposit at Nevada Bank & Trust with most of the funds in that account and thus created account ending **1275**.

3. **Wells Fargo account ending in 8032** – Kirk opened an account at First Interstate Bank on November 29, 1990, to deposit all monies he received from his father's estate and all monies he received from the lease and sale of Kirk's parents' family home, which Kirk and his sisters inherited from their mother when she passed away in 1983. Kirk's father lived in the family home until the time of his death. The home was subsequently leased and sold. Sometime after all monies were received from his father's estate and the family home was sold, Kirk purchased a certificate of deposit at FIB with all of the funds in that account and thus created this account. Wells Fargo subsequently acquired First Interstate Bank.

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[3] Page 3, footnote 1, of Vivian's Opposition.

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As noted in the moving papers, Kirk has consistently identified his separate property accounts, which have always been separately maintained, as separate property from the inception of this litigation. Kirk has made multiple responses to discovery promulgated by Vivian confirming the accounts are Kirk's separate property. The parties resolved the community property interest in the ranch based upon Cliff Beadle's calculations, clearly reflecting the accounts are Kirk's separate property. In other words, money spent from some of those accounts were deemed separate property contributions on the ranch issue, but Vivian now seeks to divide said accounts. Finally, the parties unequivocally identified on the record on December 3, 2012, which accounts were left to be divided – which did *not* include Kirk's separate property accounts. Despite all of the foregoing, in a draft of a decree of divorce, submitted almost one year after that hearing, Vivian now asserts she is entitled to one-half of Kirk's separate property accounts. These type of bad faith cannot be permitted or condoned by this Court.

Contrary to Vivian's baseless allegation, Kirk provided bank statements for every account, again and again. *See* documents bates-stamped PLTF000798 - PLTF000800, PLTF000801, PLTF000802 - PLTF000806, PLTF000807 - PLTF000809, PLTF000810 - PLTF000811, PLTF000812 - PLTF000828, PLTF002656 - PLTF002782, PLTF003679 - PLTF003759, PLTF010061 - PLTF010064, PLTF010065 - PLTF010101, PLTF010102, PLTF010103, produced in response to Vivian's requests for production of documents. *See also*, Kirk's detailed explanation as to the source of the funds he used to purchase his sisters' interests in the ranch, in his response to Interrogatory No. 28.

In what can only be described as an attempt to mislead this Court, Vivian quotes language entirely out of context with a citation to the wrong page in, perhaps, an effort hide that fact. Vivian, unethically quotes Ed Kainen from the hearing on December 3, 2012, *out of context* in an effort to improperly lead this Court to believe that Ed Kainen represented that [all] "remaining accounts will be distributed between the parties" as follows:

> MR. KAINEN: There is a . . . tobacco settlement money that comes to the parties . . . Those monies will be paid to my client . . . He will pay Mrs. Harrison, half of the net proceeds. . . The Geothermic Solutions, LLC is just going to be put in some sort of trust. . . ***the remaining accounts will be distributed between the parties***. . .

. . .

Vivian then makes the following citation for the above quotation: "*See* Written Transcript of the hearing, page 10, lines 7-24."

The quoted language is actually from page 9 and **does not** provide what Vivian has intentionally attempted to mislead this Court into believing it provides. What is written *actually* provides just the opposite. Mr. Kainen, in referring to the "remaining accounts" *specifically identifies those discrete accounts*. The record is unequivocally clear what discrete remaining accounts remained to be divided – none of which were Kirk's separate property accounts:

> MR. KAINEN: There is tobacco settlement money . . . The remaining accounts will be distributed between the parties which include my client's business account, the Harrison Dispute Resolution, which obviously will be awarded to him. Half of that account goes to Mrs. Harrison, but the entity itself goes to my client. There is a retirement account that is yet to be divided which will be divided and we agree on the terms of a qualified domestic relations order. There is the million dollar account that was set aside that we agreed to previously. That will be divided net of the (inaudible – crosstalk – 0:08:42.0).
>
> MR. SMITH: To equalize, okay.
>
> MR. KAINEN: The items that we've covered here today. There are three accounts that have not been divided, not counting the retirement account that is in the process. We have a draft of a qualified order that's been circulated. Those three accounts are Kirk's checking account that ends in 4040, the number, and a money market account also in Kirk's name ending in 5111, and then the Harrison Dispute Resolution, LLC account, which actually ends in, the number 4668.

(Hearing Transcript, 12.3.12, p. 8, l. 20-25; p. 9, l-25; p. 10, l. 1)

As the Court can readily see, Vivian attempted to mislead this Court into believing that the reference to "remaining accounts" was an all-encompassing reference which would have included Kirk's separate property accounts. This representation is clearly false. The only accounts remaining to be divided were specifically enumerated by Mr. Kainen: (1) the account for Harrison Dispute Resolution ending in 4668; (2) the retirement account pursuant to a qualified domestic relations order; (3) the million dollar set aside account; (4) Kirk's checking account ending in 4040, and; (5) Kirk's money market account ending in 5111.

Vivian once again made a knowing misrepresentation of a material fact with the intent that this Court rely upon that misrepresentation. That is a fraud upon this Court. Again, this type of openly unethical behavior before this Court must stop and cannot be condoned by this Court.

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Kirk urges the Court to examine his moving papers. The record before the Court is clear that Ed Kainen identified the only accounts remaining to be divided – none of which were these separate property accounts. The fact that after these accounts were specifically identified and Vivian's attorney did not add Kirk's separate property accounts to the list speaks volumes. The fact that these accounts are separate accounts was the basis for Cliff Beadle's calculation of the community property interest in the ranch property, all of which was accepted by Vivian's financial experts and attorneys, is also entirely inconsistent with the position she is now taking. Finally, during discovery, Kirk made it clear that these accounts were all clearly separate property and the actual settlement also makes that clear.

B. Vivian Blatantly Attempts To Obfuscate The Division Of Personal Property, the Consummated Agreement Between The Parties, And The Unequivocal Record Before The Court

On November 13, 2012, Vivian's appraiser, Ms. Newman, appraised the personal property in the marital residence. On November 20, 2012, Ms. Newman appraised the personal property at the ranch. Kirk's appraiser, Ms. Hutchison, also went to the marital residence and the ranch and appraised the same personal property.

The parties subsequently settled the financial portion of the case and memorialized that settlement before the Court on December 3, 2012.

It is indisputable, that the parties agreed that all of the personal property at the ranch belongs to Kirk. As noted in Kirk' moving papers, the December 3, 2012 record is unequivocal that all of the personal property at the ranch belongs to Kirk; the proposed Decree submitted by Vivian on September 27, 2013 is unequivocal that all of the personal property at the ranch belongs to Kirk, and; the proposed Decree submitted by Kirk is unequivocal that all of the personal property at the ranch belongs to Kirk. *See* Kirk's Motion to Alter, filed 11.14.13, p. 11, l. 5-13.

Despite the foregoing, in Vivian's opposition, Vivian ***now*** takes the position that Ms. Newman was "rushed" – through absolutely no fault of Kirk – and did not do a very good job in her appraisals.

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The Court must put a stop to this kind of nonsense which is intended to prolong a divorce proceeding, which Vivian's attorneys have already prolonged beyond all reason. The parties have already spent over $16,000.00 ($2,000 by Kirk, and $14,176.87 by Vivian) in personal property appraisals and many tens of thousands of dollars thereafter regarding the division of this personal property, the vast majority of which was never in dispute. Enough should be enough.

1. After the Expenditure of Many Tens of Thousands of Dollars To Appraise and Divide the Personal Property And Numerous Correspondence Between the Parties In Connection Therewith, And A Negotiated Settlement Between the Parties, Which Was Memorialized on the Record Before The Court More Than One Year Ago, Vivian's Appraiser Submits A Letter Stating That Vivian's Attorneys Rushed Her And Despite Billing Over $14,000.00 for Her Appraisals, She Did Not Do A Very Good Job

The ploy Vivian's attorneys are now attempting before the Court in connection with the division of personal property is also outrageous. Many tens of thousands of dollars have been spent in connection with appraising the personal property, correspondence between the parties, negotiating an overall settlement, submitting decrees of divorce to the Court, and the Court having entered a Decree of Divorce based upon that settlement. Now, for the very first time, Vivian's attorneys submit a letter from Vivian's personal property appraiser, Ms. Newman, alleging, even though she was paid over $14,000.00 for her work, that she was **rushed** – not by Kirk – but by Vivian's attorneys[4] and she did not do a very good job. There is no bounds to the unsavory tactics Vivian's attorneys have employed and continue to employ in this case.

Ms. Newman alleges "the total time available to conduct the project was limited by an impending deadline." Ms. Newman, billed $14,176.87 to appraise the personal property at the marital residence and at the ranch. Kirk's personal property appraiser, Ms. Hutchison, appraised the same personal property at the marital residence and at the ranch. For the identical scope of work, Ms. Hutchison billed $2,000.00. All of this begs the question as to how much Ms. Newman would have billed had she not been "rushed" by Vivian's attorneys.

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[4] "When I conducted the inspection at the Boulder City home, my initial instructions were to visit the home and conduct a cursory overview of the property at the home. After I arrived at the home, I was asked by the **attorneys** to instead conduct an actual appraisal." (Emphasis added)

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Ms. Newman flew to Las Vegas and drove to Boulder City on November 13, 2012 to appraise the personal property in the marital residence. Kirk was present when this occurred. Ms. Newman was not rushed. She took her time. When Ms. Newman appraised the personal property at the marital residence, she was denied access to nothing. The tool chest in the garage was not locked and has never been locked. Somebody, not Kirk, told Ms. Newman not to value the furniture and personal property in the children's bedrooms and the guest bedroom. Ms. Newman never asked Kirk to open his gun safe.[5] There was no boat engine at the marital residence. The only boat engine was on the boat at the ranch which Ms. Newman appraised. Kirk was living in the marital residence at the time and Ms. Newman could have taken, and Kirk was led to believe she had taken, all of the time she thought necessary to perform her work. Ms. Newman now claims she was rushed (again, not by Kirk, but by Vivian's attorneys). Ms. Newman's letter is inconsistent with the conversations Kirk had with her. After Ms. Newman had also appraised the personal property at the ranch, she informed Kirk that Mr. Silverman wanted her or an associate to return to the marital residence to appraise the outside furniture. At no time did she say she wanted or needed to spend more time inside the house to appraise additional personal property.

Similarly, while at the ranch, neither Ms. Newman nor her husband indicated, at any time, they were rushed or did not have sufficient time. Kirk met Ms. Newman and her husband at the ranch. Kirk had set aside the entire day for this purpose. When Ms. Newman appraised the personal property at the ranch, she was denied access to nothing. Kirk opened up the old cabin, the two metal sheds, the three storage containers, and the storage container containing old beds. Ms. Newman inspected the contents of all of the buildings and storage containers. Kirk accompanied Ms. Newman and answered all questions posed. When asked about the automobile in the one storage unit, Kirk identified it as a 1937 Oldsmobile Coupe that Kirk purchased with his father *when Kirk was 14 years old.* Kirk mentioned the car had sentimental value as Kirk restored it with his father when he was a teenager and his father's first

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[5] Kirk has already explained in great detail why he *assumed* Vivian did not intend to appraise his guns, just as he had no intention of having a significant amount of Vivian's personal property appraised. *See* Kirk's Opposition to Motion for Fees And Counterclaims for Fees, filed 5.28.13, Exh. 5, Kirk's Affidavit, ¶47 thru 50. True and correct copies of these paragraphs are attached hereto as **Exhibit "5"** for the Court's convenience.

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new car was also a 1937 Oldsmobile Coupe. *Kirk does not own any antique firearms.* Ms. Newman and her husband spent a number of hours identifying, photographing, and inventorying personal property. At no time did Ms. Newman suggest or imply she was rushed in any way.

It flies in the face of common sense that Ms. Newman and her husband would drive all the way from Reno to Pinto, Utah and not take whatever time they needed. Kirk recalls it was still daylight when they left. Ms. Newman and her husband indicated that the appraisal was a stopover for them, as they were taking a leisurely vacation, planning to explore areas in Southern Utah and continuing to Arizona where they planned to spend Thanksgiving with friends.

III. OPPOSITION TO COUNTERCLAIM

A. Tahnee's Account Is Not an Omitted Asset

An interest in the account the parties gifted to Tahnee in 2011 became one of Vivian's spurious complaints during the divorce process. However, this claim was abandoned during the litigation and in the final global settlement of the parties. Vivian cannot raise an interest in this account now, a year after the global settlement, any more than Kirk can raise an interest in the waste claims he made against Vivian in the divorce process, or the debts Vivian failed to account for which she treated as community debt.

Vivian was well aware of the gift to Tahnee and agreed to the same. The global settlement, which was memorialized on record, specifically identified those issues remaining, such as attorney's fees, for example. Now, more than a year later, after the relationship with Tahnee has failed to improve, she has *changed her mind,* and is attempting to receive an asset which she well knows is Tahnee's.

Vivian was intimately involved in the decision to give Tahnee this money. Although Vivian feigns no knowledge of this fact, she does admit to knowing about this account long before the global settlement agreement was consummated between the parties and not raising the issue in the final global settlement.

The family, with the exception of Joseph, went to Disneyland from July 8, 2011 through July 11, 2011. On July 10, 2011, they had lunch together at the Carnation Café on Main Street. During that lunch there was a discussion with Vivian, Kirk, Tahnee and Whitney, whereby Kirk and Vivian both agreed that neither of them wanted the divorce to negatively financially impact Tahnee and Whitney in

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the pursuit of their careers. Both Kirk and Vivian agreed they wanted to give Tahnee and Whitney the money necessary to accomplish their goals, without worrying about how the divorce might negatively impact them. The intent was to make an unconditional present gift of money to Tahnee and Whitney so they would not have to worry about, ironically, precisely what Vivian now, much belatedly, attempts to do.

Contrary to Vivian's representation to the Court, the children's UTMA accounts were never intended to be utilized for college or when they were just starting out in their careers.

Kirk thereafter immediately consulted with Greg Morris, Esq. for advice. Mr. Morris advised Kirk that if the money was given directly to Tahnee and Whitney, it would be a taxable event and recommended that all costs of the respective proposed educations be prepaid. Kirk related Mr. Morris's advice to Vivian, and with her concurrence, communicated with both Methodist University and UNR Medical School about prepaying all tuition and costs. Methodist University accepted and was paid a lump sum payment for Whitney's entire education. However, UNR would not accept payment beyond the then current semester. Kirk again consulted with Mr. Morris. Mr. Morris advised setting aside the money in a separate account in Tahnee's name for Tahnee, as initially planned. However, he recommended adding Kirk's name to the account to avoid triggering a taxable event. All of this was done with Vivian's knowledge and concurrence. Vivian was absolutely well aware of the 2011 gift to Tahnee and Tahnee's account prior to the time of the settlement between the parties. The parties did not foresee Tahnee subsequently leaving medical school at the time of the gift. However, that did not *retroactively* nullify a present unconditional gift. It is also important to note that Vivian is trying to reclaim money gifted to Tahnee, who is not before the Court nor a party to this action.

Vivian makes the following false and baseless representation to the Court, "During the parties divorce, **in direct violation of the Joint Preliminary Injunction**, Kirk unilaterally, without Vivian's knowledge or consent, transferred $126,000 from community monies into an account that was ostensibly being held to pay Tahnee's medical school tuition." (Opposition, p. 9, l. 5-8) (emphasis added). The Joint Preliminary Injunction was filed on September 9, 2013 and served upon Vivian's attorneys on September 14, 2011. The account was opened for Tahnee on July 14, 2011 – two months prior to the service of the Joint Preliminary Injunction.

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Although Vivian denies her intimate involvement in the decision to give Tahnee this money, critically, Vivian admits she was well aware of the existence of this account for *a long time prior* to the parties' financial settlement was placed on the record on December 3, 2012. Vivian represents to the Court, "It was only when Kirk provided a list of the accounts to Melissa Attanasio, did Vivian became (sic) aware that such an account existed." (Opposition, p. 9, l. 8-9) Although this statement is false in that Vivian was well aware of the transfer of this money to Tahnee at the time it occurred and was intimately involved with that transfer, as above described, it is an admission Vivian was well aware of this account long before the parties consummated the financial settlement memorialized before the Court on December 3, 2012. It has been more than a year since the consummation of the settlement. Yet, Vivian is attempting to have this Court believe that when she first learned of this account she "vehemently objected," however, more than a year has passed since the financial settlement and it, obviously, never crossed her mind. That simply doesn't pass any kind of smell test.

What has happened during the intervening twelve month period is that Vivian, through her own negligence, caused retaining walls at the marital residence to collapse. As a consequence, the insurance company on the homeowner's policy has denied her claim and it is going to cost Vivian in excess of $150,000.00 to remediate the damage done not only to her property, but to two of the neighbors as well. In addition, Vivian has been undertaking an extensive remodel of the marital residence for many months. Vivian has not spoken to Tahnee in over a year, so she is trying to take money she knows was given to Tahnee with her knowledge and concurrence.

Vivian expresses concern that Kirk will inform Tahnee that Vivian is trying to take her money from her. Vivian then alleges, "This is another tactic by Kirk to alienate the parties' adult children from Vivian." (Opposition, p. 10, l. 26-27) It is Vivian's behavior that has and continues to alienate her from Tahnee and Whitney. Tahnee and Whitney were part of the discussions where it was agreed this money would be theirs. They know the truth and what was said by Vivian. Just as in the past, it will be Vivian's outrageous behavior that will further alienate Tahnee and Whitney from her, not Kirk simply informing Tahnee that Vivian is trying to renege on a gift and unequivocal promises that were made.

Kirk has never refused to turn over Tahnee's, Whitney's or Joseph's UTMA accounts to them. Kirk does not control them. By operation of law, those accounts are Tahnee's, Whitney's, and Joseph's.

Kirk's name is still on some of the accounts, because that is the way they were initially opened, and with respect to Joseph, one of those accounts must remain in Kirk's name "as custodian" until Joseph reaches the age of 25. The name on the UTMA Charles Schawb accounts were changed sometime shortly after Tahnee, Whitney and Joseph each reached 21 years of age. In connection with one half of the Vanguard UTMA accounts, where the majority of the UTMA money has been deposited, the name could not be changed until after Tahnee, Whitney and Joseph each reached the age of 25 years old. They are, respectively, 28, 27, and 24. Kirk has discussed these accounts on numerous occasions with both Tahnee and Whitney, and to a lesser extent, with Joseph as well.

IV. CONCLUSION

After more than a year after the financial settlement was placed upon the record before the Court, Vivian is now advancing positions and taking actions which are patently false and would have readily appeared so had these positions been taken in a timely manner. The passage of time has not removed the stench, but rather has added to the odor. What Vivian is presently attempting to perpetrate upon this Court is truly outrageous.

Kirk's separate property accounts, which have always been separately maintained, consist of (1) an account he has had since he was in high school; (2) an account he owned in joint tenancy with his father; and (3) an account consisting solely of money he received from his parents' estates. These accounts were clearly identified as separate property in Kirk's Financial Disclosure Form, were treated by *both* parties, their respective experts and attorneys as Kirk's separate property throughout the litigation and during the final settlement meeting which was placed on the record before the Court. Ed Kainen, on the record, specifically identified the only accounts remaining to be divided – those accounts did not include these accounts.

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Over a year after the personal property was divided and an indisputable record from both parties that all of the personal property at the ranch is Kirk's property, Vivian now submits a letter from her personal property appraiser alleging **Vivian's attorneys** rushed her and she didn't do a good job. The parties have spent tens of thousands of dollars in connection with resolving the personal property issues, when there was not much of a dispute to begin with. The proposition that the parties should be in any way compelled to do it all over again because **Vivian's attorneys** rushed Vivian's personal property appraiser is absurd.

For Vivian to try to take Tahnee's money in light of the discussion Vivian, Kirk, Tahnee and Whitney had and the agreement Vivian and Kirk made in front of Tahnee and Whitney is disgraceful. The very reason a joint decision was made at that time to make unconditional present gifts to Tahnee and Whitney at that time was to avoid the very thing Vivian is now trying to do. The existing evidence and Vivian's inconsistent and evolving position should discredit this late-in-the-game claim.

Finally, any provision providing for the reimbursement for separate property funds being utilized for community expenses during the pendency of the divorce *must be mutual* and with the parameters of this Court's Temporary Orders of February 24, 2012, and formalized on June 13, 2012.

Kirk pleads with the Court to enter an Order giving the parties the closure and finality to this proceeding which is long over due.

DATED this 16th day of December, 2013.

KAINEN LAW GROUP, PLLC

By: _____

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

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DECLARATION OF KIRK R. HARRISON IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO ALTER, AMEND, CORRECT AND CLARIFY JUDGMENT AND HIS OPPOSITION TO DEFENDANT'S COUNTERMOTION TO CLARIFY ORDERS

I am the Plaintiff in the above-entitled matter and I make this Declaration in support of my *Reply to Defendant's Opposition to Motion to Alter, Amend, Correct and Clarify Judgment and His Opposition To Defendant's Countermotion to Clarify Orders.*

That I make this Declaration based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true. I have read the foregoing Reply and Opposition and hereby declare that the facts contained therein are true and correct to the best of my knowledge. I reaffirm and restate said facts as if set forth fully herein. I am requesting that the Court grant my Motion, deny the Defendant's Countermotion in its entirety and award me attorney's fees for having to respond to same.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 16th day of December, 2013.

/s/ Kirk R. Harrison
KIRK R. HARRISON

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EXHIBIT "4"

KAINEN
LAW GROUP
A Professional Limited Liability Company

May 9, 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:

This letter is in response to your letter, dated May 8, 2013, which was faxed to my office late yesterday afternoon. I was hoping to speak with you about the contents of this letter this afternoon (at 4:30 as we had scheduled before we got your letter and before sending this letter), but I understand your Court schedule necessitated postponing that telephone conference. I will respond by the categories set forth in your letter.

Allegations in your April 15, 2013 letter:

The letter is dated April 12, 2013. Your continued unfounded character assault upon Kirk, both in letters and in pleadings, is unprofessional.

The facts concerning the visitation issue are set forth in the second paragraph of my April 12, 2013 letter. It is difficult to understand how you can spin and twist those facts to falsely reference "Kirk's misunderstanding" and further state the matter "was resolved by your client understanding that his interpretation was in error even before you wrote your missive." Kirk never had a misunderstanding, nor was he in error. Kirk was simply relying upon the schedule/calendar provided

by *your client*. Vivian took a position that was *contrary to the schedule* to which the parties had been abiding. Kirk called me the very day Vivian first broached the subject. I told him the *calendar* was in error. Kirk immediately sent an email to Vivian confirming that fact.

Neither Kirk nor I have made any assault upon Vivian because there was an error in the calendar, nor should we. Mistakes happen. Kirk appreciates the fact that Vivian took the time to prepare the calendar, which has been for the benefit of both parties and has been very helpful. This should not have been a big deal. No one's visitation was disrupted, even for one millisecond.

This issue, however, is indicative of the approach you have taken throughout this litigation. You know that Kirk has consistently acted in good faith. Yet, you continually try to spin and twist events to the point there is no correlation between your allegations and actual facts. For example, based upon these facts, you frivolously claim that "Kirk only seems to lack understanding of orders, rules or agreements when it is to his advantage." This is nonsensical. Kirk did absolutely nothing wrong here -- as soon as Vivian took a position which was contrary to the schedule to which the parties had been adhering, he contacted me immediately; as soon as I told him there was an error in the schedule, he contacted Vivian immediately.

Turning to the issue of your e-mails, this is not the first time that Tom or I received an email from your office on a day or time after the time and/or date memorialized on the e-mail. On January 11, 2013, I sent you a letter, which provided in relevant part:

> As a preliminary matter, it should be noted your letter is dated December 27, 2012 and represented as being sent **via e-mail**. Based upon this, one would assume your letter was e-mailed on December 27, 2012. However, Tom's office indicates it was not e-mailed to their office until 9:06 a.m. on January 3, 2013, with a demand that items be returned or a statement in detail on or before January 7, 2013.

As previously noted, we then get an e-mail from you on April 12, 2013 at 12:27 p.m., which is erroneously identified as being sent at 7:40 p.m. on April 11, 2013.

This is truly bizarre. To the best of my knowledge, the time memorialized on other emails is accurate and can be relied upon. This issue reminds me of the scene from the movie, *My Cousin Vinny*, when the Joe Pesci's character "Vinny," is cross examining "Sam Tipton" about the time it allegedly took him to cook grits. He asked, "Are we to believe that boiling water soaks into a grit faster in your kitchen than on any place on the face of the earth? Well perhaps the laws of physics cease to exist on your stove?"

PC Order:

The Stipulation and Order Regarding Parent/Child Issues filed on July 11, 2012, contains the following language regarding the parenting coordinator:

> The parties shall hire a Parenting Coordinator to resolve disputes between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment.

I was attempting to defer to Tom on the parenting coordinator issues, but time necessitates an immediate response. Therefore, my concerns with respect to your proposed Parenting Coordinator Order are as follows:

(1) There are far too many provisions designed solely to protect the parenting coordinator, which does not benefit the parties in any way;

(2) The near total delegation of authority to the parenting coordinator, where it is my belief that the parenting coordinator's authority should be more limited in terms of what they can do;

(3) Access to the Court should be more readily available to the parties during fundamental disagreements;

(4) There are potential problems with the ability to have objections timely heard and the binding nature of the recommendations made by the parenting coordinator; and

(5) There are internal inconsistencies regarding communication with the parenting coordinator.

I believe your recollection of my statements regarding Dr. Lenkeit are misstated. In any case, if I had agreed to Gary Lenkeit as the parenting coordinator without making the disclosure, *then* you would have a basis to complain. I did not.

The Proposed MSA:

There was never any agreement that Kirk could not take any personal property from the marital residence.

The proposed MSA is consistent with the correspondence between the parties and the record before the Court. On the other hand, your position is inconsistent with the correspondence between the parties and the record before the Court. In the interest of clarity, I will again set forth the problem with your position, as previously written in my January 11, 2013, letter to you:

> Significantly, the last written proposal between the parties concerning the division of personal property is set forth in the attachment to Tom's letter to you, dated November 14, 2012 ("Kirk's proposal"). This proposal was in response to the proposal contained in your letter, dated November 9, 2012, which proposed:
>
> > If he is not willing to choose one of the A/B lists for the property at the residence, Vivian proposes that Joyce Nelson [sic] value ***everything*** in the marital residence (with the parties dividing the cost of the appraisal), and Vivian paying Kirk for one-half of the personal property at the residence. She will then retain all of the property at the residence. (Emphasis added).
>
> Joyce Nelson [sic] did not value "everything" in the marital residence, the parties did not divide the cost of the appraisal, and the parties never agreed that Kirk would get none of the personal property at the marital residence. Under this proposal, Kirk would not have gotten ***any*** personal property at the marital residence whatsoever, including his own clothes. The proposal contained in Tom's letter, dated November 14, 2012, was an unequivocal rejection of your proposal.
>
> We agreed to a division of the items on Joyce Newman's list. At no time during the negotiations, did we ever agree that Kirk would only get specified items on Joyce Newman's list and Vivian would get *everything else*. Under your present position, Kirk would not be entitled to take his own parents' bedroom furniture, heirlooms he received from his parents, his mother's alder china hutch and alder buffet, his great aunt's hand painted china and paintings, his mother's needlepoint bench that was hand made by Kirk's uncle, his mother's oak children's rocking chair she had as a child, etc. That was never the agreement, nor would it ever be the agreement.

> There was no agreement as to any items that did not appear on the list prepared by Joyce Newman, other than each party would take their own personal items and miscellany. As to the personal items located in the marital residence that were not on Joyce Newman's list, Kirk strongly believes Vivian received in excess of ninety-five per cent (95%) of them.

(Letter, dated January 11, 2013)

Moreover, your position makes no sense whatsoever from a practical and equitable perspective. There is a monumental difference between the personal property at the marital residence and the personal property at the ranch. The parties were married for over 30 years. During that 30 year period, they accumulated a significant amount of personal property, almost all of which that had any monetary or sentimental value was located at the marital residence. Moreover, most of Kirk's most cherished possessions from his parents were in the marital residence.

In contrast, there was very little, if any, community personal property of any monetary or sentimental value located at the ranch, other than the tools and equipment for which Joyce Newman identified and for which Kirk has paid. Until Kirk built the first metal building in 2007, there was a mice infested 800 square foot cabin that was built by Kirk's father in 1949 using two CCC offices for which he paid $25.00 each, which were originally built during the 1930s. There is water in the basement every winter. Therefore, no community personal property of any sentimental or monetary value was kept there. It is not coincidental that all of the community equipment and tools valued by Joyce Newman were acquired after the first metal building was constructed in 2007.[1] The notable exception is the 1968 backhoe, which was previously stored in the two sided old barn and therefore exposed to the weather.

Vivian is well aware of the fact that, historically, the personal property that was taken to the ranch was stuff Vivian did not want which would otherwise have been thrown away. For that reason, Vivian did not want anything from the ranch, except her mother's bed (for which Kirk went to the ranch, loaded, and took to the marital residence) and two cut down church pews. The church pews had been cut down and utilized in the elementary school in Payson, Utah, where Kirk's mother went to school. They are only large enough for two children to sit side by side. The only reason Kirk

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[1] Unfortunately, Joyce Newman also appraised, and Kirk paid for, very old equipment that has been left outside in the weather for many many years, which belonged to Kirk's father, and was never community property. For example, Ms. Newman valued a World War II wagon at $1,400.00. The axle on this approximately 70 year old wagon is completely rusted out. The wagon only has salvage scrap value, which is far less than $1,400.00. The only reason it is still at the ranch is because it belonged to Kirk's father. Yet, as part of a settlement, a community property value was assessed.

bought the church pews was because they were at his mother's school when she attended and it is for this reason he was unwilling to let Vivian have them.

In your letter, dated December 27, 2012 (which, as noted above, was not received until January 3, 2013) you listed 15 different descriptions of personal property which Kirk took from the marital residence. In my letter to you, dated January 11, 2013, I set forth in painstaking detail our position with respect to each of those 15 different descriptions of personal items, which Kirk legally and equitably took from the marital residence.

In your missive of May 8, 2013, you reference "photographs and other family memorabilia (which is priceless)." We have previously proposed that all photographs and videos in the possession of both Kirk and Vivian be electronically copied with a copy for Vivian, Kirk, *and each of their children.* It is impossible to respond to the obscure and nebulous "other family memorabilia (which is priceless)." Would you please be more specific as to what you are referring to as "other family memorabilia (which is priceless)?" Are you referring to anything other than what has been previously identified in your 15 different listed items?

You also allege there are many items in the proposed MSA "that have never been discussed...". I don't believe that is true. Would you please identify which items were never identified in the correspondence between the parties or on the record before the Court?

It appears that you are making much to do about nothing.

Your Ex-Parte Motion:

Let me make sure I understand your position. You have filed a motion wherein you want Kirk to pay all of Vivian's attorneys' fees and costs. However, you have redacted over Twenty-Six Thousand Dollars ($26,000.00) of those costs. We received your motion on April 5, 2013. Despite repeated requests to be provided the descriptions of the costs **for which you seek payment**, it is now May 9, 2013 and we still have not received that information.

You now take the position you really never agreed to provide that information, it is really no big deal, and we should simply file our response without that information. The remaining redacted big ticket cost items are on Mr. Silverman's invoices and remain unknown at this time. We need that information to respond.

In order to tell you when we will be able to file our responsive pleading, I need to know when you will provide the missing items. Please advise.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.

ELK/cn

cc: Kirk Harrison
Tom Standish, Esq.

EXHIBIT "5"

behavior over many months, including telling Whitney that she thought Tahnee would try to smother her with a pillow in her sleep and telling me she thought Tahnee would try to kill her; (33) having a practice of telling her own children what she believes to be their physical defects; (34) seemingly, constantly criticizing the other members of our family; (35) telling her children she is a "master soul" because she has been reincarnated so many times; (36) exhibiting a pattern of obsessive compulsive behaviors which caused Vivian to emotionally and physically exclude Brooke and Rylee from her life month after month, with no indication whatsoever that pattern of conduct is going to stop and the obvious future emotional and physical risk to Brooke and Rylee; (36) continuing to overtly manipulate Brooke and Rylee during the divorce.

47. On or about November 13, 2012, Joyce Newman came to the house to value personal property. At no time did I tell her not to value any of the personal property. At no time did I restrict Joyce's access to anywhere or anything. Joyce did not value any personal property in any of the children's bedrooms. I assumed that was based upon a prior conversation or conversations Joyce had with either Vivian or Vivian's attorneys. Since both Vivian and I had always taken the position that all of the personal items in each of the children's bedrooms was theirs, I was not surprised by this. The same is true with respect to the guest bedroom where my parents bedroom set was located. I assumed Joyce had been told it was my separate property. I did tell Joyce that the alder china hutch and buffet belonged to my mother. However, I never told Joyce not to value either piece. Joyce also did not value the outside patio, bar, dining and pool furniture at the marital residence. I recall that at a later point in time, Joyce telephoned me and said that Mr. Silverman wanted her or an associate to make another trip to Las Vegas to value the outside furniture. Joyce was, obviously, not able to value the personal property that Vivian had removed from the marital residence, including, but not limited to, several of Vivian's sewing machines, all of Vivian's Apple computers, ipads, itouches, Kindles, etc., and Vivian's jewelry.

48. I did not have anyone value all of Vivian's jewelry, which includes several diamond rings and earrings, pearl necklaces, a brand new Omega diamond studded watch, a brand new Tiffany watch, a brand new Rolex watch, etc. In contrast, my jewelry consists of a used Omega watch, which Vivian gave me as a gift during an Alaskan cruise a number of years

ago. I also did not have anyone value all of Vivian's many technical products, including, but limited to, all of the Apple products Vivian has purchased, including an iMac computer, Mac Book air computer, Mac Book Pro computer, iPods, iphones, and iPod Touches and all the Kindles Vivian has purchased. I did not have anyone value all of the expensive sewing machines Vivian took from the marital residence. I did not have Joyce Newman value the guitar autographed by the Rolling Stones, for which Vivian paid $3,500.00. I did not have anyone value these items and did not make a big deal about Joyce not valuing these items, because I viewed these items as being very personal to Vivian.

49. I met Joyce Newman and her husband at the ranch on the morning of November 20, 2013. I unlocked and opened the buildings and the metal storage units for Joyce and her husband. I did not deny Joyce access to anything or anywhere. Soon after I started opening things up for Joyce, she asked me if I had any guns and that she wanted to look at them. I answered that I did, but it was something very personal (I viewed my guns as being very personal to me, just like I viewed Vivian's jewelry, technical products, sewing machines, and autographed guitar as being very personal to Vivian). I then said I realized if I didn't show them, Gary Silverman would make a big deal about it and to let me think about it. When we later came to a horizontal gun safe, Joyce asked me what it was. I told her it was a gun safe. She asked me what was in it. I identified the guns and she took notes. I also told her there was also some ammunition in there. I explained to her that only one of the guns was mine – one of the two Benelli SBE II shotguns. I explained the other one was Joseph's. I also explained that I had bought Ruger 22 rifles for Brooke and Rylee and they had shot them a number of times. However, since they were semi-automatics, I was uncomfortable with Brooke and Rylee shooting them without me standing right next to them. Out of that concern, I had bought them the bolt action Marlin 22 rifles, which they have also shot. I then offered to open the gun safe for her. Joyce said it was not necessary, as she had all the information she needed. If at that time, Joyce had said she needed the serial numbers, the only way to obtain the serial numbers would have been to open up the safe, as I offered to do. She did not make that request at that time.

. . .

50. After I was back home in Boulder City and Joyce had returned from her Thanksgiving Holiday, Joyce telephoned and asked me for the model and serial numbers of the guns I had described for her while at the ranch. I told her I didn't have the serial numbers in Boulder City, the model of the two shotguns was Benelli SBE II. I told her I bought the two Ruger 22 rifles at Walmart and it was probably the most popular gun sold in the last several years. Joyce seemed like a nice person. I was disappointed to read what she wrote on item 237 of Volume II of II of her Summary Appraisal Report: "I was not able to view these guns. I asked Mr. Harrison for the model and serial numbers and they were not provided." My recollection is that I paid $229.00 each for the two Ruger 22 rifles at Walmart and that I paid about $200.00 each for the two Marlin bolt action 22 rifles at Dick's Sporting Goods. I have since checked on the internet and confirmed the Rugers are "10/22s." I cannot remember for sure what I paid for the two shotguns, but I think it was around $1,300.00 each.

FURTHER AFFIANT SAYETH NAUGHT.

Kirk R. Harrison

Subscribed and sworn before me
this 24th day of May, 2013.

MELODY HOWARD
Notary Public State of Nevada
No. 99-37014-1
My appt. exp. Jan. 15, 2016

Melody Howard
Notary Public