

1 different casinos; therefore, she had to make the affirmation required under Nevada Gaming
2 Control Board Regulation 5A.110(3)(c) at least five times. Further, the Casino PMKs variously
3 testified it is casino policy: (1) that a player must play on their own card (V1:146, 159, 175,
4 186, 197-98); (2) to request identification when players win jackpots (V1:174); and (3) to
5 request identification of players at tables (V1:175-76; 186). As between the Casino PMKs and
6 Plaintiff who said as a dealer she "never" had to ask a player who presented a player card for
7 identification and could not specify a single date on which someone else was allowed to use her
8 card, the Court should believe the Casino PMKs.

9 Presumptively then, the play on Plaintiff's player cards, as reflected in the records
10 admitted as Defendant's Exhibits N1 to N5 is Plaintiff's own play. As set forth in the
11 summaries admitted as Defendant's Exhibit N7 (V3:40-41), since December 2012 through
12 December 2015, Plaintiff logged over 1,231 hours on her player cards, which averages to 33
13 hours per month; and in 2013 Plaintiff had actual losses of \$10,333.42, in 2014 Plaintiff had
14 actual losses of \$13,293.19, and in 2015 Plaintiff had actual losses of \$10,664.64. (The Casino
15 PMKs testified that adjusted win/loss records represent actual wins or losses; V1:146, 156, 165,
16 183, 194.) In Plaintiff's most recent FDF, filed on June 21, 2016, for the first time she included
17 an average monthly gambling income of \$95.83, but she testified that she did not consider the
18 amount of money that she had actually wagered to earn those winnings. V3:42-43. Her
19 historical loss records do not support the claim that she actual earns money gambling.

20 Defendant understands that Nevada is a gaming state, and gaming in moderation within
21 one's means is legal and accepted. It does not appear that Plaintiff can afford an average of
22 \$10,000.00 or more per year in gaming losses, and Defendant argues that 33 hours a month
23 could be spent in more constructive ways, particularly when one's child is in school, but the key
24 point for this Court's consideration is whether Plaintiff's gaming activity affects the best
25 interests of Evan. Here, "the nature of the relationship of the child with each parent" is
26 implicated. Parents who work regularly set an example for their children. It is true that
27 Defendant has not worked since the fall of 2015, but those circumstances were unforeseen, and
28 it is clear that Defendant historically worked hard running a successful hockey coaching

1 program, instructing thousands of children a year, which Evan, as a child, was and is in a
2 unique position to watch his father do. Being a stay-at-home mother is noble and it is work,
3 and Plaintiff is to be commended for the work she does as a mother; however, Defendant does
4 not believe this is a matter of choice but of circumstance. As between a parent who seems to
5 have time to work while her child is in school but does not, and a parent who spends his days
6 and evenings coaching children with his own son participating and watching on, Defendant's
7 choices are more closely aligned with the best interests of the child.

8 Evan has two half siblings in Plaintiff's household; a brother who is now emancipated
9 and reportedly moving, and a sister who will soon be fourteen and spends weekends with her
10 father. These relationships are important, and they can be maintained through Plaintiff's own
11 visitation and FaceTime. Evan should be permitted to communicate with his sister. The parties
12 made competing allegations of abuse or neglect dating back to 2010, but there was no testimony
13 of abuse or neglect by either parent since the last custody order was entered. Nor has either
14 parent committed any act of abduction against the child or any other child since the last custody
15 order was entered.

16 **3. ACTUAL ADVANTAGE AND IMPACTS ON PARENTS AND** 17 **CHILD**

18 For the same reasons as set forth above, Defendant and Evan will realize an an actual
19 advantage in relocating to New York.

20 If a relocating parent demonstrates to the court the factors set forth in NRS 125C.007(1)
21 are met, then pursuant to NRS 125C.007(2)(a-f), the court must weigh the following factors and
22 the impact of each on the child, the relocating parent and the non-relocating parent, including,
23 without limitation, the extent to which the compelling interests of the child, the relocating
24 parent and the non-relocating parent are accommodated:

25 The extent to which the relocation is likely to improve the quality of life for the child
26 and the relocating parent. The Court can and should find that the improvement for both Evan
27 and Defendant will be quite significant. The improvement for Evan will be tempered by the
28 decreased frequency of contact with his maternal family, but it will benefit him greatly to have

1 a hands-on, available parent with the kind of routine that Defendant has practiced with Evan
2 during his timeshares here, but on a weekly basis in New York.

3 Whether the motives of the relocating parent are honorable and not designed to frustrate
4 or defeat any visitation rights accorded to the non-relocating parent. Defendant's motives are
5 honorable, above all else, New York is and always has been his home, but there are still other
6 motivations reflected elsewhere herein that are also honorable in Defendant's request for
7 relocation.

8 Whether the relocating parent will comply with any substitute visitation orders issued by
9 the court if permission to relocate is granted. There was some evidence that Defendant violated
10 the existing custody order by continuing to take Evan to New York when Evan started
11 kindergarten; however, this was not a deprivation of Plaintiff's timeshare. In the emails
12 produced in Defendant's Exhibit A, the Court can see that Defendant was attempting to find a
13 balance between Evan getting everything he could from kindergarten, while still maintaining a
14 connection to his home, family, friends and activities in New York. The emails also show that,
15 at least initially, Defendant was supported in this by the parenting coordinator, and he was
16 continuously supported in this (to the extent Evan did not fall behind in Kindergarten, and he
17 did not) by Principal Hungerford; however, it was Plaintiff and Ms. Tolman who were
18 obstinately opposed to Evan missing a single minute of kindergarten to travel to New York.
19 The Court can see in the emails that Plaintiff even refused to let Evan out early on Fridays to
20 catch an earlier plane to New York, even though she herself had initially only enrolled Evan in
21 ½ day kindergarten. It was Defendant who got him enrolled in and paid for full day
22 kindergarten. This behavior by Plaintiff shows that *she* is the one who has a tendency to
23 interfere with Evan's relationships in and connections to New York. There is no reason to
24 believe that Defendant will not comply with the visitation order.

25 Whether the motives of the non-relocating parent are honorable in resisting the petition
26 for permission to relocate or to what extent any opposition to the petition for permission to
27 relocate is intended to secure a financial advantage in the form of ongoing support obligations
28 or otherwise. The Plaintiff's motives in resisting the relocation are honorable. Her identity is

1 as a mother, and her testimony was that she does not want her relationship with Evan to change.

2 Whether there will be a realistic opportunity for the non-relocating parent to maintain a
3 visitation schedule that will adequately foster and preserve the parental relationship between the
4 child and the non-relocating parent if permission to relocate is granted. Here, there is a
5 reasonable alternative visitation schedule as set forth in the proposed order in Exhibit A.

6 Defendant concedes that Plaintiff and Evan need to have a continuous, uninterrupted period in
7 the summer time. He hopes the Court understands his desire to enroll Evan in summer camps
8 and programs is not born of a desire to interfere with Evan's relationship with his mother, and
9 hopes that perhaps that is something the parties can agree upon when Evan is older.

10 The burden to prove that relocation is in the best interest of the child is on the parent
11 seeking relocation. (NRS 125C.007(3).) As set forth above and in the findings of fact
12 presented in Exhibit A, Defendant met that burden.

13 Each party should pay their own attorney's fees and costs.

14 **3. CONCLUSION**

15 Defendant's consistent travel between New York and Las Vegas every month for the
16 last six years and his testimony at trial demonstrate how committed he is to his son. He sees all
17 of the positive qualities that his son has to offer – straight A student, a great personality,
18 “gifted” with other children, a leader, a great little athlete – and he seeks to devote every
19 resource he has: time, experience, family and community connections, and money, in service to
20 Evan and solidifying and expanding upon Evan's great qualities.

21 Plaintiff loves Evan, but she did not at any point in her testimony, talk about her son in
22 such glowing terms or how she intends to provide him opportunities for growth or
23 development. Her insistence on placing him in weekly therapy for years on end in the absence
24 of any objective evidence to support the choice suggests – to Defendant – that she perceives
25 Evan as a problem to be solved by someone else. Defendant cannot understand why Plaintiff
26 continually denies Evan opportunities to be the best he can be and do what he loves to do when
27 there is no expense to her and even when he has arranged for others to get Evan to and from
28 activities.

1 Defendant cannot understand Plaintiff's consistent practice of painting every thing he
2 and his family do for Evan as a personal affront to her (i.e., the Tooth Fairy college fund; new
3 baseball equipment that is Evan's size; volunteering at Evan's school when she is not there),
4 this is not an affront to her, it is not about her, it is about Evan.

5 Plaintiff testified that she thinks Evan fails to show affection to her during school events
6 when Defendant is present or upon his return from Defendant's timeshare because she thinks,
7 Evan believes his dad will be mad at him. However, Defendant has repeatedly tried to foster a
8 relationship between the two families, as seen by his invitation to Desmond to come with Evan
9 to New York, in 2014, which he did, and inviting and hosting the whole family to New York at
10 Christmastime in 2013 and in the Summer of 2014, and in emails where Plaintiff complains
11 about sharing school activities with Defendant, and it is Defendant who points out that this is
12 not about them, it is about Evan and Evan having as much family support as possible. (Ex. A at
13 DEFT0193.)

14 Defendant said it best himself, he seeks to relocate Evan to New York because: Evan
15 "has tremendous relationships there, friendships, he's got a stable home there in New York, he's
16 got stable friends, the school systems. My availability to Evan, I have a very flexible schedule
17 that I am with Evan virtually at all times." V1:69 "It's my home. It's my community. It's
18 where I live. It's his friends. The community relationships that I have as a hockey player and
19 my family business for almost 50 years and these community connections I will pass on to
20 Evan. The school systems, financial resources, to save on financial resources for my travels
21 back and forth to Las Vegas. I'd like to dedicate those resources solely to Evan and his future."

22 V1:64.

23 //

24 //

25 //

26 //

27 //

28 //

1 Based on the foregoing, Defendant Christopher Ferraro respectfully requests the Court
2 grant him primary physical custody of Evan and permission to relocate to New York.

3 DATED this 5th day of August, 2016.

4 HUTCHISON & STEFFEN, LLC

5
6 By: Shannon R. Wilson
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8 Todd L. Moody (5430)
9 Peccole Professional Park
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15 Attorneys for *Defendant Christopher Michael Ferraro*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 5th day of August, 2016, I caused the above and foregoing document entitled **DEFENDANT'S CLOSING BRIEF** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☒ pursuant to EDCR 8.05, sent electronically via the Court's electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail.
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

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An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT A

1 **ORDR**

2
3 **DISTRICT COURT**
4 **FAMILY DIVISION**
5 **CLARK COUNTY, NEVADA**

6 **SANDRA LYNN NANCE**

7 Plaintiff(s),

8 v.

9 **CHRISTOPHER MICHAEL FERRARO**

10 Defendant(s).

CASE NO. D-10-426817-D
DEPT NO. F

Dates of Trial:

June 27, 2016, 9:00 a.m. & 1:30 p.m.

June 28, 2016, 1:30 p.m.

June 29, 2016, 1:30 p.m.

11
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

13 This matter having come on for Trial upon Defendant Christopher Ferraro's
14 Motion to Modify Custody, for Relocation of Minor Child and Other Related Relief and
15 Plaintiff Sandra Nance's Opposition and Countermotion, Defendant being present and
16 represented by his attorneys, Shannon R. Wilson and Todd L. Moody, and Plaintiff
17 being present and represented by her attorneys, Jason Naimi and Shelley Booth
18 Cooley, the Court having heard the evidence presented, reviewed the written closing
19 arguments and taking the matter under advisement, finds and orders as follows:

20 **FINDINGS OF FACT**

21 1. For six months prior to Defendant filing his motion for relocation on June
22 19, 2015, the minor child Evan Daniel Ferraro, born September 30, 2008 (now 7
23 years, 10 months) was a resident of the State of Nevada.

24 2. Defendant is a resident of Sound Beach, New York. V1:22:12-13. He
25 has lived there, in the same home where he grew up, for forty-three years with the
26 exception of times that he lived in other communities to attend school and play
27 hockey. V1:22, 27. Defendant attended university for about 1 ½ years, but left to play
28 hockey for the 1994 US Olympic hockey team and then professionally in the National

1 Hockey League. V1:22, 27. He has no plans to move from his current residence.
2 V1:22. He lives with his mother and twin brother. The residence is owned by
3 Defendant's mother. It is a 3,000 square foot ranch house with four bedrooms, three
4 bathrooms, on two acres of land with a fenced yard and in-ground pool. If his son is
5 relocated, then Defendant plans to install a sport court in the backyard. Evan has his
6 own bedroom. The neighborhood consists entirely of single family homes. V1:22-23.

7 3. Based on Defendant's testimony and Defendant's Exhibit G2 (flight
8 records), Evan has spent significant time at the Ferraro family home in New York.
9 From 2012 through 2014, he was there for Defendant's timeshare every month or
10 nearly every month, and he continued to visit routinely in 2015 and 2016. V1:23-26,
11 Ex. G2 at DEFT0358-0368. Defendant testified that while in New York, and in addition
12 to Evan's uncle and grandmother with whom Defendant resides, Evan routinely sees
13 his aunt and her husband, another uncle, Evan's own friends and other extended
14 family. V1:26, 44. Most of the family live and/or work within about five miles of
15 Defendant's home. V1:44-45. Evan sees his grandfather, aunt, uncle and cousins
16 several times per week, and some of them daily. V1:45-47. The Ferraros get together
17 for dinner, family functions, for Evan's extracurricular activities, birthdays and
18 barbeques. V1:47.

19 4. Defendant testified that Evan is bright, talented, special, gifted, "he is
20 my life." V1:48. During this testimony the Court observed the Defendant become
21 extremely emotional and have a hard time holding back tears. Defendant testified that
22 Evan is a straight A student, that he has a great personality, he is gifted with other
23 children, he is popular, a leader, children migrate to him and he is a great little athlete.
24 V1:48.

25 5. Defendant testified that Evan has a lot of friends from hockey and some
26 very good friends in New York, in particular Tommy and Neil Doyle, who Evan has
27 known since he was a baby, and Leila Pannacculli who Evan has known for three
28 years. V1:49. Over the recent break, Defendant put together a hockey tournament in

1 Connecticut with fifteen other children, and in July they will go to a hockey camp in
2 Minnesota, where the Doyle boys will be too. Id. When in New York, the kids all play
3 hockey together as well as have play dates, swimming, visiting the beach and going to
4 movies.

5 6. Defendant testified that Evan's time with him is very structured, and he
6 creates additional math, reading, writing and drawing assignments for Evan, even
7 when not in school, then there are a variety of extracurricular activities and sports to fill
8 out his day, including baseball, soccer, rollerblading, swimming, running, and mixed
9 martial arts training. V1:50-51. Defendant testified that on a typical school day, they
10 will go to the park before school if time allows; Defendant takes Evan to school and
11 Evan rides his scooter up to the school; Defendant returns at lunch time to volunteer
12 in the lunchroom and at recess; and after school, homework generally comes first and
13 then they do extracurricular activities. V1:74-75.

14 7. Defendant's exhibit J was admitted. V1:79-80. Defendant testified that
15 these are weekly progress reports from the last school year. V1:79. Two of three
16 progress reports were from a week that Evan was with Plaintiff, and those reports
17 show that during Defendant's timeshare, Evan stayed on task and followed direction,
18 whereas he did not do those things during Plaintiff's timeshare, and the teacher
19 commented during Defendant's timeshare that Evan was "much better this week with
20 talking/giggling." Ex. J.

21 8. Defendant's exhibit B was admitted. V1:80-82. Exhibit B1 and 2 are
22 photos of Evan during his Dad's timeshare and B3 is a video of Evan practicing
23 baseball and enjoying the level of activity in which he is engaged with his Dad.

24 9. Defendant's exhibit G was admitted. V1:83-85. Mr. Ferraro testified that
25 he created spreadsheets of his timeshare with Evan from 2013 to 2015 from his
26 personal calendars and flight records; however, he testified that the day-count on the
27 spreadsheet does not include every day of the timeshare, and if it did, then one day
28 would be added to each timeshare (twelve days to each year), giving him 155 days in

1 2013, 166 days in 2014 and 150 days in 2015. V1:83-87; see also Ex. G1. Defendant
2 testified that during timeshares commencing when Evan was in school, pick up was
3 from school at 3:21 p.m. and return was to school in the morning. When school is not
4 in session, he typically picks Evan up in the morning when his timeshare begins and
5 returns him in the after or evening that his timeshare ends. See e.g., Ex. A at
6 DEFT0211.

7 10. Defendant testified that if relocated to New York, then Evan would attend
8 the Rocky Point School District and all of the schools of that district are within two to
9 five miles of his home. V1:54-55. Defendant testified that he would personally take
10 Evan to and from school. V1:55. Defendant researched the school system to satisfy
11 himself that this was a good place for his son to go to school, he personally spoke to
12 the school principal and obtained a variety of information from her and he did internet
13 research on web sites for the New York State System of Education and the Annie E.
14 Casey Foundation. V1:55-59. The Court admitted Defendant's Exhibit F2 (V1:58-
15 61), the New York State Education records, which state very low turn over rates for
16 teachers, that more than 80% of teachers in the elementary and middle schools have
17 master's degrees or doctorates, and average class sizes are 23-24 students.
18 Highschool graduation rates for male students in 2014 was 97%. Defendant's
19 statements regarding widespread knowledge of the deficiencies of Nevada schools
20 were objected to, but the unfortunate reality is that this is true and widely known in the
21 community and the Court can take judicial notice of the fact. The evidence supports
22 that Evan would be enrolling in a high-quality school district in New York.

23 11. Defendant testified as to the reasons he wants to relocate Evan to New
24 York, he said, "It's my home. It's my community. It's where I live. It's his friends. The
25 community relationships that I have as a hockey player and my family business for
26 almost 50 years and these community connections I will pass on to Evan. The school
27 systems, financial resources, to save on financial resources for my travels back and
28 forth to Las Vegas. I'd like to dedicate those resources solely to Evan and his future."

1 V1:64.

2 12. Defendant testified that relocation would improve Evan's life for mostly
3 the same reasons, it is the Defendant's home, and Evan "has tremendous
4 relationships there, friendships, he's got a stable home there in New York, he's got
5 stable friends, the school systems. My availability to Evan, I have a very flexible
6 schedule that I am with Evan virtually at all times, and community relationships that I
7 will pass along to Evan for his overall benefit and development." V1:69.

8 13. Defendant testified the relocation would benefit him personally by
9 allowing him to get back to work right away, earn a salary, and be able to dedicate
10 resources directly for Evan's benefit. Also Defendant's own parents are aging, and he
11 would like to be able to share his own life and Evan's with them. Defendant testified
12 his own mother is 70 and has some health issues. His father is 68 and healthy.
13 V1:70. Defendant testified that Ferraro Brothers Hockey is based in New York and
14 that is where the client base is, and he does not have the same kinds of relationships
15 in Las Vegas as he does in New York. V1:70.

16 14. Defendant testified that Plaintiff denies Evan opportunities to participate
17 in extracurricular activities and private school. V1:67. Defendant testified that he has
18 offered to pay for private school and a variety of extracurricular activities for Evan,
19 including hockey, soccer, and MMA, but that Plaintiff will not participate in these with
20 Evan during her own timeshare, which upsets Evan. V1:67. Defendant testified that
21 extracurricular activities are important because one learns "life skills," including:
22 "respect, preparation, dedication, commitment, working with others, taking instruction
23 from coaches, highs, lows, failures, rewards, successes, all of these are critical to life
24 and career. In fact, athletes are proven better students . . . and they are more prone
25 to stay away from drugs and alcohol and live a more focused, dedicated life." V1:67-
26 68.

27 15. Defendant proposed a visitation schedule whereby they would alternate
28 and split the winter break, alternate Thanksgiving and the February, April and

1 Memorial day breaks, but in Defendant's years to have Evan during February and
2 April, he would invite Plaintiff to attend any sport camps or tournaments in which Evan
3 was participating. Plaintiff would also have Columbus weekend, every year and if no
4 interference with school or extracurricular activities, on the Memorial Day and
5 Columbus weekends, Evan could leave New York on Thursday and return on Tuesday
6 to create a full four day weekend with Plaintiff. Finally Defendant proposed that
7 summer be divided into three, three week intervals with Plaintiff having the first and
8 last intervals and Defendant having the middle interval. Defendant explained the
9 reason for the split being to allow Evan to participate in hockey camps, clinics and like
10 sports activities. Additionally, at Plaintiff's option, Defendant would help facilitate an
11 additional visits each month to be held in New York. Defendant would pay all airfare
12 for the Plaintiff's Christmas, February, April, Memorial Day, Summer, Columbus, and
13 Thanksgiving visits. Plaintiff would be responsible to pay costs of any additional visits,
14 but Defendant will waive child support to help her be able to do this. V1:71-74.

15 16. On co-parenting, Defendant testified that the parties had 'many
16 challenges from the start, but believes they were helped by parenting coordinator,
17 Margaret Pickard, and their current, respective counsel. Defendant testified that he
18 sees a pattern whereby he proposes something for Evan, Plaintiff says 'no,' he
19 attempts to persuade her by enumerating the benefits for Evan, and Plaintiff asks
20 Defendant to stop harassing her. V1:68. The emails produced and admitted in
21 Defendant's Exhibit A, tend to support Defendant's testimony. See e.g, Ex. A at
22 DEFT0138-42. 173-74, 198.

23 17. A co-parenting dispute arose when Evan was first eligible to start
24 kindergarten. V1:88-94. Evan's birthday falls on the kindergarten enrollment cut-off
25 date, which made him eligible to start kindergarten when he was four. Defendant
26 wanted to hold Evan back to the following year; Plaintiff did not want to hold him back.
27 V1:92-93. Defendant testified that he consulted teachers in Las Vegas and New York,
28 Margaret Pickard, who apparently had a son in a similar situation, and Judith Tolman,

1 and his conclusion was that Evan would benefit from another year of development,
2 maturity wise. V1:90. Defendant's Exhibit K, was admitted. V1:88, 93-94. It is a text
3 message from Judith Tolman to Defendant with a link to an article explaining that
4 studies have shown delayed kindergarten enrollment dramatically reduced ADHD in
5 children. V1:88-89.

6 18. Plaintiff testified that Nevada is Evan's home, but it is clear to the Court
7 that Evan has two homes.

8 19. With respect to his employment, Defendant testified that the partnership
9 group in which he was a 7.5% minority owner and for which he was working, filed
10 bankruptcy in September 2015. He was not responsible for financial management of
11 the partnership nor did he set his own salary. V1:28-29. He has not worked since the
12 bankruptcy was filed, but plans to reestablish Ferraro Brothers Hockey, an academy
13 that trains players from age six to NHL-level players. V1:28, 30. Defendant's brother
14 testified that Ferraro Brother's Hockey was in existence for eight years before they
15 began working with the bankrupt partnership. V1:232-233. Defendant and his brother
16 primarily work with players age 5 or 6 to 12. V1:30, 233. Historically, Ferraro Brothers
17 Hockey trains thousands of players annually and has a database of between 4,000
18 and 5,000 players. V1:31, 233.

19 20. During his unemployment, Defendant has relied on income from the NHL
20 Emergency Fund (\$2,500 per month); a family real estate investment (\$2,500 per
21 month); and repayment of a family loan (\$2,500) per month. V1:31-33. Defendant is
22 uncertain what his future income with Ferraro Brother's Hockey will be; he thinks it
23 unlikely that he will earn as much as he did with Twin Rinks, but he also as the
24 opportunity to do as few or as many alumni events with the New York Rangers as he
25 chooses to earn additional income. He will also continue to receive payments from his
26 real estate investment from repayment of the family loan. V1:33-34. Defendant's
27 brother confirmed he would afford him such flexibility.

28 21. Defendant testified that he can create a work schedule around Evan

1 because he runs Ferraro Brothers Hockey with his twin brother who will run programs
2 while Defendant is attending to Evan. V1:34.

3 22. Defendant testified – consistent with his Financial Disclosure Form filed
4 January 11, 2016 – that his average monthly expenses to exercise his timeshare with
5 Evan are \$6,233.33. (V1:35, 36, 43.) Defendant covers the deficit between his
6 income and expenses from money earned from Twin Rinks and those funds are being
7 depleted. V1:43-44.

8 23. Defendant testified that Evan missed two days of school during the first
9 grade during his timeshare, one-half day for an eye appointment set by Plaintiff, one-
10 half day to travel to Los Angeles for his uncle's birthday party, and one full day to
11 travel to New York for his cousin's sweet 16 party. Defendant testified that Plaintiff
12 was aware that Evan was missing school on these days for these reasons. V1:29.

13 24. Daniel Hungerford testified in Defendant's case in chief. V1:95-28. Mr.
14 Hungerford was Evan's school principal for kindergarten and first grade, and he
15 testified that Evan has never had any behavioral issues, has never been referred to
16 the school counselor or his office, and that Evan is "a good guy," "he behaves well at
17 school and attends in class," "behaviorally, academically, he's a model student."
18 V1:99-101. Principal Hungerford testified that he sees the children in his school daily
19 coming to and from school, in the hallways and in the classrooms; and before his
20 deposition, he also talked to a number of individuals at the school about Evan,
21 including Evan's teacher and the school counselor, and he reviewed Evan's school
22 records; there were no concerns about Evan, socially, academically, and in fact he
23 was doing very well with both. V1:98,111-14. Principal Hungerford could not recall
24 either parent coming to him with concerns about Evan's behavior or academic
25 performance at school, only the situation with the parents and the living situation.
26 V1:101-102. Principal Hungerford testified that he never had any concerns about
27 Evan advancing to the first grade, he never saw Evan engage in any unusual behavior
28 or chew his clothing, but he commented that that is not uncommon for elementary

1 school kids to chew things. V1:103. Principal Hungerford testified that he sees Mr.
2 Ferraro volunteering at the school "much more frequently than Ms. Nance." V1:125.

3 25. Peter Pannacciulli testified in Defendant's case in chief. V1:203-218.
4 Mr. Pannacciulli lives in New York; his nine year old daughter, Lila, was coached by
5 Defendant beginning in or about the Spring of 2014; around that time frame, Lila and
6 Evan met 'on the ice;' thereafter, Mr. Pannacciulli and the Defendant became friends.
7 Mr. Pannacciulli testified that Defendant is an excellent youth hockey coach, that the
8 kids connect with him, they react to what he says, whether good or bad, without
9 prejudice. Mr. Pannacciulli testified that he sees Defendant and Evan outside of
10 hockey every time Evan is in New York, usually multiple times, that they have play
11 dates and go to each other's houses. Mr. Pannacciulli described Evan's behavior as
12 "normal," and elaborated that he is respectful, he listens, he is a polite, well-mannered
13 kid. Mr. Pannacciulli testified that in addition to his own daughter, he spends time
14 around his sisters' children, there are five of them from ages 4 to 18, and he has not
15 observed Evan to be any more or less argumentative than these children; he has
16 never observed Evan to blame others for his behavior or refuse to do things he is
17 asked; he has never seen Evan bite his nails or chew his clothing. Mr. Pannacciulli
18 testified that Defendant does not talk about the Plaintiff nor has he seen Defendant do
19 anything to impede Evan's relationship with Plaintiff, on the contrary, he has observed
20 Defendant making sure that Evan contacts his mother.

21 26. Laura Bell-Doyle testified in Defendant's case in chief. V1:219-230. She
22 testified that she lives in New York, that she and her fiancée have two boys together –
23 Thomas age 10 and Neil age 6 – and their family are friends with Defendant and
24 Evan. The Doyles met Defendant about six years ago when Thomas started doing
25 hockey clinics with Defendant, and they met Evan when he was just about three or
26 four years old. When Evan is in New York, the families see each other almost daily,
27 doing a variety of activities, and both of her boys are friends with Evan; her youngest
28 calls Evan his "best friend." She testified that Thomas coached with Defendant for

1 about six years; during that time, she has had the opportunity to observe him as a
2 coach and her impression is that "he is all about the kids" and he, "Teaches my son
3 everything about hockey and respect and treats the kids as adults on the ice." She
4 testified that Evan is a very fun, loving child, respectful to all of her family members
5 and is outgoing. In addition to her own children, she sees others kids at their hockey
6 practices and at school functions, and in comparison to those other children, Ms.
7 Doyle does not find Evan to be any more or less distracted than other children, he
8 does not blame other people for his behavior or defy requests and he listens to her
9 very well; she has never seen him bite his nails or chew his clothing. If Defendant
10 resumes coaching in New York, her boys will resume coaching with him.

11 27. Peter Ferraro testified in Defendant's case in chief. V1:231-251. Mr.
12 Ferraro is Defendant's twin brother, and their careers followed very similar trajectories.
13 V1:232, 243. Mr. Ferraro also played on the 1994 U.S. Olympic Hockey Team and
14 then went on to play professional hockey. V1:232. Mr. Ferraro testified that Ferraro
15 Brothers Hockey was in existence for about eight years before they joined the
16 complex that filed bankruptcy last year, and they train thousands of players annually,
17 aged 5 to 65, but their primary players are age 6 to 12. V1:232-233. Mr. Ferraro
18 testified that he is around for about 95% of Defendant's timeshare with Evan, and
19 describes himself as a "very committed uncle." V1:234. He describes Evan as "a very
20 charismatic, special boy. He has got a big heart, very confident, filled with a lot of
21 leadership. He just impresses me every day." V1:234. Mr. Ferraro testified that Evan
22 is not argumentative, he does not get annoyed, irritated, or blame others for his
23 misbehavior, which he says is "very minimal." V1:234-35. Mr. Ferraro's testimony
24 regarding family discipline of Evan tracked closely with Defendant's, and he testified it
25 is the same way they were raised. V1:236-37. Mr. Ferraro described the last
26 occasion during which he spent any substantial time with the Plaintiff, it was in New
27 York in 2014, Defendant had invited Sandra to visit with her other two children as well;
28 Mr. Ferraro said she was welcomed by the family and everyone was quite happy.

1 V1:237-38. Mr. Ferraro described another occasion when Plaintiff's older son visited
2 New York with Evan, and that he was "extremely happy, extremely confident, loves
3 New York . . . He seems like he is one of us when he is there with us. We get along
4 with him great." Mr. Ferraro testified that he saw Desmond just a few months before
5 the trial at Evan's school, he described that Desmond approached him with a big smile
6 and asked him how he was doing. V1:283. Desmond was actually wearing a Ferraro
7 Brother's t-shirt and they had a 'great' conversation. V1:238. Mr. Ferraro described
8 Defendant as an "all hands on" dad, great, committed, loving. V1:241. Mr. Ferraro's
9 testimony affirmed that Defendant has a great deal of flexibility in his schedule to be
10 present for Evan, and that the whole family supports him in that. V1:241.

11 28. Plaintiff, Sandra Nance testified. V2:94-156; V3:8-67. She is a resident
12 of Las Vegas. V2:92-93.

13 a. Plaintiff testified there were problems with the visitation schedule,
14 namely that when he started kindergarten he was not to travel to New York with
15 Defendant, but she said he traveled most of the school year. V2:97-98. Emails
16 between the parties and their parenting coordinator admitted with Defendant's exhibit
17 A, at DEFT0001-47, show that Defendant was trying to balance the competing
18 interests between Evan's home, family and activities in New York with Kindergarten,
19 and that he was taking measures to ensure that Evan would not fall behind in school
20 and in fact Evan never did fall behind in school and the principal had no concerns with
21 Evan's absences during Kindergarten.

22 b. Plaintiff said Defendant does not always tell her where he is traveling,
23 but emails produced in Defendant's Exhibit A, suggest he typically does. V2:101-02.

24 c. Plaintiff testified her concern about Evan's possible relocation is that she
25 will not have the same relationship she has now with him, and he will not have a
26 relationship with his maternal grandparents or siblings. V2:102 Evan has a brother
27 who is moving and a sister who is about to turn 14. V2:102; V:145.

28 d. Plaintiff believes that she does things to foster Evan's relationship with

1 Defendant but that it is not reciprocated. She feels that Defendant is always "one-
2 upping" her. By way of example she said that Evan returns with shoes or games or
3 sports gear from his timeshare with Chris. V2:108. However, there is a provision in
4 the parenting plan (1.12) that says the parents will allow Evan to take his belongings
5 freely between households. It is not entirely clear, but it appears that Plaintiff tells
6 Evan to "Keep them in a bag until you go back with your dad." V2:108. The Court can
7 see how this could cause a problem, but it is not created by the Defendant. Another
8 example Plaintiff gave was that of the "Tooth Fairy." V2:108-09. On cross-
9 examination, it came out that Plaintiff had complained to the parenting coordinator
10 about this situation and received an email explanation that the "Tooth Fairy" gave
11 Evan \$115; Evan was allowed to keep \$15, but had to give the \$100 bill to his
12 grandmother for his college fund. V3:29-31. The Court understands Plaintiff's
13 frustration, but Plaintiff did not acknowledge in her testimony that the specific
14 circumstances were already explained to her, that Evan was not *actually* getting the
15 large sums of money. The fact that Mrs. Ferraro is saving for her grandson's college
16 education is a laudable goal to be supported.

17 e. Plaintiff testified that she gets her FaceTime visits with Evan but says
18 they are shorter duration than Defendant's. There was testimony from Defendant's
19 witness that he is diligent about making sure that Evan FaceTimes his mother, but it
20 will be critical that Defendant make sure Evan is in a quite and private place, without
21 distractions for FaceTime sessions of quality duration, not less than fifteen minutes,
22 ideally thirty or more so that Evan can FaceTime with his sister and grandparents too.

23 f. Plaintiff testified to co-parenting difficulties with Defendant, which she
24 attributed to feeling that she is co-parenting with his whole family and that it is "Chris's
25 way or no way" and that "He just does whatever he wants to do." V2:115-17.
26 However, the emails produced as Defendant's Exhibit A, which are much more
27 comprehensive than the limited emails produced by Plaintiff, tell a different story.
28 There are no emails from anyone other than Defendant, and Plaintiff denies most

1 everything Defendant requests. Plaintiff does not ask anything of Defendant,
2 suggestion she is the one who does whatever she wants. Defendant testified that he
3 thinks there is pattern: he asks, Plaintiff says "no," he gives benefits of the request,
4 Plaintiff says "no," and he lets it drop.

5 g. Plaintiff testified to injuries that Defendant sustained during his
6 professional hockey career. V2:120-25. However, Defendant stopped playing
7 professional hockey at or about the time that Evan was born; therefore, there was no
8 current testimony regarding these past injuries. She testified to another incident
9 when Defendant went to the emergency room, but was released and she did not say
10 when that was. V2:125-28. The Court is not concerned that either party has a health
11 condition that interfere's with their ability to parent Evan

12 h. Plaintiff testified to a couple of injuries that Evan has sustained in his
13 father's care (V2:131-132), but they seem like ordinary, childhood injuries and
14 mishaps, not the result of abuse or neglect.

15 i. Plaintiff testified that she lives with her parents because it allows her to
16 be a full-time mom, but also because, she "fears for her life" because, she said, "of
17 on-going threats, harassments, and problems that are going on with Chris." V2:155-
18 156. However, on cross-examination, she admitted that during her deposition when
19 she talked about living with her parents, she only indicated that she does not intend to
20 live with her parents forever and she intends to purchase her own home when she has
21 the resources to do so; she further admitted that she has not sought a protective order
22 against Defendant since 2010. V3:27-28. The Court does not find Plaintiff's
23 testimony, that she fears for her life, credible.

24 j. Plaintiff has an older son, Desmond who is nineteen. V3:13-14. Plaintiff
25 allowed him to transfer from traditional high school to an on-line home school program
26 at some point in his junior year. V3:14. She allowed him to take the program "at his
27 own pace," and he did not graduate on time. V3:14-15. During this time, Plaintiff
28 gave Desmond an ownership interest in her business. V3:16-17. Plaintiff said that

1 she allowed him to go at his own pace because of all he had been through, but she
2 admitted she never enrolled him in therapy. V3:16.

3 k. She does not allow Evan to play hockey during her timeshare. V3:22.
4 The Court appreciates that a parent can be concerned about their child playing certain
5 sports. However, by all accounts, Evan *loves* the game of hockey; it sounds like he is
6 already leading drills and assisting his dad and uncle on the ice. His father and his
7 uncle are former *U.S. Olympians* in hockey; they played in the National Hockey League.
8 Mr. Ferraro seems very clear that he does not want his son to follow his path, but
9 he does want his son to pursue his passions and give him every advantage and
10 assistance in doing so.

11 l. Defendant offered to pay for Evan to attend private school, specifically
12 Challenger School, before Kindergarten, that they toured the school together, but
13 Plaintiff refused to allow Defendant to enroll Evan, for the reason Plaintiff thought that
14 the school was "too intense." V3:22-23. Plaintiff denied that Defendant renewed the
15 offer for Evan to attend private school before first grade (V3:22); however, Exhibit A,
16 DEFT0138 shows email correspondence in which Defendant renewed the offer and
17 Plaintiff again refused.

18 m. In the seven years since Evan was born, Plaintiff has lived in four
19 different residences. V3:23-24.

20 n. Plaintiff testified that she did not tell Defendant when Evan was missing
21 school. V3:32.

22 o. Plaintiff testified that she does not always tell Defendant that she is
23 taking Evan to the doctor before she takes him. V3:32.

24 p. Within the last four years, Plaintiff has worked as a dealer of blackjack
25 and other casino games. V3:33. She denied that she ever asked a player who
26 presented a player card for identification. V3:33-34. Also, Plaintiff could not identify
27 any particular date that she allowed another person to use one of her own player's
28 cards. V3:36.

1 29. Defendant asked the Court to take judicial notice of Nevada Gaming
2 Control Board Regulation 5A.110 which states that a person who is issued a card for
3 interactive gaming must affirm that they will not allow another person to utilize their
4 card. V3:35. Specifically, Regulation 5A.110(3)(c) provides, “ Before registering an
5 individual as an authorized player, the operator must have the individual affirm the
6 following . . . That the individual has been informed and has acknowledged that, as an
7 authorized player, they are prohibited from allowing any other person access to or use
8 of their interactive gaming account.” The Court takes judicial notice of this regulation.

9 a. Testimony was taken from persons most knowledgeable from several
10 casinos (Casino PMKs). V1:131-202. The evidence showed that Plaintiff had player
11 cards from at least five (5) different casinos; therefore, she had to make the
12 affirmation required under Regulation 5A.110(3)(c) at least five times. Further, the
13 Casino PMKs variously testified it is casino policy: (1) that a player must play on their
14 own card (V1:146, 159, 175, 186, 197-98); (2) to request identification when players
15 win jackpots (V1:174); and (3) to request identification of players at tables (V1:175-76;
16 186). As between the Casino PMKs and Plaintiff who said as a dealer she “never”
17 had to ask a player who presented a player card for identification and could not
18 specify a single date on which someone else was allowed to use her card, the Court
19 believes the Casino PMKs. Presumptively then, the play on Plaintiff’s player cards, as
20 reflected in the records admitted as Defendant’s Exhibits N1 to N5 is Plaintiff’s own
21 play. As set forth in the summaries admitted as Defendant’s Exhibit N7 (V3:40-41),
22 since December 2012 through December 2015, Plaintiff logged over 1,231 hours on
23 her player cards, which averages to 33 hours per month; and in 2013 Plaintiff had
24 actual losses of \$10,333.42, in 2014 Plaintiff had actual losses of \$13,293.19, and in
25 2015 Plaintiff had actual losses of \$10,664.64. (The Casino PMKs testified that
26 adjusted win/loss records represent actual wins or losses; V1:146, 156, 165, 183,
27 194.) Although it is not possible to say how much money Plaintiff actually wagered,
28 the coin in/coin out numbers are staggeringly high (2013 - \$237,500.50/\$196,627.10;

1 2014 - \$209,949.72/\$176,238.55; 2015 - \$160,495.06/\$147,017.46). Finally, in
2 Plaintiff's most recent FDF, filed on June 21, 2016, for the first time she included an
3 average monthly gambling income of \$95.83, but she testified that she did not
4 consider the amount of money that she had actually wagered to earn those winnings.
5 V3:42-43. Her historical loss records do not support the claim that she actual earns
6 money gambling.

7 b. All of that said, Nevada is a gaming state, and gaming in moderation
8 within one's means is legal and accepted. It does not appear that Plaintiff can afford
9 an average of \$10,000.00 or more per year in gaming losses, and Defendant argues
10 that 33 hours a month could be spent in more constructive ways, particularly when
11 one's child is in school, but the key point for this Court's consideration is whether
12 Plaintiff's gaming activity affects the best interests of Evan. Here, "the nature of the
13 relationship of the child with each parent" is implicated. Parents who work regularly
14 set an example for their children. It is true that Defendant has not worked since the
15 fall of 2015, but those circumstances were unforeseen, and it is clear that Defendant
16 historically worked hard running a successful hockey coaching program, instructing
17 thousands of children a year, which Evan, as a child, was and is in a unique position
18 to watch his father do. Being a stay-at-home mother is noble and it is work, and
19 Plaintiff is to be commended for the work she does as a mother; however, the Court is
20 less convinced that this is a matter of choice than circumstance. As between a
21 parent who seems to have time to work while her child is in school but does not, and a
22 parent who spends his days and evenings coaching children with his own son
23 participating and watching on, the Court finds the Defendant's choices are more
24 closely aligned with the best interests of the child.

25 30. Rebecca Nance testified in Plaintiff's case in chief. V3:68-85. Mrs.
26 Nance is Plaintiff's mother. V3:68-69. She and her husband have lived with Plaintiff
27 and Plaintiff's three children since 2010. V3:69. She said that Evan has a loving
28 relationship with his mother and he is a very good kid. V3:69. She described all the

1 family relationships in the household and those with her other daughter and her
2 children who live in town as "close." V3:70-73. The family go together to go
3 swimming, to the park, to movies, and bowling. V3:70. She reported that Evan is
4 presently infatuated with baseball. V3:71. She said, "he rarely brings up hockey at
5 the house" and she could not say who Evan's favorite hockey team was. V3:83-84.
6 She said that when Evan FaceTimes with Defendant he is in his room for an hour or
7 an hour and half and apparently talking to all of the Ferraros. V3:75. She described
8 the relationship between Plaintiff and Defendant as strained. V3:75. Asked for
9 examples of what she meant by "strained," she instead talked about Plaintiff sending
10 pictures of Evan to Defendant, or working on Father's day projects with Evan. V3:75-
11 76. She testified that Sandra prepares the kids meals. V3:78. She testified that she
12 gambles, "a little bit," on "senior days" and uses Sandra's card so they can get points
13 to use the casino pool and comps for buffets. V3:79-80.

14 31. Judith Tolman testified in Plaintiff's case in chief. V3:86-149. She holds
15 a bachelor's degree and master's degree in social work; she obtained her Bachelor's
16 License of Social Work in 2009, her Master's License of Social Work in 2010 and her
17 Clinical License in 2014. V3:87. Initially she said she has worked as a therapist for
18 five years; however, on cross-examination she said it was more like 4 or 4 ½ years;
19 she works with children, adolescents and adults utilizing cognitive behavioral therapy.
20 V3:87-8; V3:126-27. Ms. Tolman did not testify as an expert witness.

21 a. Ms. Tolman began working with Evan in February 2013 when she was
22 still an intern. V3:89. Evan did not attend therapy for a period of several months
23 between 2013 and 2014 while the parties were getting along. V3:131; Ex. A at
24 DEFT0004, #2. In or around the fall of 2014, Plaintiff placed Evan back into therapy.
25 Ms. Tolman sees Evan every Wednesday except during Defendant's timeshare.
26 V1:75; V3:9; V90. Ms. Tolman sees Plaintiff when she brings Evan to therapy, and
27 Plaintiff sometimes participates in therapy. V3:89-90. It is rare that Plaintiff misses or
28 cancels a session, and when she does will generally ask for a make-up session.

1 V3:132. Defendant occasionally calls her by phone, and she has seen Defendant
2 only once or twice. V3:89-90. Ms. Tolman testified that she only reaches out to
3 Defendant "on occasion" and has only initiated contact with the Defendant in the last
4 year to conduct her annual reviews of Evan and to provide him literature regarding
5 delayed enrollment of children in kindergarten. V3:144. The only people Ms. Tolman
6 has ever talked to about Evan are Evan, the Plaintiff and the Defendant. V3:130.

7 b. Ms. Tolman testified that Oppositional Defiant Disorder (ODD) may
8 present in situations where a child does not want to do something, they may push
9 back or argue, they may yell, or throw themselves on the floor, and sometimes the
10 target is adults or authority figures, or the child may be annoying, irritable, or insist
11 upon getting their way. V3:102. Ms. Tolman testified that indicators of ADHD are not
12 paying close attention to detail, making careless mistakes, difficulty sustaining
13 attention, seeming not to listen, not following instructions, difficulty organizing tasks or
14 materials. V3:134. Ms. Tollman testified that there are two main components of
15 ADHD, there is an inattention component and a hyperactivity/impulsivity component.
16 V3:134, She further testified, to make the diagnosis you need to find six or more
17 criterion of each component *and* you need to find those in *two or more settings*.
18 V3:135. Ms. Tollman conceded that everyone in the courtroom has multiple of the
19 attributes that define ADHD, to greater and lesser degrees. V3:135. Ms. Tollman
20 testified that the settings in which she identified Evan as having the requisite number
21 of criterion in each component was by reports from the school, her own office, and
22 Plaintiff's home. V3:135. However, when pressed, she admitted that she did not *talk*
23 to anyone at the school, and she could not find the report on which she was relying in
24 her records. V3:135-37.

25 c. She was unaware that Evan has never been sent to the school
26 counselor. V3:138. She said that his behavior has been handled in the classroom,
27 but it is unclear how she would know that given she has never talked to anyone at the
28 school. V:138. From memory, she said the school report noted needs for

1 improvement in the areas of talking, distractibility, and staying in his seat, but admitted
2 a number of first graders exhibit such behaviors and do not have a diagnosis of and
3 would not be diagnosed with ADHD. V3:137-38. She admitted the treatment
4 recommendations of the National Institutes of Health and American Academy of
5 Pediatrics for children of Evan's age are medication and cognitive behavioral therapy
6 (CBT), and she has not recommended medication for Evan, only CBT. V3:138. Ms.
7 Tolman admitted that there is a CBT certification, but she does not have one. V3:141.
8 She believes it is possible that a parent can teach their child the same things that she
9 is teaching Evan. V3:145. This was Defendant's point, that he can and believes he
10 does teach Evan many of the same things Ms. Tolman does, but in different ways,
11 namely through having a structured, daily schedule and through extra-curricular
12 activities, many of which Defendant is personally coaching his son, whether formally or
13 informally.

14 d. Ms. Tolman thinks that it would benefit Evan to see her every week
15 because she says, "Evan struggles with meeting the expectations of each parent.
16 They have different expectations." V3:91. Ms. Tolman, was asked about the
17 behavioral expectations in Sandra's home and she talked about "traditional family
18 values" existing in Plaintiff's household. V3:91-92 However, she could not say what
19 the behavioral expectations were in Defendant's household. V3:92,146. And, Ms.
20 Tolman admitted that she does not have any direct knowledge of what goes on in Mr.
21 Ferraro's household. Moreover, the parties' testimony did not reflect that they have
22 different expectations of Evan or that Evan was not, in fact, meeting their
23 expectations. Again the testimony from every witness, was that Evan was well-
24 behaved, respectful, excelling in school, and no one testified to any serious problems,
25 except Ms. Tolman. In deed, Plaintiff did not even say that Evan was behaving in a
26 way that was consistent with the behaviors of ADHD/ODD.

27 e. Ms. Tolman was asked if she has made suggestions to both parents as
28 to how they can address symptoms of ADHD in the home, but she did not answer the

1 question, she only talked about how she understands Plaintiff addresses Evan's
2 behaviors in her home. V3:116.

3 f. Ms. Tolman testified that the behavior Evan was exhibiting when Evan
4 began treatment with her was "chewing on a blanket, obviously it was a few years ago,
5 a blanket or the neck of his shirt, his sleeve that kind of thing" and "he would kind of
6 shut down sometimes because of anxiety." V3:100. However, several witnesses who
7 have known Evan all or most of his life – Defendant, his brother, and Ms. Doyle – and
8 witnesses who have known Evan since 2014 – Mr. Pannacciulli and Principal
9 Hungerford – all testified that they never observed or did not recall Evan doing this
10 kind of thing during Chris's timeshare or at school. And, no one testified that Evan
11 was shutting down or that Evan was anything other than an engaged and engaging
12 little boy; "outgoing" is how Ms. Doyle described him (she has known him since he was
13 about 3 or 4 years old) and his uncle described him as a "leader." Ms. Tolman stated
14 her recent evaluation put Evan's anxiety diagnosis in remission. V3:101.

15 g. Ms. Tolman testified that she has also diagnosed Evan with Oppositional
16 Defiant Disorder (ODD) and Attention Deficit Hyperactivity Disorder (ADHD) combined
17 presentation. V3:101. She testified that ODD cannot be "cured," that it is organic and
18 is caused by personality traits and a reaction to situations the child is in, but it can
19 improve with age. V3:101-02. She testified that ADHD presents in situations that
20 cause the symptoms. V3:102. Ms. Tolman testified that Evan symptoms include
21 getting angry, arguing, talking back, not doing what he is asked to and blaming others
22 for his problems, making careless mistakes, sloppy homework or handwriting, not
23 finishing chores or homework, not listening, trouble sustaining attention, or being
24 hyperfocused on something the child is actually interested in. V3:103-05. Defendant
25 testified that Evan does not exhibit these behaviors any more than the thousands of
26 children of Evan's age that he has observed during his coaching career. V1:76-77.
27 Similarly, Defendant's brother, Ms. Doyle, Mr. Pannacciulli, and Principal Hungerford
28 denied that these behaviors exist or that they exist in any greater degree than that of

1 the general population of children who are Evan's age; and they all get opportunity to
2 observe many children of Evan's age. Even Plaintiff's mother – Evan's maternal
3 grandmother – testified Evan is a "very good kid." Plaintiff did not testify much about
4 Evan's behavior.

5 h. Defendant testified that when Evan does misbehave, there is discussion,
6 positive examples are given, there is negotiation, compromise and Evan is given
7 opportunities for problem solving, V1:77-78. Defendant expressed his belief that it is
8 his job as a parent to teach his son these skills, not a therapist and that he believes
9 Plaintiff uses therapy as a substitute for parenting. V1:77.

10 i. Ms. Tolman's direct testimony was critical, perhaps even biased against,
11 Defendant, yet on cross-examination she admitted that she has no direct observation
12 or understanding from Mr. Ferraro of what happens or occurs in Mr. Ferraro's home.
13 V3:143-44, 147. She has never had a discussion with Defendant about the means of
14 discipline in his home. V3:149. She was not aware that Defendant uses a reward
15 system with Evan. V3:144. She was not aware that Defendant's method of discipline
16 is to discuss Evan's behaviors with him and give him choices. V3:144-45. Ms.
17 Tolman was asked if she would be surprised to learn that the symptoms she described
18 in Evan are not observed during Defendant's timeshare in a degree that is beyond that
19 of hundreds of children that Defendant coaches every year. V3:145. To that question
20 Ms. Tolman answered, "I don't know how he measures that so I can't judge it."
21 V3:145. But just a few questions earlier she admitted that it is possible that a person
22 who coaches thousands of children per year could develop an average measurement
23 of children's behavior. V3:143-44. The Court agrees that such a person can and will
24 develop such a measurement, and that Defendant and his brother can compare
25 Evan's behavior to those of the other children they coach to conclude that Evan's
26 behaviors are not out of the norm.

27 j. Ms. Tolman testified that Defendant did report to her that Evan exhibits
28 the symptoms of ODD (V3:103), but Ms. Tolman also testified that she is aware that

1 Defendant does not think that Evan qualifies for a mental health diagnosis. V3:102-
2 03. From his testimony it very clear that Defendant thinks the issue is one of degree
3 and on balance all witnesses agree that Evan is a very well behaved and respectful
4 child. Ms. Tolman speculated that there may be ADHD/ODD in the Ferraro household
5 and this may account for their belief that Evan's behavior is 'normal;' however, she
6 admitted that she is unaware as to whether any member of the Ferraro family has ever
7 attended therapy and she has made no direct observations of the Ferraro home.
8 V3:119, 143-44.

9 k. Ms. Tolman evaded giving any concrete benchmarks for the success or
10 failure of her own treatment of Evan or how long he should continue to be in weekly
11 therapy and said that a second opinion would usually only be sought if new behaviors
12 cropped up. V3:139-141. Ms. Tolman testified that she would not second guess her
13 own diagnosis even if the child's school principal had not identified any of the
14 behaviors she described in Evan. V3:143. This concerns the Court. It seems to this
15 Court that if a therapist thinks, as Ms. Tolman clearly does, that the buy-in and
16 participation of both parents is a key to the successful treatment of a child and the
17 therapist has been unable to accomplish that with one of the parents, then it would be
18 in the best interest of her patient to recommend a second opinion from a therapist
19 selected by both parents, but Ms. Tolman testified she has never recommended a
20 neuropsychic exam for Evan or sought a second opinion, nor has she ever considered
21 a differential diagnoses for Evan. V3:128, 133, 139-41.

22 23 **CONCLUSIONS OF LAW**

24 1. Nevada has subject matter jurisdiction over the minor child in
25 accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, which is
26 codified at Chapter 125A of the Nevada Revised Statutes, and the Court has personal
27 jurisdiction over the parties.

28 2. The court may modify or vacate a child custody order at any time during

1 a child's minority as appears in the child's best interest. (NRS 125C.0045(1)(a-b).)
2 When considering a motion to modify custody, the court must first determine the
3 actual physical custody timeshare that is in effect, regardless of what was stated in the
4 last child custody order. *Rivero v. Rivero*, 125 Nev. 410, 430, 215 P. 3d 213, 227
5 (2009). Different tests apply to modify custody depending on the current custody
6 arrangement. Joint physical custody may be modified or terminated if it is in the best
7 interest of the child. (NRS 125C.0045(2); see also, *Truax v. Truax*, 110 Nev. 473, 874
8 P.2d 10 (1994).) Primary physical custody may be modified only when "(1) there has
9 been a substantial change in circumstances affecting the welfare of the child, and (2)
10 the modification would serve the child's best interest." *Ellis v. Carucci*, 123 Nev. 145,
11 153, 161 P.3d 239, 244 (2007). However, "the child's best interest must be the
12 primary consideration for modifying custody and *Rivero*'s 40-percent *guideline* shall
13 serve as a tool in determining what custody arrangement is in the child's best interest."
14 *Bluestein v. Bluestein*, ___ Nev. ___, 345 P.3d 1044, 1046 (2015) (emphasis added).
15 Since *Rivero*, *Bluestein*, and the commencement of this case, the Nevada Legislature
16 enacted NRS 125C.003(1)(a) which states in part that "An award of joint physical
17 custody is presumed not to be in the best interest of the child if . . . The court
18 determines by substantial evidence that a parent is unable to adequately care for a
19 minor child for at least 146 days of the year." If this rule applies in this context, which
20 the Court does not think it does, the Court does not think the issue has ever been that
21 Defendant was unable to care for Evan 146 days per year.

22 3. Here, the parties' post-*Rivero* parenting plan stated they would share
23 joint legal and joint physical custody of Evan ("Parenting Plan" at 2:4-5, 5:18-21.),
24 which is evidence that the parties themselves believed joint physical custody was in
25 Evan's interest and they did this even though the terms of the parenting plan,
26 arguably, did not give Defendant 146 days of timeshare every year. However, the
27 *Rivero* Court said, "In calculating the time during which a party has physical custody of
28 the child, the district court should look at the number of days during which a party

1 provided supervision of the child, the child resided with the party, and during which the
2 party made the day-to-day decisions regarding the child. The district court should not
3 focus on, for example, the exact number of hours the child was in the care of the
4 parent" *Rivero v. Rivero*, 125 Nev. at 225. Therefore, if as Defendant testified
5 at trial, the Court counts every day that Defendant had the child in his care, and not
6 just those days in which Defendant had the child overnight, then Defendant is well
7 over the 40% threshold in every year. Therefore, the Court finds that the parties do, as
8 a matter of law, exercise joint legal custody of Evan.

9 4. Nevertheless, and in an abundance of caution, the Court also finds that
10 the Defendant meets the additional burden under *Ellis*. Changed circumstances
11 affecting the welfare of the child are shown by: (a) Plaintiff maintaining Evan in weekly
12 therapy when there is very little, if any, evidence that Evan suffers behavioral issues
13 beyond those of an average, active and healthy first grader; (b) Evan is of an age
14 where extracurricular activities and socialization with his peers is important and
15 Plaintiff never fostered this until Defendant filed his motion (the first activity in which
16 she enrolled him was baseball in 2015); she denies him any opportunity to play
17 hockey during her timeshare, which is his father's sport and a sport that Evan loves;
18 (c) now that Evan is in grade school, school quality is important and the specific
19 school district that Evan will attend in New York is better than schools generally in Las
20 Vegas; (d) since the last custody order was entered, Plaintiff has failed to ensure her
21 oldest son graduated high school on time, allowing him to leave regular high school for
22 an on-line home school program, allowing him to do it at 'his own pace', and failing to
23 obtain resources to assist him when, by her own testimony, she believed he was
24 struggling; instead, she gave him an ownership interest in her business before he was
25 even done school; and (e) albeit of lesser importance than things effecting the
26 circumstances of the child, Defendant's circumstances have changed in that since the
27 parenting plan was entered, his second career has solidly established itself and his
28 client base in New York.

1 5. NRS 125C.007 sets forth the relocation factors to be weighed by court,
2 which were previously found in *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268
3 (1991); *Jones v. Jones*, 110 Nev. 1253, 885 P.2d 563 (1994); and *Potter v. Potter*,
4 121 Nev. 613, 119 P.3d 1246 (2005). NRS 125C.007(1)(a-c) requires the relocating
5 parent to demonstrate to the court that:

6 a. There exists a sensible, good-faith reason for the move, and the move is
7 not intended to deprive the non-relocating parent of his or her parenting time. Here,
8 the sensible good faith reasons include: allowing Defendant to reestablish his
9 business; reduce travel expenses to dedicate more financial resources to Evan; afford
10 Evan better educational and more extra-curricular opportunities than exist in Nevada,
11 whereas his mother resists sending Evan to better schools when presented the
12 opportunity, resists enrolling Evan in more sport-related activity even when Defendant
13 offers to pay, and she will not allow him to play hockey at all; and the network of
14 connections that Defendant can provide for his son by raising him in New York is a
15 unique and valuable in promoting Evan's long-term best interests..

16 b. The best interests of the child are served by allowing the relocating
17 parent to relocate with the child. Here, as set forth above, education, extra-curricular
18 activities, the guidance of a parent who has some unique skills derived from his
19 coaching career to augment his skills as a parent, and a fairly large and very close
20 family to support father and son, all serve Evan's best interest. Then too, there are
21 the best interest factors under NRS 125C.0035(4). Evan is not yet of sufficient age
22 and capacity to form an intelligent preference as to his physical custody; therefore, this
23 factor is inapplicable. There was not a lot of testimony as to which parent is more
24 likely to allow the child to have frequent associations and a continuing relationship with
25 the noncustodial parent; no one testified that they were deprived of their timeshare;
26 concern was raised over the *duration* of FaceTime visits but the Court believes that if
27 ordered, Defendant will comply. Although the Court wants to see more summer
28 visitation between Plaintiff and Evan than Defendant initially proposed, the Court is

1 impressed that Defendant is willing to share some of his time with Plaintiff, and waive
2 child support to help her potentially visit Evan in New York at still other times. This
3 may be difficult while Plaintiff's daughter is still in school, but Plaintiff's daughter is with
4 her father on weekends, and they do live with her grandparents; therefore, it seems
5 that there could be opportunities for Plaintiff to visit Evan in New York, and even when
6 her daughter graduates, Evan will still have six years of school remaining. The level of
7 conflict between the parents has moderated in recent years, mostly they have found
8 ways to avoid co-parenting, this is a neutral factor for the Court on relocation. The
9 ability of the parents to cooperate to meet the needs of the child, at present there is
10 just not much interaction, but cooperation is clearly difficult. If the parties were living in
11 the same community, the Court would not impose a primary physical custodian, but it
12 may not be a bad thing that it happens by default. Defendant very clearly wants to
13 provide every opportunity for his son that he can, but Plaintiff resists and oftentimes
14 denies those opportunities. Some testimony was given by Plaintiff on Defendant's
15 health, but it was old and the Court is not concerned for the health of either parent
16 being an issue in meeting Evan's best interests. As to the physical, developmental
17 and emotional needs of the child, the Court finds that both parents have met them to
18 this point, but questions Plaintiff's decision or perceived need to keep Evan in weekly
19 therapy; the Court questions the therapist in not obtaining a second opinion or
20 recommending a therapist with whom both parents felt they could work, and the Court
21 thinks that Defendant's strong commitment to his son and experience coaching
22 thousands of children over the years will serve Evan's needs very well. With respect
23 to the nature of the relationship of the child with each parent, the Court does not doubt
24 that there is a close bond between Evan and both of his parents, and both are
25 committed in their different ways; Plaintiff appears very maternal, while Defendant
26 appears to be both paternal and a mentor. Evan has two half siblings in Plaintiff's
27 household; a brother who is now emancipated and reportedly moving, and a sister
28 who will soon be fourteen and spends weekends with her father. These relationships

1 are important, and they can be maintained through Plaintiff's own visitation and
2 FaceTime. Evan should be permitted to communicate with his sister. The Court
3 understands that the parties made competing allegations of abuse or neglect dating
4 back to 2010, but there was no testimony of abuse or neglect by either parent since
5 the last custody order was entered. Nor has either parent committed any act of
6 abduction against the child or any other child since the last custody order was entered.

7 c. The child and the relocating parent will benefit from an actual advantage
8 as a result of the relocation. For the same reasons as set forth above, the Court finds
9 that there will be an actual advantage to Evan and the Defendant in relocating to New
10 York.

11 6. If a relocating parent demonstrates to the court the factors set forth in
12 NRS 125C.007(1) are met, then pursuant to NRS 125C.007(2)(a-f), the court must
13 weigh the following factors and the impact of each on the child, the relocating parent
14 and the non-relocating parent, including, without limitation, the extent to which the
15 compelling interests of the child, the relocating parent and the non-relocating parent
16 are accommodated:

17 a. The extent to which the relocation is likely to improve the quality of life
18 for the child and the relocating parent. The Court finds that the improvement for both
19 Evan and Defendant will be quite significant. The improvement for Evan will be
20 tempered by the decreased frequency of contact with his maternal family, but it will
21 benefit him greatly to have a hands-on, available parent with the kind of routine that
22 Defendant has practiced with Evan during his timeshare's here, but on a weekly basis
23 in New York.

24 b. Whether the motives of the relocating parent are honorable and not
25 designed to frustrate or defeat any visitation rights accorded to the non-relocating
26 parent. Defendant's motives are honorable, above all else, New York is and always
27 has been his home, but there are still other motivations reflected elsewhere herein
28 that are also honorable in Defendant's request for relocation.

1 c. Whether the relocating parent will comply with any substitute visitation
2 orders issued by the court if permission to relocate is granted. There was some
3 evidence that Defendant had violated the existing custody order by continuing to take
4 Evan to New York when Evan started kindergarten; however, this was not a
5 deprivation of Plaintiff's timeshare. The Court has no reason to believe that
6 Defendant will not comply with the visitation order.

7 d. Whether the motives of the non-relocating parent are honorable in
8 resisting the petition for permission to relocate or to what extent any opposition to the
9 petition for permission to relocate is intended to secure a financial advantage in the
10 form of ongoing support obligations or otherwise. The Court perceives that Plaintiff's
11 motives in resisting the relocation are likewise honorable. Her identity is as a mother,
12 and as she testified, she does not want that relationship to change.

13 e. Whether there will be a realistic opportunity for the non-relocating parent
14 to maintain a visitation schedule that will adequately foster and preserve the parental
15 relationship between the child and the non-relocating parent if permission to relocate
16 is granted. Here, there is a reasonable alternative visitation schedule as set forth in
17 the order below. The Court was pleased that, in closing argument, Defendant
18 conceded that Plaintiff and Evan needed to have a continuous, uninterrupted period in
19 the summer time. The Court understands Defendant's desire to enroll Evan in
20 summer camps and programs, but perhaps that is something the parties can agree
21 upon when Evan is older.

22 3. The burden to prove that relocation is in the best interest of the child is on the
23 parent seeking relocation. (NRS 125C.007(3).) As set forth above, Defendant met
24 that burden.

25 ORDER

26 IT IS HEREBY ORDERED that the Parties shall continue to share joint legal
27 custody of Evan Daniel Ferraro, born September 30, 2008. Legal custody involves
28 having basic legal responsibility for the child and making major decisions concerning

1 the child such as their health, education, and religious upbringing. Legal custody
2 includes but is not necessarily limited to those items enumerated in the legal custody
3 provisions of the parties' Stipulation and Order Re: Parenting Plan filed November 30,
4 2012.

5 IT IS FURTHER ORDERED that Defendant's request for primary physical
6 custody of the minor child is GRANTED.

7 IT IS FURTHER ORDERED that Defendant's request to relocate to New York
8 with the minor child is GRANTED.

9 IT IS FURTHER ORDERED that Plaintiff is granted specified visitation as
10 follows:

11 **Winter Break:** In EVEN years, Mom shall have Evan upon release from school
12 prior to the break until December 30th (Evan returns to New York on 12/30 in EVEN
13 years). In ODD years, Mom shall have Evan from December 26 to the day before
14 school resumes.

15 **February Break:** This period will begin upon the release of school prior to the
16 break and continue until the day before school resumes following the break. Mom
17 shall have Evan in even years and Dad shall have Evan in odd years. In odd years
18 when Evan is with Dad, if Evan is participating in a sports camp or tournament, Mom
19 may attend at Mom's expense.

20 **April Break:** This period will begin upon the release of school prior to the
21 break and continue until the day before school resumes following the break. Mom
22 shall have Evan in odd years and Dad shall have Evan in even years. In even years
23 when Evan is with Dad, if Evan is participating in a sports camp or tournament, Mom
24 may attend at Mom's expense.

25 **Memorial Day Weekend:** This period will begin upon release of school prior to
26 the break and continue until the day before school resumes following the break. Mom
27 shall have Evan in even years and Dad shall have Evan in odd years. However,
28 during even years, if permission is granted from Evan's school and there is no

1 substantial interference with school or extracurricular activities, then in order to
2 facilitate additional visitation with Mom, Evan shall be permitted to miss the Friday
3 before and the Tuesday after Memorial Day.

4 **Summer Break:** Mom shall have Evan from one week following Evan's
5 release from school through one week prior to Evan's return to school.

6 **Columbus Day Weekend (October):** This period will begin upon the release
7 of school prior to the break and continue until the day before school resumes following
8 the break. Mom shall have Evan for Columbus Day Weekend every year. If
9 permission is granted from Evan's school and there is no substantial interference with
10 extracurricular activities, then in order to facilitate additional visitation, Evan shall be
11 permitted to miss the Friday before and the Tuesday after Columbus Day.

12 **Thanksgiving:** This period will begin upon the release of school prior to the
13 break and continue until the day before school resumes following the break. Mom
14 shall have Evan in odd years and Dad shall have Evan in even years. If permission is
15 granted from Evan's school and there is no substantial interference with
16 extracurricular activities, then in order to facilitate additional visitation, Evan shall be
17 permitted to miss school Monday, Tuesday or Wednesday before Thanksgiving.

18 IT IS FURTHER ORDERED that Defendant shall pay all costs of transportation
19 for the foregoing visits. Plaintiff shall fly to New York to pick up Evan for her visits (but
20 Defendant will pay Plaintiff's airfare); and Defendant shall fly to Las Vegas to retrieve
21 Evan.

22 IT IS FURTHER ORDERED that Plaintiff may have additional visits with Evan in
23 New York at Plaintiff's own expense provided that Plaintiff gives Defendant two weeks'
24 advance notice and the visit does not interfere with any pre-planned Ferraro-family
25 events. During such visits, Plaintiff is responsible to get Evan to and from school and
26 extracurricular activities.

27 IT IS FURTHER ORDERED that each Party shall have unlimited telephone,
28 text, or FaceTime/Skype contact during their non-custodial time, with the

1 understanding that contact shall not unduly intrude on the other party's custodial time.
2 More specifically, the parents shall have communication with the child four days per
3 week, on a schedule to be determined and set in writing each quarter or semester
4 based on Evan's extra-curricular activity schedule. The parents will assure that Evan
5 is in a private location, free of distractions. The scheduled calls will be planned for at
6 least thirty minutes duration so that Evan can communicate with his extended family
7 members as well.

8 IT IS FURTHER ORDERED, pursuant to Defendant's waiver of child support
9 from Plaintiff, the relative income of the parents, and Defendant's resources being
10 sufficient to meet the needs of the child, that Plaintiff shall pay no child support.

11 IT IS FURTHER ORDERED that Defendant shall provide health insurance for
12 the minor child and Defendant shall pay 100% of the premium for such health
13 insurance. The parties shall share all of out-of-pocket costs equally pursuant to the
14 30/30 rule, i.e., any unreimbursed medical, dental, optical, orthodontic or other health
15 related expense incurred for the benefit of the minor child is to be divided equally
16 between the parties. Either party incurring an out of pocket medical expenses for the
17 child shall provide a copy of the paid invoice/receipt to the other party within thirty days
18 of incurring such expenses, if not tendered with the thirty day period, the Court may
19 consider it as a waiver of reimbursement. The other party will then have thirty days
20 from receipt within which to dispute the expense in writing or reimburse the incurring
21 party for one-half of the out of pocket expense, if not disputed or paid within the thirty
22 day period the party may be subject to a finding of contempt and appropriate
23 sanctions.

24 IT IS FURTHER ORDERED that each party shall bear their own attorney's fees
25 and costs.

26 **NOTICE IS HEREBY GIVEN** that the parties shall be required to submit the
27 information required to NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate
28 form to the Court and to the Welfare Division of the Department of Human Resources

1 within ten (10) days of entry of the decree and within ten (10) days of any change in
2 the original form should any of that information change.

3 **NOTICE IS HEREBY GIVEN** of the following provision of NRS 125.510(6):

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

10 **NOTICE IS HEREBY GIVEN** that the terms of the Hague Convention of
11 October 25, 1980, adopted by the 14th Session of the Hague Conference on Private
12 International Law apply if a parent abducts or wrongfully retains a child in a foreign
13 country. The Parties are also put on notice of the following provisions in NRS
14 125.510(8).

15 If a parent of the child lives in a foreign country or has significant
commitments in a foreign country:

16 (a) The Parties may agree, and the court shall include in the order for
17 custody of the child, that the United States is the country of habitual
residence of the child for the purposes of applying the terms of the Hague
Convention as set forth in subsection 7.

18 (b) Upon motion of one of the Parties, the court may order the parent to
19 post a bond if the court determines that the parent poses an imminent risk
20 of wrongfully removing or concealing the child outside the country of
habitual residence. The bond must be in an amount determined by the
21 court and may be used only to pay for the cost of locating the child and
22 returning him to his habitual residence if the child is wrongfully removed
from or concealed outside the country of habitual residence. The fact that
a parent has significant commitments in a foreign country does not create
a presumption that the parent poses an imminent risk of wrongfully
removing or concealing the child.

23 **NOTICE IS HEREBY GIVEN** of the following provisions of NRS 125C.006 and
24 NRS 125C.0065:

25
26 The parties, and each of them, are hereby placed on notice that if primary
27 physical custody has been established pursuant to an order, judgment or
28 decree of a court or if joint physical custody has been established pursuant
to an order, judgment or decree of a court and the primary custodian or a
joint custodian intends to relocate his or her residence to a place outside

1 of this State or to a place within this State that is at such a distance that
2 would substantially impair the ability of the other parent to maintain a
3 meaningful relationship with the child and desires to take the child with him
4 or her, the relocating parent shall, before relocating: (a) attempt to obtain
5 the written consent of the non-relocating parent to relocate with the child;
6 and (b) if the non-relocating parent refuses to give that consent, petition the
7 court for permission to relocate with the child. The court may award
reasonable attorney's fees and costs to the relocating parent if the court
finds that the non-relocating parent refused to consent to the relocation
without having reasonable grounds for such refusal or for the purpose of
harassing the relocating parent. A parent who relocates with a child
pursuant to this section without the written consent of the other parent or
the permission of the court is subject to the provisions of NRS 200.359.

8 **NOTICE IS HEREBY GIVEN** that the Parties are subject to the provisions of NRS
9 31A.010 et seq. and NRS 125.450 regarding the collection of delinquent child support
10 payments by wage withholding and assignment.

11 **NOTICE IS HEREBY GIVEN** that either Party may request a review of child
12 support pursuant to NRS 125B.145, presently every three years or upon changed
13 circumstances.

14 IT IS SO ORDERED this _____ day of _____, 20____.

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16 _____
17 DISTRICT COURT JUDGE, FAMILY DIVISION
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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN

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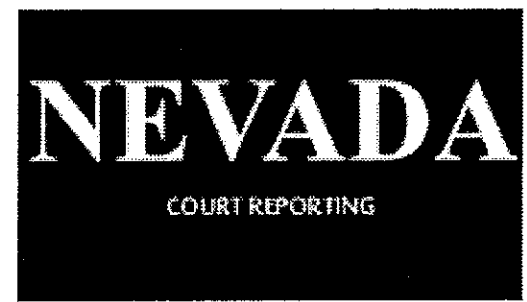
DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA LYNN NANCE,) Case No.: D-10-426817-D
Plaintiff,) Dept. No. F
vs.)
CHRISTOPHER MICHAEL FERRARO,)
Defendant.)
_____)

TRIAL TESTIMONY
Taken on June 27, 2016

Nevada Court Reporting

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Las Vegas, NV 89146
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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

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5 SANDRA LYNN NANCE,) Case No.: D-10-426817-D

6 Plaintiff,) Dept. No. F

7 vs.)

8 CHRISTOPHER MICHAEL FERRARO,)

9 Defendant.)

10 _____)

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13 TRIAL TESTIMONY

14 Taken on June 27, 2016

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Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: JASON NAIMI, ESQ.</p> <p>3 SHELLY COOLEY, ESQ.</p> <p>4 STANDISH NAIMI LAW GROUP</p> <p>5 1635 Village Center Circle</p> <p>6 Suite 180</p> <p>7 Las Vegas, Nevada 89134</p> <p>8</p> <p>9</p> <p>10 For the Defendants: SHANNON WILSON, ESQ.</p> <p>11 TODD MOODY, ESQ.</p> <p>12 HUTCHISON STEFFEN</p> <p>13 10080 Alta Drive</p> <p>14 Suite 200</p> <p>15 Las Vegas, Nevada 89145</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 theory or another, and so quite frankly I mean I've</p> <p>2 read both of your briefs. I understand what your</p> <p>3 positions are. For me to make that determination</p> <p>4 before I hear the evidence I think makes... I don't</p> <p>5 think I need to do that. I think I understand where</p> <p>6 both of you are coming from but in the end you</p> <p>7 ultimately either do closings or maybe closing briefs</p> <p>8 depending upon what I feel I need to hear from you</p> <p>9 and go from there. But I understand the issue but I</p> <p>10 don't think I need to make a ruling before we start.</p> <p>11 That's the way I look at it anyway. You need to</p> <p>12 persuade me to use this legal standard over that</p> <p>13 before or make a ruling as to whether someone has</p> <p>14 primary de facto, I don't think that's appropriate at</p> <p>15 this point.</p> <p>16 MR. NAIMI: If I may Your Honor.</p> <p>17 JUDGE GENTILE: You may.</p> <p>18 MR. NAIMI: I think it is appropriate</p> <p>19 in the sense that in knowing where we stand</p> <p>20 custodially at this point in time. It could make a</p> <p>21 difference on whether we have a...</p> <p>22 JUDGE GENTILE: Isn't that a factual</p> <p>23 issue?</p> <p>24 MR. NAIMI: Pardon.</p> <p>25 JUDGE GENTILE: Isn't that a factual</p>
Page 3	Page 5
<p>1 JUDGE GENTILE: Okay. We're on the record in</p> <p>2 the Nance versus Ferraro matter, case D426-817.</p> <p>3 State your appearances, please.</p> <p>4 MR. NAIMI: Good morning Your Honor.</p> <p>5 Jason Naimi, bar number 9441, on behalf of Ms. Sandra</p> <p>6 Nance who is present with me today. Also with me is</p> <p>7 Ms. Cooley. Go ahead.</p> <p>8 MS. COOLEY: Bar number 8992, also in</p> <p>9 behalf of Ms. Nance.</p> <p>10 JUDGE GENTILE: Okay.</p> <p>11 MS. WILSON: Good morning, Your Honor.</p> <p>12 Shannon Wilson, bar number 9933, on behalf of</p> <p>13 Christopher Ferraro who is present and also Todd</p> <p>14 Moody.</p> <p>15 MR. MOODY: Good morning.</p> <p>16 JUDGE GENTILE: Good morning. Okay, so</p> <p>17 we're here. We got to follow the timed method of</p> <p>18 this thing. So, is everybody ready to proceed? I</p> <p>19 know you had a one... you had sent a letter in.</p> <p>20 MS. WILSON: Right. We didn't expect</p> <p>21 you to do that last week. We just wanted you to be</p> <p>22 prepared for this morning on that issue.</p> <p>23 JUDGE GENTILE: Okay. Well, I mean I</p> <p>24 think that that's part of your overall case in terms</p> <p>25 of whether to persuade me to either follow one legal</p>	<p>1 issue in terms of me having to hear from each of you</p> <p>2 as to what's been going on up the time?</p> <p>3 MR. NAIMI: Your Honor is absolutely</p> <p>4 correct. It is a factual issue. There's no question</p> <p>5 on that. I think there is objective material here</p> <p>6 apart from the testimony and parties that you can</p> <p>7 look at in a matter of moments and in doing so we can</p> <p>8 eliminate that whole part of this trial. I think it</p> <p>9 would be much more efficient. Now, now of course, you</p> <p>10 have the discretion to do this however you please.</p> <p>11 If you say I'm just not interested in that, you have</p> <p>12 that right, but I think if candidly if I were on the</p> <p>13 bench I would probably want to look at any objective</p> <p>14 information that can be presented to me in a summary</p> <p>15 format that might be a lot easier and quicker to</p> <p>16 grasp.</p> <p>17 JUDGE GENTILE: Okay.</p> <p>18 MR. NAIMI: So we say okay we're on the</p> <p>19 same page.</p> <p>20 JUDGE GENTILE: Are we all on the same</p> <p>21 page though?</p> <p>22 MS. WILSON: Jason and I are in fact.</p> <p>23 JUDGE GENTILE: Okay.</p> <p>24 MS. WILSON: I think if we do believe</p> <p>25 that there are a couple of issues within this that</p>

<p style="text-align: right;">Page 6</p> <p>1 are decisions to be made as a matter of law. So 2 for... and I think they roughly break down into two. 3 There is one, the question of how do you as a judge 4 count timeshare under Rivero. And then the second 5 piece is again you as a judge as a matter of law, are 6 you following the new... I don't remember the 7 subsection, off the top of my head, under the 8 revision of NRS 125C right there is a section of that 9 statute now that reads that when the court is 10 considering whether joint physical custody isn't the 11 best interest of the child, the court shall consider 12 whether or not the parent can exercise 146 days. So, 13 Mr. Naimi and I have a slight difference of opinion 14 about how that statute applies and its effect on this 15 case which we could argue as a matter of law 16 simulating we argue how you count timeshare. We 17 think those are the issues that you can decide as a 18 matter of law in giving your decision then we know 19 what facts to present. 20 MR. NAIMI: Where I defer so we're 21 clear on the record at this point... 22 JUDGE GENTILE: Yeah, I don't know that 23 I can say I specifically rule a certain way based 24 upon any or either of those two things because it's 25 all fact specific and the case law doesn't define</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. NAIMI: Okay. 2 JUDGE GENTILE: Okay? 3 MS. WILSON: Okay. 4 MR. NAIMI: Go ahead. 5 JUDGE GENTILE: All right. Ms. Wilson 6 MS. WILSON: Thank you. Give me just a 7 moment to opening if you would. 8 JUDGE GENTILE: Sure. 9 MS. WILSON: Ready? 10 JUDGE GENTILE: Sure. 11 MS. WILSON: All right. Thank you. 12 Your Honor I think pretty well familiar with the very 13 background facts of the case. The parties have a 14 minor child together, Evan, who is now seven years 15 old just about seven and a half years old, who was 16 born September 30, 2009. 17 MR. FERRARO: 2008. 18 MS. WILSON: 2010. 2008, sorry. After 19 a very bumpy beginning in November of 2012, they 20 negotiated a parenting plan with the assistance of 21 Margaret Picker that stated the parties would share 22 joint legal and joint physical custody. This is what 23 we were just talking about. So the parenting plan 24 states that they will have joint physical custody and 25 it sets forth a timeshare where in the years where</p>
<p style="text-align: right;">Page 7</p> <p>1 specifically how we do it, so in each case it could 2 be different so I don't know that I can... I mean I'm 3 just saying I don't believe it's appropriate for me 4 to make that determination. 5 MR. NAIMI: Actually I disagree with 6 that last statement Your Honor, if I may, 7 respectfully. 8 JUDGE GENTILE: Disagree? I'm just 9 telling you how I look at it. 10 MR. NAIMI: Rivero actually lays out 11 the calculation very clearly. It essentially said to 12 look at... 13 JUDGE GENTILE: But now we have 14 Bluestein and others... you've both argued Rivero and 15 Bluestein and so, you're right, it lays it out but 16 what I'm saying is I don't think that I can make a 17 determination as a matter of law before I start if I 18 haven't heard the facts in detail. I would prefer to 19 hear them. I mean I obviously don't want you to 20 spend a ton of time on it. You can get that 21 information out fairly quickly I would imagine if it 22 comes down to that, what's been done up until now, 23 what the timeshare has been. Then, you make your 24 legal argument as to which way you think I should go 25 with regard to the law so that's my position.</p>	<p style="text-align: right;">Page 9</p> <p>1 Chris would have Evan for the Christmas or spring 2 break. He would in fact have 146 days or better of 3 timeshare. In the years when he doesn't have that 4 break, he would not have 146 days. So even under a 5 parenting plan that was negotiated at the time of 6 Rivero, it was after Rivero, the parties knew what 7 Rivero was, they understood the designation of joint 8 physical custody that the Supreme Court had roughly 9 defined as a 40/60 timeshare but did not specifically 10 tell us how we would count those days. It said we 11 wouldn't count hours but it never told us how exactly 12 we were going to count days. So they agreed that 13 this timeshare even though some years you wouldn't 14 meet 146 days and sometimes on every year even if 15 certain things fell on certain... if certain holidays 16 coincide with routine timeshare then he still 17 wouldn't make the 146 days but nevertheless they 18 agreed that this would be joint physical custody. 19 Now, we fast forward a few years we have some new 20 case law, we have a new statute and as I understand 21 the opposing party would read that statute to impose 22 a strict bright line of 146 days of timeshare per 23 year. Therefore, under the facts that will be 24 presented to you today, Mr. Ferraro would not have 25 146 days every year. Therefore, their argument goes</p>

Page 10

1 he is not a joint physical custodian. In fact Ms.
2 Nance is the de facto primary physical custodian and
3 therefore the legal standard to be applied in this
4 hearing is a slightly higher burden for Mr. Ferraro
5 meaning that he will have to additionally prove that
6 there is a change circumstance and that the proposed
7 modification is in the best interest of the child.
8 We think that as set forth in our pretrial memo that
9 Mr. Ferraro is a joint physical custodian and that
10 additional burden should not be applied to the case.
11 But if it is, that's okay, he can meet that burden.
12 We believe that there are several change
13 circumstances that you will hear about, change
14 circumstances that affecting the best interest of the
15 child namely that for two or more years consistently,
16 the minor child has been enrolled in weekly therapy
17 by his mother that the counselor continues to
18 identify deficiencies in the child's behavior and
19 diagnosis him with Anxiety Disorder albeit that in
20 remission, Attention Deficit Disorder and
21 Oppositional Defiant Disorder. All of the things
22 that Ms. Nance complaints of on her timeshare but Mr.
23 Ferraro does not see on his timeshare and if Ms.
24 Nance and Evan's counselor have been unable for two
25 years to cure these issues that exist only in her

Page 11

1 timeshare then that is something that affects the
2 best interest of the child. That is effectively a
3 change circumstance if you will and if they can't
4 cure this problem in a child of eight years old
5 should not have to be in weekly therapy for the
6 duration of his childhood. So that's one of the
7 circumstances. Another one is more about Mr.
8 Ferraro's own circumstances. Shortly after the
9 parenting plan was negotiated, he joined a
10 partnership that allowed him to work predominantly in
11 New York, have a good salary, be able to travel
12 effectively at his own leisure, allowed him to
13 maintain the timeshare in Las Vegas that he's been
14 exercising. However, that company went bankrupt in
15 September of last year. His financial and work
16 circumstances have changed. You'll hear about that
17 and it is making his ability to maintain this
18 timeshare increasingly difficult. He really needs to
19 be based in New York in order to resume his
20 operations with him and his brothers' hockey company.
21 And while he's not saying that he won't be able to do
22 that if Evan is not relocated to New York, the
23 resources are questionable of how long he will be
24 able to maintain that and it's drawing resources away
25 from Evan. Clearly the court can understand that it

Page 12

1 would be extremely expensive to come to Las Vegas to
2 exercise a 10-day timeshare every month. So those
3 are at least two of the facts that meet the change
4 circumstances analysis if we have to show that. Then
5 secondarily, whether the proposed modification is in
6 the best interest of the child, you will hear from
7 Mr. Ferraro and from other witnesses that why the
8 proposed modification is in Evan's best interest that
9 ties closely to what I already spoke about in terms
10 of Ms. Tolman's diagnosis and the reasons why she
11 still thinks that Evan needs to be in weekly therapy
12 and how it is that Chris addresses exactly the issues
13 that she identifies, and therefore, he is the
14 stronger parent to have primary physical custody of
15 Evan. As far as the remaining factors for a
16 relocation analysis, certainly, Mr. Ferraro has
17 brought the motion in good faith. Most parents do.
18 They desire to be able to have maximize their time
19 with their children. Mr. Ferraro is not interested
20 in denying Ms. Nance's timeshare with Evan. We set
21 forth a timeshare attached as an exhibit in the
22 pretrial memorandum. He will talk about that. He
23 will talk about what else he is willing to do in
24 order to facilitate additional timeshare with Ms.
25 Nance if need be. And he of course will talk about

Page 13

1 as I think other witnesses will testify to the extent
2 to which living primarily in New York will improve
3 Evan's quality of life in terms of the ability to
4 participate in extracurricular activities, improves
5 school opportunities that exist there, the ability to
6 be raised by a parent who has a very unique set of
7 skills for training children. This is what he does
8 for a living. He coaches children. He will talk
9 about how that experience and what he does is
10 applicable to developing his own child into an
11 intelligent, healthy, productive member of society.
12 I think that the court is going to see evidence of
13 ways in which Ms. Nance has, throughout the years,
14 resisted Evan's relationship with New York and his
15 New York family that suggest that her resistance to
16 Chris' motion to relocate Evan is not necessarily in
17 good faith. That's not to say that Chris doubts for
18 a moment Sandra's love for Evan but that she has her
19 own motivations for not allowing that to happen when
20 it is clearly in his best interest. Then, with
21 respect to the particular best interest factors that
22 are part of the relocation analysis, of course Evan
23 is only eight so we're going to be looking at what
24 his preferences assuming that he even had one. The
25 parents had a very difficult beginning in their co-

Page 14

1 parenting relationship. I think the court will see
2 that in the last year that has calm down a little bit
3 but there still continue to be co-parenting
4 challenges. Mr. Ferraro has attempted to co-parent
5 with Sandra on some very important issues,
6 participation in extracurricular activities, access
7 to better school systems, and Ms. Nance has
8 consistently denied those requests without really
9 explaining why. She seems to perceive any
10 communication from him as harassment. I think the
11 court is going to see that Chris and Evan have a very
12 close relationship and they have I think what's very
13 important in the context of what Ms. Tolman has to
14 say and what must be the conditions in Ms. Nance's
15 household in order to think that her child needs
16 weekly therapy. Chris has a good working
17 relationship with his son. He does not see the
18 problems that are identified by Ms. Nance and Ms.
19 Tolman, and so his relationship is one that actually
20 works for Evan's benefit. There were allegations of
21 domestic violence between the parties prior to the
22 November 2012 order and those have been excluded by
23 this court based on its order in limine and the
24 applicable case law of course if there were instances
25 that were unknown to the parties then those are

Page 15

1 things that the court might be able to consider, but
2 there are no such instances and there have been no
3 instances of domestic violence between the parties
4 and/or against the child since the implementation of
5 that last...
6 MR. NAIMI: I'm going to object to that
7 statement Your Honor as being about the law and not a
8 factual opening statement.
9 JUDGE GENTILE: Okay.
10 MR. NAIMI: In fact if I were to
11 explain further, Your Honor, the Castle versus
12 Simmons exception is what she's referring to.
13 JUDGE GENTILE: Right. We talked about
14 this already.
15 MR. NAIMI: And that is actually an
16 inaccurate statement about the interpretation of
17 Castle v Simmons. Castle v Simmons specifically
18 states ``unknown to the parties or the court`` and
19 that the court has got to adjudicate on the domestic
20 violence. So, in fact, in the motion in limine that
21 she is referring to, again, in another argument in
22 opening statement. Your orders were very clear in
23 that they have to be prepared to cite where on the
24 record it had been presented to the court and that
25 the court had ruled on it. And so if they cannot do

Page 16

1 so then the Castle v Simmons exception would apply...
2 JUDGE GENTILE: Well, I didn't say the
3 court had ruled on it because the court had to know
4 about it.
5 MR. NAIMI: Correct.
6 JUDGE GENTILE: So as long as they can
7 cite to me that...
8 MR. NAIMI: I meant that you considered
9 it in making any kind of findings, yes.
10 JUDGE GENTILE: Correct. Correct.
11 Okay.
12 MR. NAIMI: Can I get a ruling on the
13 objection Your Honor?
14 JUDGE GENTILE: So it's sustained. I
15 mean you don't need to go into that because I already
16 know where I stand on that one.
17 MR. NAIMI: Thank you, Your Honor.
18 JUDGE GENTILE: Everybody knows my
19 stand on that one so she can proceed.
20 MS. WILSON: All right. That was
21 essentially my last point. That takes us through the
22 potentially applicable best interest of the child
23 factors. So, in conclusion, Chris has brought his
24 motion in good faith. He is ready, willing, desirous
25 and very capable of having primary physical custody

Page 17

1 of Evan in New York. That actually raised it back.
2 I want to point out to the court one other important
3 sort of change circumstance. When this parenting
4 plan was initially negotiated, Evan wasn't in school
5 yet, and so under that parenting plan, Chris had the
6 ability to pick up Evan and return him to New York
7 for his 10-day timeshares. Of course, once the child
8 started school then that was no longer possible and
9 that in turn both increased the expense for Mr.
10 Ferraro in exercising the timeshare and it decreased
11 Evan's connections to his family in New York. That's
12 one other reason why he brought this motion and also
13 satisfies the change circumstance criteria open
14 statement. Thank you.
15 JUDGE GENTILE: Thank you.
16 MR. NAIMI: I'll be quick, Your Honor.
17 JUDGE GENTILE: Okay. That was exactly
18 15 minutes.
19 MR. NAIMI: I'll be less than three or
20 five.
21 JUDGE GENTILE: Okay.
22 MR. NAIMI: While it was interesting to
23 hear the perspective of Mr. Ferraro in presenting why
24 he's before the court here today, I don't view this
25 case the same way, Your Honor. My client, Sandra

<div>Page 18</div> <div>1 Nance, does not view this case the same way. We see 2 this a case about Evan`s home. It`s not a case about 3 custody of Evan. Evan`s home is in Nevada. He was 4 born here. He`s been raised here. His family is 5 here including his father. The evidence will show 6 that his father routinely comes to Nevada to visit 7 his son. His friends are here. His school has been 8 here. Albeit as she stated he only recently enter 9 school it`s been two years now. School is in Las 10 Vegas. His extracurricular activities are in Las 11 Vegas. His doctors are in Las Vegas. His dentist is 12 in Las Vegas. Evan`s world is in Las Vegas. With 13 Sandra, Evan experiences and if the court will see 14 here throughout this trial that Evan experiences 15 traditional family values. Evan lives primarily with 16 Ms. Sandra Nance`s mother, his grandparents and then 17 he experiences almost on a regular basis his 18 relationships with his aunt, his uncles, his cousins, 19 one of whom is his best friend and without Pears, 20 Evan would have... would he be missing his best 21 friend. With Chris, Evan is routinely on vacation. 22 He goes to New York on vacation with Chris. He goes 23 to LA on vacation with Chris. He goes to Orlando on 24 vacation with Chris and he`s here in Las Vegas on 25 vacation with Chris. In addition, Evan has a brother</div>	<div>Page 20</div> <div>1 relocation to New York must be denied. In addition 2 to that, not only will you deny that motion, you will 3 find that my client is the primary custodian of Evan 4 because his home is here in Nevada. Also to that 5 effect, you have no choice but to award us some 6 attorney`s fees because had they looked at this case 7 pragmatically from the beginning they would have seen 8 that there`s going to be no substantial change to 9 move this child and even in the event, Your Honor, 10 we`re to see that okay it`s possible if I were to 11 manipulate the law a little bit here I`m going to 12 call it a joint physical custody relationship, which 13 I don`t see by the way, even under those 14 circumstances he is at best this is his own admission 15 Your Honor at the ceiling, his ceiling would be 146 16 days. Never has he ever had 50 percent or more. And 17 so with that when home is Nevada, Your Honor, why 18 would we uplift that and move this child to a place 19 that is his vacation spot? Thank you. 20 JUDGE GENTILE: Ms. Wilson. 21 MS. WILSON: I call Mr. Ferraro. 22 JUDGE GENTILE: That was five minutes. 23 That was five minutes for you, Mr. Naimi. Five 24 minutes. 25 MS. WILSON: He said three to five.</div>
<div>Page 19</div> <div>1 here in Las Vegas and he has a sister here in Las 2 Vegas. He doesn`t have any siblings in New York or 3 Los Angeles or Orlando. Chris is now before you 4 today alleging that he is exercising joint physical 5 custody. He isn`t and the evidence before and the 6 evidence that will come out throughout this trial 7 will demonstrate that in no year has he exercised 8 joint physical custody. Moreover, if we apply the 9 Rivero case as will come out in trial, the 10 calculation will show that under any circumstances 11 has he ever exercised joint physical custody. The 12 other argument they`re going to try and make is how 13 Evan is so significantly connected to New York. 14 There isn`t much of a connection to New York. We`re 15 not trying to downplay New York. We respect the fact 16 that Evan`s father is from New York but the court 17 must recall where this case stems from. Evan was 18 born in Nevada. Chris was aware that his son was 19 born in Nevada. Chris also knew of the circumstances 20 surrounding his son being raised in Nevada and 21 contemplated a parenting agreement keeping that in 22 mind. At the end of the day, you`re going to see 23 that there is no basis to uplift Evan from his home 24 here in Nevada. After all home means Nevada, Your 25 Honor. And so with that the motion requesting</div>	<div>Page 21</div> <div>1 JUDGE GENTILE: I just want to let you 2 know. I`m trying to keep track here while we`re 3 doing this. 4 MS. MCCULLOCH: Do you solemnly swear 5 that the testimony you`re about to give this action 6 shall be the truth, the whole truth, and nothing but 7 the truth so help you God? 8 MR. FERRARO: Yes, I do. 9 MS. WILSON: Your Honor, we also have 10 exhibit binders for the witness of the report. May I 11 approach? 12 JUDGE GENTILE: Okay. You may 13 approach, yes. 14 MS. WILSON: And a copy for you also 15 Judge. May I approach. 16 JUDGE GENTILE: Sure. Thank you. 17 DIRECT EXAMINATION 18 By: Shannon Wilson 19 MS. WILSON: Mr. Ferraro, would you 20 please state and spell your name for the record? 21 MR. FERRARO: Chris Ferraro, C-H-R-I-S, 22 F-E-R-R-A-R-O. 23 Q: And are you the defendant in this 24 action? 25 A: Yes, I am.</div>

Page 22

1 Q: And briefly why did you bring this
2 motion?
3 A: To relocate my son, Evan Ferraro,
4 from Las Vegas to New York.
5 Q: Do you recognize the woman sitting
6 in the green dress to the right?
7 A: I do.
8 Q: Who is that?
9 A: That is Evan's mother.
10 Q: What is her name?
11 A: Sorry. Sandra Nance.
12 Q: What is your current address?
13 A: 54 Hempstead Drive, Sound Beach,
14 New York 11789.
15 Q: How long have you lived there?
16 A: Forty-three years.
17 Q: How long do you intend to continue
18 to reside there?
19 A: I continue to do that for the time
20 being.
21 Q: Do you have any plans of moving
22 from that address?
23 A: No.
24 Q: Who else lives there with you?
25 A: My twin brother, Peter, and my

Page 23

1 mother.
2 Q: Who owns the residence?
3 A: My mother.
4 Q: And what kind of residence is it?
5 A: It is a 3000 square foot ranch
6 style home, finished basement, four-bedroom, three
7 baths on two acres of land, fenced in land, backyard,
8 large deck, in ground pool in a safe, quiet
9 community. If Evan is relocated to New York, I have
10 plans on building a sport court in the back for him
11 and his friends.
12 Q: Does Evan have his own bedroom
13 there?
14 A: Yes, he does.
15 Q: What kind of neighborhood is it in
16 generally? Is it residential neighborhood? Is it a
17 mixed used neighborhood?
18 A: It's a residential.
19 Q: Is it all single family homes? Are
20 there any apartments?
21 A: No apartments.
22 Q: How often has Evan visited that
23 house?
24 A: Every month.
25 Q: Every month for how long?

Page 24

1 A: I would say at least six years,
2 five years, six years.
3 Q: Are there occasional months where
4 he's been in school all month and he's not gone back
5 to New York?
6 A: Yes.
7 Q: So certainly in the first grade
8 there were months that he didn't go to that?
9 A: Correct.
10 Q: Has he been there this month of
11 June?
12 A: Yes, he was there for two weeks.
13 Q: And prior to June when was the last
14 time he was at the house?
15 A: I want to say it was during spring
16 break in February.
17 Q: And before that one when was he
18 there?
19 A: December for the Christmas holiday.
20 Q: And before that one when was he
21 there?
22 A: He was there I believe
23 Thanksgiving. I could be off.
24 Q: Then is it fair to say that he was
25 in school September, October so he was in Las Vegas

Page 25

1 in those months. Correct?
2 A: Correct.
3 Q: Was he there June, July and August
4 of last year?
5 A: Yes, he was.
6 MR. NAIMI: Objection. Leading.
7 JUDGE GENTILE: Sustained.
8 Q: Okay. So if we think about the
9 timeframe between January 2015 and August 2015, what
10 months was Evan in New York?
11 A: June, July, August for two weeks in
12 June, two weeks in July and two weeks in August. And
13 Christmas time he was there for the Christmas holiday
14 break and for spring break as well. I'm sorry from
15 2015 to 2015?
16 Q: Yeah, that's the year.
17 A: Oh I'm sorry. This is when he was
18 in Kindergarten.
19 Q: That would be correct.
20 A: Yes. He was in New York quite
21 frequently.
22 Q: And so in 2014 how many months of
23 2014 had he been in New York?
24 A: Virtually every month.
25 Q: And in 2013 how many months was he

Page 26

1 in New York?
2 A: Same.
3 Q: And what about in 2012? So the
4 parenting plan wasn't negotiated yet but how
5 frequently was he in New York in 2012?
6 A: He was in New York every month.
7 Q: Who was he with when he was in New
8 York?
9 A: He was with myself, my family, my
10 twin brother, my sister, my mother and my brother-in-
11 law, my father routinely. My older brother Michael,
12 my older brother Joey, his friends, extended family.
13 Q: We'll come back around to them in a
14 moment. Let's go back and do a little more
15 background. How old are you?
16 A: Forty-three.
17 Q: What is the highest level of
18 education you have completed?
19 A: I did one and a half years of
20 university.
21 Q: And why did you leave?
22 A: I was fortunate enough to play for
23 the 1994 US Olympic team and then sign a professional
24 hockey career.
25 Q: How many times have you been

Page 27

1 married?
2 A: Two.
3 Q: And one of those was to Ms. Nance.
4 Correct?
5 A: Correct.
6 Q: And what was your other marriage?
7 A: I was with a tragic loss to my wife
8 that passed away from cancer. We were together for
9 10 years and married for a year and a half.
10 Q: Was she diagnosed before or after
11 your marriage?
12 A: After.
13 Q: Is Evan your only child?
14 A: Yes.
15 Q: You talked about having a pro
16 hockey career. Did that hockey career take you away
17 from the house in New York from time to time?
18 A: Every year.
19 Q: And so where did you live during
20 those times?
21 A: Wherever I was located. If I was
22 playing for the Washington Capitals, I would be there
23 for the season nine months, ten months, and then
24 resume. In the off season, I would go back home to
25 my home in Sound Beach.

Page 28

1 Q: That's in New York, right?
2 A: In New York, yes.
3 Q: Are you working at present?
4 A: I am not.
5 Q: Why not?
6 A: Last September, the business that I
7 was working under, the partnership group, filed for
8 bankruptcy which came to a surprise to myself and
9 that ended my relationship and employment with that
10 company.
11 Q: And were you a majority partner in
12 that company?
13 A: I was not.
14 Q: What was your percentage ownership?
15 A: 7.5 percent.
16 Q: Did you have any responsibility for
17 financial management?
18 A: No.
19 Q: Did you set your own salary?
20 A: No.
21 Q: What have you been doing since
22 September of last year when the bankruptcy happened?
23 A: I spent the majority of the year in
24 Los Angeles. My sister and brother-in-law have a
25 home, a part-time home for business purposes.

Page 29

1 They're from New York but they have a part-time home
2 in Los Angeles and I spent the majority of the year
3 there to be closer to Evan here in Las Vegas and to
4 save on flight travel expenses to and from New York
5 to Las Vegas. And of course I would spend my 10 days
6 here in Las Vegas to exercise my timeshare with Evan.
7 Q: Did you take Evan to LA at anytime
8 during that period?
9 A: Yes, I did.
10 Q: When did you take him there?
11 A: Throughout the year, probably five
12 or six occasions on the weekends.
13 Q: How many days of school did Evan
14 miss on your timeshare in the first grade?
15 A: He missed one full day to travel
16 back to New York for my niece's sweet 16 party. He
17 missed another half day to celebrate my brother-in-
18 law's birthday party in Los Angeles and then he
19 missed another half day for an eye appointment that
20 Sandra set up on my timeshare for me to remove Evan
21 from school to take him to his doctor's appointment,
22 so a total of two days.
23 Q: Was Ms. Nance aware that Evan was
24 missing school to travel to his cousin's sweet 16
25 party?

Page 30

1 A: Yes, she was.
2 Q: And was she aware that he was
3 missing that half day to travel for your brother's
4 birthday party?
5 A: Yes, she was.
6 Q: What are your future work plans?
7 A: My future work plans are to move
8 back to New York and reestablish our Ferraro Brothers
9 Hockey in September.
10 Q: Explain what is Ferraro Brothers
11 Hockey?
12 A: Ferraro Brothers Hockey is a
13 multilevel hockey academy which develops youth hockey
14 players from age six to NHL level players. Hockey on
15 ice development, camps, clinics, hockey teams,
16 education, off-ice training.
17 Q: What age groups do you work with?
18 A: I primarily work with age groups
19 from 6, 5 to 12, but as mentioned there are times
20 where we work with older level players even at the
21 NHL level.
22 Q: Prior to the bankruptcy, how many
23 players a year did you train?
24 A: Thousands.
25 Q: In a single year, thousands?

Page 31

1 A: In a single year I've come across
2 between Ferraro Brothers Hockey and working with
3 multiple different organizations, the Long Island
4 Goals, the New York Bobcats and Long Island Dynamo,
5 the Long Island Goals in itself had 600, 700 players
6 in the organization that I've worked with.
7 Q: Of the players that you train who
8 are in that age range of 5 to 12, how many players do
9 you have as a core group that you train?
10 A: I don't know the exact number but
11 hundreds. I have a database of close to 4000 to
12 5000.
13 Q: What are your current sources of
14 income?
15 A: I have three sources of income.
16 The first is the NHL emergency fund. Second is a
17 family commercial real estate investment. And third
18 is a family business loan.
19 Q: What is that NHL relief fund?
20 A: The NHL relief fund is a program
21 that is designed for players post career that are in
22 need of financial resources. As a player you... as a
23 current player, you pay your dues into this program.
24 Players are fined throughout the year and it goes
25 into a pool for the NHL to help players in assistance

Page 32

1 and in need and that is a program that was available
2 to me during the time of bankruptcy. They learned of
3 my situation and was accommodating to my needs.
4 Q: How much do you receive a month
5 from that fund?
6 A: \$2500.
7 Q: And how long do you expect that to
8 continue?
9 A: Until September.
10 Q: You mentioned a family investment.
11 What's that?
12 A: During my playing career, I was
13 able to get into a partnership with my twin brother
14 and my father and purchase a real estate property
15 waterfront in Montauk, New York and I'm a 25 percent
16 owner in that investment and that brings me a
17 guaranteed income each month.
18 Q: Of how much?
19 A: At this particular time \$2500.
20 Q: When did you start receiving that
21 money?
22 A: Right around the time of the
23 bankruptcy.
24 Q: So prior to that you have not
25 realized any proceeds from that real estate

Page 33

1 investment?
2 A: No.
3 Q: And then you mentioned also a loan
4 of some kind.
5 A: Yes.
6 Q: What is that about?
7 A: When I was playing pro hockey, my
8 financial resources, I was doing well and the family
9 business needed some assistance to the family
10 sporting goods business, I'm sorry. That's the
11 business that my family is in and throughout those
12 years I loaned the business close to \$150,000.00 and
13 this is their way of paying me back in a time of
14 need.
15 Q: And how much are they paying you?
16 A: \$2500.
17 Q: So three sources at 2500 each
18 that's \$7500 a month total?
19 A: Correct.
20 Q: What sources of income will you
21 have in the fall of 2016?
22 A: I will reestablish Ferraro Brothers
23 Hockey. Of course, there is no telling of the type
24 of income I will make there. I don't suspect that it
25 will be what it was with Twin Rinks as I sold off my

Page 34

1 shares with Twin Rinks and had a salary and it's a
2 big reason why I need Evan relocated to New York.
3 Another source is New York Ranger Alumni events. As
4 a former player for the New York Rangers, they give
5 players opportunities to do hospital visits, home
6 game appearances, youth hockey programs and getting
7 it out into the community and give us the opportunity
8 to get paid for these appearances. Number three on
9 the list would be my ongoing guaranteed income from
10 the family investment property, the family loan as
11 well.
12 Q: That's a lot of activity. How will
13 you have time for Evan?
14 A: My schedule and my work schedule is
15 very flexible. I have a partnership with Ferraro
16 Brothers Hockey where it's Peter and myself that own
17 and run the company.
18 Q: Who is Peter?
19 A: I'm sorry. Peter is my twin
20 brother.
21 Q: Okay.
22 A: And if we are running a program or
23 programs we have worked in conjunction with one
24 another where he will stay and run the program while
25 I have to meet the needs of Evan's expectations.

Page 35

1 Q: What about the alumni events that
2 you talked about, how frequent are those?
3 A: That's an open relationship which
4 depends on your availability and your schedule. I
5 can book as many as one a year or 20 a year. There's
6 no set. In fact, many former players earn a pretty
7 good living doing that as their only source of
8 income.
9 Q: Did you say you get to make that
10 schedule yourself?
11 A: Yes, not myself... myself and the
12 New York Rangers organization collaborate and decide
13 what events.
14 Q: Okay. There is a binder in front
15 of you, it's marked number 1, Volume 1. If you take
16 a moment and turn to Exhibit L.
17 MS. COOLEY: L, what number?
18 Q: Just L1. Take a moment to look
19 through the pages that are marked L1 and let me know
20 when you're done.
21 A: Okay.
22 Q: Do you recognize this document?
23 A: Yes, I do.
24 Q: What is it?
25 A: This is my financial disclosure.

Page 36

1 Q: And if you look at the first page
2 in the upper right hand corner, it tells you the
3 filing date. What's that date?
4 A: 01/11/2016.
5 Q: Have your income or expenses
6 changed significantly since January of 2016?
7 A: Yes.
8 Q: How have they changed? Let's do
9 this. Let's go through the disclosure and you can
10 let us know what has changed if anything.
11 A: Okay.
12 Q: Your Honor, we move to admit L1.
13 JUDGE GENTILE: No judge here, right.
14 I'll be admitting it.
15 MR. NAIMI: Leading Your Honor, it's
16 okay.
17 Q: Mr. Ferraro, turn to the second
18 page of that disclosure at the top it says monthly
19 personal income statement.
20 A: Monthly personal income schedule?
21 Q: Yeah. Exactly.
22 A: Okay.
23 Q: So at the top there it says that as
24 of the pay period ending 09/2015 you have received
25 \$96,000.00. Was that from Twin Rinks?

Page 37

1 A: Yes, it was.
2 Q: Okay. So should that number have
3 been removed from your financial disclosure? You no
4 longer have income from Twin Rinks?
5 A: I have no longer income, yes.
6 Q: All right. And then the other
7 sources of income, what were those? At the bottom is
8 says \$7500.
9 A: Those were the NHL emergency fund
10 and the one we discussed earlier the NHL emergency
11 fund, the family loan and the investment property.
12 Q: And were you receiving any of those
13 prior to the bankruptcy?
14 A: No.
15 Q: If we turn the page there's monthly
16 deductions. What are those?
17 A: Child support, health insurance.
18 Q: I think you went one page too far.
19 See it says D Monthly Deductions.
20 A: Yes.
21 Q: What deductions do you have from
22 your income?
23 A: Social Security dues, sorry.
24 Q: What deductions did you identify?
25 A: Child support, health insurance,

<p style="text-align: right;">Page 38</p> <p>1 disability.</p> <p>2 Q: You don't have amounts for any of</p> <p>3 those though do you?</p> <p>4 A: No.</p> <p>5 MR. NAIMI: Objection. Leading.</p> <p>6 JUDGE GENTILE: Sustained.</p> <p>7 Q: Do you child support automatically</p> <p>8 deducted from any of your checks?</p> <p>9 A: I do not.</p> <p>10 Q: Okay. Do you have a federal health</p> <p>11 savings plan?</p> <p>12 MR. NAIMI: Objection. Leading.</p> <p>13 A: No, I do not.</p> <p>14 JUDGE GENTILE: Overruled.</p> <p>15 MR. NAIMI: Was that sustained Your</p> <p>16 Honor?</p> <p>17 JUDGE GENTILE: No, it was overruled.</p> <p>18 Q: Thank you. Do you have federal</p> <p>19 income tax directly deducted from any of those</p> <p>20 checks? Let me ask you this way. How do you pay</p> <p>21 your federal income tax?</p> <p>22 A: It's taken out of my check.</p> <p>23 Q: What check is it taken out of?</p> <p>24 A: Twin Rinks.</p> <p>25 Q: We're not talking about Twin Rinks.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q: Do you own your car, do you lease</p> <p>2 it?</p> <p>3 A: I lease it.</p> <p>4 Q: And what's the lease payment?</p> <p>5 A: 695.</p> <p>6 Q: And child support, how much do you</p> <p>7 pay per month for that?</p> <p>8 A: 221.50.</p> <p>9 Q: And then do you have an estimated</p> <p>10 amount for your clothing and shoes and accessories?</p> <p>11 A: Yeah, roughly around \$300.00 as</p> <p>12 well.</p> <p>13 Q: And food and groceries including</p> <p>14 restaurants how much is that?</p> <p>15 A: \$1500.</p> <p>16 Q: Has that changed?</p> <p>17 A: No.</p> <p>18 Q: And gas for vehicle, you had 250</p> <p>19 there, has that changed?</p> <p>20 A: No.</p> <p>21 Q: Health insurance. Do you pay your</p> <p>22 own health insurance directly?</p> <p>23 A: Yes.</p> <p>24 Q: Is that still the same amount,</p> <p>25 \$649.56?</p>
<p style="text-align: right;">Page 39</p> <p>1 A: Okay.</p> <p>2 Q: We're talking about the income that</p> <p>3 you have currently, any of the checks that you</p> <p>4 receive from the NHL emergency fund, from your family</p> <p>5 business or your investment income. Do you receive a</p> <p>6 full \$2500 for each of those?</p> <p>7 A: Yes, I do.</p> <p>8 Q: Okay. So how do you pay your</p> <p>9 federal taxes?</p> <p>10 A: At the yearend, I pay my taxes</p> <p>11 through tax accountant.</p> <p>12 Q: And how much is that?</p> <p>13 A: I'm not sure.</p> <p>14 Q: You don't recall. Okay. Turn to</p> <p>15 page 4. Take a moment to look that over.</p> <p>16 A: Okay.</p> <p>17 Q: Do you still pay your auto</p> <p>18 insurance?</p> <p>19 A: Yes.</p> <p>20 Q: And is the amount identified there</p> <p>21 \$338.13 is that approximately what you pay?</p> <p>22 A: Yes.</p> <p>23 Q: Do you still have a car loan or</p> <p>24 lease payment?</p> <p>25 A: Yes, I do.</p>	<p style="text-align: right;">Page 41</p> <p>1 A: Yes.</p> <p>2 Q: And then you've identified</p> <p>3 membership fees of some kind. What were those?</p> <p>4 A: There was a gym membership or</p> <p>5 membership for being on a plane and accessing online</p> <p>6 access.</p> <p>7 Q: You still have a gym membership</p> <p>8 that you pay for?</p> <p>9 A: Yes.</p> <p>10 Q: And what is your total monthly</p> <p>11 expenses?</p> <p>12 A: \$4134.09.</p> <p>13 Q: And if you turn to page 5 section</p> <p>14 B, you've identified some expenses for Evan.</p> <p>15 A: Yes.</p> <p>16 Q: Is on average of \$125.00 a month</p> <p>17 for clothing for him still correct?</p> <p>18 A: Yes.</p> <p>19 Q: You've identified \$150.00 for</p> <p>20 entertainment. What would that include?</p> <p>21 MR. NAIMI: Objection. Leading.</p> <p>22 Perhaps she could ask it in an open fashion, Your</p> <p>23 Honor. I don't mean to continuously interrupt but</p> <p>24 the previous question was you pay \$125.00 for his</p> <p>25 clothing then this question was you pay this don't</p>

Page 42

1 you. There is a fashion in which we can go about
2 this without...

3 JUDGE GENTILE: Right. I mean I agree
4 except we're just... she's just confirming these
5 numbers.

6 Q: Confirming, exactly.

7 JUDGE GENTILE: So if you want to do it
8 so that we don't continue to get an objection from
9 Mr. Naimi if you would just ask him the open-ended
10 direct.

11 Q: Mr. Ferraro, how much do you pay
12 for entertainment for Evan?

13 A: \$150.00.

14 Q: And what would that include?

15 A: Anything entertainment wise. Kids
16 Quest at Red Rock where we stay, movies, anything
17 along those lines. We've been to shows while we're
18 in town. During play dates, I am very generous with
19 his friends. Extracurricular activities in sports
20 \$125.00 a month for his hockey lessons, soccer.
21 Those are dedicated to that. Summer camps and
22 programs and then of course my transportation cost
23 for visitation is \$3000.

24 Q: And how did you estimate that
25 number?

Page 43

1 A: Through flights. Flight records.

2 Q: Okay. So that transportation cost
3 for visitation, that 3000 a month, that's just
4 dedicated for flights?

5 A: Flights, rental cars, driving.

6 Q: And then you've identified other
7 category. What did you include within that?

8 A: Food and lodging. My 10-day stay
9 or 11-day stay, sometimes 12-day stay in Red Rock
10 hotel.

11 Q: And how did you estimate that?

12 A: With receipts from Red Rock.

13 Q: And so what are your estimated
14 expenses with respect to Evan?

15 A: \$6233.33.

16 Q: So if we add your personal expenses
17 with Evan's expenses, we arrive at a number that is
18 greater than your current monthly income. How do you
19 cover the deficit?

20 A: At this particular time?

21 Q: Right.

22 A: My funds are depleting.

23 Q: What funds do you have then?

24 A: Anything that I was able to earn
25 through Twin Rinks I was able to dedicate towards my

Page 44

1 travel and I no longer have a share in Twin Rinks and
2 I do not longer have a salary in Twin Rinks. This is
3 the challenge that I'm faced with through travel
4 expenses to and from Las Vegas and is why it's
5 critical.

6 Q: Thank you. You can close that
7 binder if you like. Earlier, you started to mention
8 family in New York. You said that you live with your
9 brother and your mother, correct?

10 A: Yes.

11 Q: Does anyone else live in that
12 household?

13 A: No.

14 Q: What other family do you have in
15 New York?

16 A: Well, if I can go back, Evan lives
17 there when he's in New York.

18 Q: And what other family do you have
19 there?

20 A: I have my father, my older brother
21 Michael, his three daughters, my nieces. My sister,
22 my brother-in-law. My cousin, her husband, her two
23 children.

24 Q: Is that pretty much the close
25 family?

Page 45

1 A: Yes.

2 Q: And where do they live in relation
3 to your home?

4 A: My father lives in Montauk so he's
5 an hour away but he works very close and he commutes
6 everyday to where we live so we see him quite often.
7 But generally, everyone lives within four to five
8 miles apart from each other.

9 Q: You've mentioned a family business.
10 What kind of family business is this?

11 A: Sporting goods.

12 Q: And who works for the family
13 business?

14 A: My father, my older brother Michael
15 and my mother.

16 Q: Are your parents divorced?

17 A: They are.

18 Q: And they still work together?

19 A: They do.

20 Q: How frequently does Evan see your
21 father when he's in New York?

22 A: Often. Three, four days a week.

23 Q: And how often does he see his uncle
24 Mike?

25 A: Same. We visit the sporting goods

Page 46

1 business more than three or four days, probably five
2 days a week, so we see them often.
3 Q: And do you see them other than
4 visiting them at the business?
5 A: Yes.
6 Q: How do you see them?
7 A: We visit my brother Michael's
8 house. He has a beautiful backyard and a pool. We
9 have barbeques. He visits Evan while he's playing
10 hockey. My dad we visit him in Montauk and we go to
11 the beach. We visit his home and same he supports
12 Evan's extracurricular activities, comes to the
13 hockey rink and supports his events.
14 Q: And what about your sister
15 Michelle. You said she lives both in New York and
16 LA?
17 A: Yes.
18 Q: How much time does she spend in New
19 York versus LA?
20 A: Her primary residence is New York
21 and she spends little time in Los Angeles. This year
22 has been a little different. She's spent a little
23 more time this year but overall she's based in New
24 York and her husband and all her husband's family all
25 live in New York.

Page 47

1 Q: How much time does she spend with
2 Evan when he is in New York?
3 A: A significant amount of time.
4 Q: Can you quantify that for us?
5 A: Yes. She does not work so she is
6 always available for Evan and Evan's needs. Her and
7 my brother-in-law are fortunate to have a very
8 flexible open schedule and they spend a significant
9 amount of time.
10 Q: So that if Evan is there on a 10-
11 day timeshare how many days would he see his Aunt
12 Michelle?
13 A: Almost every day.
14 Q: And then you mentioned some
15 extended family members too, some cousins, how
16 frequently does Evan see those?
17 A: A few times a week. It could be
18 more if we chose but busy lifestyles.
19 Q: What kinds of things does your
20 family do together?
21 A: We meet for dinner, family
22 functions, supporting each other's events. My
23 sister-in-law owns a dance studio so we visit her
24 dance studio. They visit Evan's extracurricular
25 activities. We meet at their home. They meet at our

Page 48

1 home. We go for dinners together.
2 Q: Let's talk about Evan. What kind
3 of kid is Evan?
4 A: He's bright.
5 Q: What's going on right now?
6 JUDGE GENTILE: Do you need a break?
7 Q: Would you like a break, Mr.
8 Ferraro?
9 A: I'm good. He's bright. He's
10 talented. He's special. He's gifted. He's my life.
11 Q: You say that he's bright, how does
12 he exhibit his brightness?
13 A: He's not only academically bright.
14 He's got a great personality. He's a great child.
15 Q: How did he do in school?
16 A: Straight A student.
17 Q: And you mentioned that he's gifted.
18 How is he gifted?
19 A: He just has a talent. He's gifted
20 with other children. He's very popular. He's a
21 leader. Kids migrate to him. He is a great little
22 athlete. He's doing very well.
23 Q: We talked about family in New York,
24 does Evan have friends in New York?
25 A: Yeah.

Page 49

1 Q: Who are his friends in New York?
2 A: Yes. He has a tremendous amount of
3 relationships and friendships in New York. His best
4 friends are in New York.
5 Q: Who would those be?
6 A: Tommy Doyle, Neil Doyle, Leila
7 Panachule to name his very best friends but we at
8 Twin Rinks that and other facilities in New Long
9 Island area is Evan's playground and he has multiple
10 different teams that he plays for. He's involved,
11 he's surrounded by hundreds and hundreds of kids. In
12 fact, I just put a team together that went to a
13 tournament in Connecticut and with 15 young kids that
14 he just established new friendships and new
15 relationships that we plan on doing another
16 tournament in August when we're back. In July for my
17 timeshare we'll be traveling to Minnesota to do a
18 hockey camp for two weeks with his best friends Tommy
19 Doyle and baby Neil. So his friendships are very,
20 very strong there.
21 Q: How long has he known the Doyle
22 boys?
23 A: Since he was a baby.
24 Q: And how long has he known Leila?
25 A: Three years.

<p style="text-align: right;">Page 50</p> <p>1 Q: How frequently does he see the</p> <p>2 Doyle boys when he's in New York?</p> <p>3 A: As soon as we arrive, they're</p> <p>4 there.</p> <p>5 Q: And then how frequently does he see</p> <p>6 Leila when he's in New York?</p> <p>7 A: The very next day.</p> <p>8 Q: What kinds of things does he do</p> <p>9 with the Doyle boys and Leila?</p> <p>10 A: What don't they do? They're all</p> <p>11 hockey players so they all play hockey. Play dates,</p> <p>12 swimming, professional sports games, New York Ranger</p> <p>13 games. We visit the beach, dinners, movies and just</p> <p>14 constant play dates where they're together.</p> <p>15 Q: And is it all fun games when Evan</p> <p>16 is on your timeshare?</p> <p>17 A: I have Evan on a very structured</p> <p>18 schedule. I'm very serious about his academics. I</p> <p>19 take the time to put him through timed math skills,</p> <p>20 writing, articulating that writing with pictures of</p> <p>21 his experiences, reading, and have him in a wide</p> <p>22 variety of extracurricular activities and sports.</p> <p>23 His day is full.</p> <p>24 Q: What does Evan do besides hockey?</p> <p>25 A: Baseball, soccer, rollerblade,</p>	<p style="text-align: right;">Page 52</p> <p>1 A: I'm done.</p> <p>2 Q: Do you recognize these pages?</p> <p>3 A: I do.</p> <p>4 Q: What are these?</p> <p>5 A: These are the curriculum or skills,</p> <p>6 educational skills that I created for Evan in the</p> <p>7 summer months after Kindergarten to keep his skills</p> <p>8 going throughout the summer months during my</p> <p>9 timeshare, my two-week timeshare in New York.</p> <p>10 Q: Your Honor we move to admit Exhibit</p> <p>11 I.</p> <p>12 MR. NAIMI: Objection. Hearsay.</p> <p>13 Technically it's double hearsay.</p> <p>14 Q: It's not offered for the truth of</p> <p>15 the matter asserted it's offered to show what he does</p> <p>16 with his son during his summer timeshare. It's</p> <p>17 offered for the truth of for minus three.</p> <p>18 MR. NAIMI: Objection. Foundation.</p> <p>19 Q: You just laid the foundation.</p> <p>20 JUDGE GENTILE: I'll overrule it. I'll</p> <p>21 allow in.</p> <p>22 Q: Thank you. All right. Mr.</p> <p>23 Ferraro, can you just quickly take us through these</p> <p>24 pages?</p> <p>25 A: Yeah, sure. First is the math log</p>
<p style="text-align: right;">Page 51</p> <p>1 swim. He loves to run so we run. Exercise, he</p> <p>2 enjoys exercising. MMA, mixed martial arts, he</p> <p>3 enjoys.</p> <p>4 Q: What does that look like for a boy</p> <p>5 of eight years old? What is mixed martial arts for</p> <p>6 them? Are they actually fighting?</p> <p>7 A: They're not actually fighting.</p> <p>8 It's a very disciplined structured program that</p> <p>9 teaches discipline and confidence and leadership</p> <p>10 skills and he thoroughly enjoys it.</p> <p>11 Q: What do they actually do in those?</p> <p>12 A: They teach skills multiple</p> <p>13 different skills, wrestling skills, mixed martial</p> <p>14 arts, posture. My purpose of putting him into MMA is</p> <p>15 for the discipline and the structure of it not to be</p> <p>16 violent or promote violence. It is the farthest</p> <p>17 thing from what I'm encouraging him to do. He asked</p> <p>18 to be a part of it. I enrolled him. He enjoyed it</p> <p>19 and he continues to want to do it. We haven't done</p> <p>20 it in a while because he's taking the passion into</p> <p>21 hockey to a different level so there was a period</p> <p>22 where he was in MMA.</p> <p>23 Q: Let's turn to Exhibit I in that</p> <p>24 binder. Take a moment to look through those pages</p> <p>25 and let me know when you're done.</p>	<p style="text-align: right;">Page 53</p> <p>1 and I would put together, I'd scramble addition and</p> <p>2 subtraction and I would time him. You see in the</p> <p>3 first page, he got 25 out of 25 in a minute and 20.</p> <p>4 The next exercise, he got 25 out of 25 in 51 seconds.</p> <p>5 Q: So then there are several more</p> <p>6 pages like that.</p> <p>7 A: Then if you would go to the reading</p> <p>8 log, I would have him read...</p> <p>9 Q: What's the page number for that at</p> <p>10 the bottom?</p> <p>11 A: 380.</p> <p>12 Q: So, go ahead and explain the</p> <p>13 reading log.</p> <p>14 A: This is a reading log that he would</p> <p>15 read in front of me and spend 15, anywhere from 14</p> <p>16 minutes to 18 minutes with some of his favorite</p> <p>17 books.</p> <p>18 Q: And was this all the reading that</p> <p>19 he did during your time?</p> <p>20 A: No.</p> <p>21 Q: What other times would he read?</p> <p>22 A: We always have books in the car</p> <p>23 when we were traveling to his extracurricular</p> <p>24 activities or play dates.</p> <p>25 Q: How is Evan's reading skill level?</p>

Page 54

1 A: He was number two in the school
2 this year.
3 Q: And then what else is in here?
4 A: For first grade. And then, his
5 writing, I would ask him to write stories of his
6 daily events and draw a picture of his daily events
7 and he's obviously not the greatest artist but he
8 tries.
9 Q: What school is Evan zoned for if he
10 relocates to New York?
11 A: Rocky Point.
12 Q: Is that the district Rocky Point?
13 A: That's the district, yes. Frank
14 Carasiti Elementary School in the Rocky Point School
15 District, yes.
16 Q: How close is that school to your
17 home?
18 A: Two miles.
19 Q: What about the other schools in the
20 district, how close are they to your home?
21 A: It's broken up into four schools.
22 The elementary school is K through two then three
23 through five, sixth through eighth and nine through
24 twelfth. And the K through two is neighbors. The
25 sixth through eighth and nine through twelfth school

Page 55

1 and the three through five school is about a mile
2 away from those schools.
3 Q: How will he get to school in the
4 morning?
5 A: Me.
6 Q: And how will he get home at night?
7 A: Me.
8 Q: What have you done to research
9 these schools?
10 A: I took the time to meet with the
11 principal, Dr. Gibbons, and toured the facility. I
12 had a lengthy conversation and learned about the
13 school and school district.
14 Q: What did you learn?
15 A: Many things.
16 MR. NAIMI: Objection. Calls for
17 hearsay.
18 JUDGE GENTILE: Sustained.
19 Q: I would say it's not offered
20 necessarily for its truth but why he satisfied
21 himself that this is a good place for school.
22 MR. NAIMI: He said I spoke with Dr.
23 Gibbons.
24 JUDGE GENTILE: I heard it yeah. I'm
25 going to sustain it. You don't have to... do it

Page 56

1 another way you're going to... to this route.
2 Q: Without telling the court what Dr.
3 Gibbons said, what can you say about these schools?
4 A: On my own research with the New
5 York State Department of Education as well as the
6 Annie Casey Foundation, I did my own research and we
7 all know that Nevada school system is unfortunately
8 are at the bottom in the country.
9 MR. NAIMI: Objection. Hearsay.
10 Q: The court will take judicial notice
11 of that as well. I can't believe that our school
12 system.
13 JUDGE GENTILE: I mean you're objecting
14 to his answer not the question that's calling for but
15 I understand.
16 MR. NAIMI: There's no evidence before
17 the court that Nevada has the worst school system in
18 the country.
19 Q: This is just his opinion at this
20 point.
21 MR. NAIMI: And he should testify that
22 in my opinion not everyone knows. He does not know
23 what everyone knows. That's hearsay.
24 JUDGE GENTILE: I know how to fair it
25 out. I know how to fair it out what he's saying but

Page 57

1 in terms of... the objection is overruled but I
2 understand your point. Your point is noted.
3 MR. NAIMI: Thank you.
4 JUDGE GENTILE: Go ahead, Mr. Ferraro,
5 you can finish.
6 A: My research suggests that Nevada
7 school systems are in the bottom of the country
8 whereas the school district or excuse me New York
9 school systems are in the top half. Nevada school
10 systems dropped... high school dropout rate is very,
11 very high whereas the school district that Evan is
12 in, the high school graduation rate is 95 percent
13 graduation and 90 percent enrollment into college.
14 And as mentioned, that high dropout rate in Nevada
15 unfortunately Sandra's oldest child Desmond is a
16 victim of that and has not graduated high school in
17 time and Sandra has allowed Desmond to be removed
18 from high school to do so called online homeschooling
19 at his own pace which scares the heck out of me. I
20 was very impressed with the school district in Rocky
21 Point. They are very close-knit community. All four
22 schools meet once a month to collaborate. They have
23 a very strong common core learning standard program
24 partnered with their five-step program which is all
25 curriculum based in Math and English. They are also

<p style="text-align: right;">Page 58</p> <p>1 affiliated with Lesley University literacy</p> <p>2 collaborative school based in Cambridge,</p> <p>3 Massachusetts which is a very strong reading and</p> <p>4 writing school that all of the staff members at Rocky</p> <p>5 Point school district are trained under this program.</p> <p>6 The teachers are overwhelmingly veteran teachers.</p> <p>7 They have master`s degrees or better and the</p> <p>8 turnaround rate is very low for teachers. Very</p> <p>9 strong sports district in fact in academic, their</p> <p>10 sixth through eighth principal was principal of the</p> <p>11 year.</p> <p>12 Q: Chris why don`t you if you would</p> <p>13 turn to Exhibit F, as in Frank, 2. Take a moment and</p> <p>14 look through those pages. Let me know when you`re</p> <p>15 done.</p> <p>16 A: Okay.</p> <p>17 Q: Do you recognize these pages?</p> <p>18 A: I do.</p> <p>19 Q: What is this?</p> <p>20 A: This is New York State School</p> <p>21 report card for Frank Carasiti Elementary School K</p> <p>22 through two and the Joseph A. Edgar three through</p> <p>23 five, and the high school nine through twelve.</p> <p>24 Q: And where did this information come</p> <p>25 from?</p>	<p style="text-align: right;">Page 60</p> <p>1 a look at that and let everybody take a quick go off</p> <p>2 the record.</p> <p>3 (RECESS)</p> <p>4 JUDGE GENTILE: Okay. We`re back on.</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY: Shannon Wilson</p> <p>7 Q: So, Your Honor, I think that it is</p> <p>8 a hearsay exception. It`s a record of regularly</p> <p>9 conducted business activity. Its authenticity is</p> <p>10 pursuant to NRS 2135 and it`s a book or pamphlet or</p> <p>11 other publication issued by a public authority.</p> <p>12 MR. NAIMI: I`m not concerned about the</p> <p>13 authenticity, okay? What I`m concerned about is the</p> <p>14 fact that it is in fact hearsay. I don`t believe</p> <p>15 that it is a regular business record. And in</p> <p>16 addition to it...</p> <p>17 JUDGE GENTILE: Who is it... through</p> <p>18 again. I`m sorry, I didn`t mean to cut you off.</p> <p>19 Q: New York Department of Education.</p> <p>20 JUDGE GENTILE: Okay, because I`m going</p> <p>21 to overrule the objection because I did my... hold on</p> <p>22 one second. I think it`s a... record report</p> <p>23 statements or data compilations in any form from</p> <p>24 public officials or agencies setting forth the</p> <p>25 activities of the official agency or matters observed</p>
<p style="text-align: right;">Page 59</p> <p>1 A: The New York State Department of</p> <p>2 Education.</p> <p>3 Q: We would like to move to admit</p> <p>4 Exhibit F2.</p> <p>5 MR. NAIMI: Hearsay, Your Honor.</p> <p>6 Q: It is information compiled by the</p> <p>7 New York State System of Education. I would suggest</p> <p>8 that it`s under auspices that are trustworthy.</p> <p>9 MR. NAIMI: It doesn`t eliminate the</p> <p>10 fact that it is still hearsay.</p> <p>11 JUDGE GENTILE: Exception.</p> <p>12 Q: That is the exception that it is</p> <p>13 trustworthy.</p> <p>14 MR. MOODY: I also think it`s a</p> <p>15 business record, Your Honor.</p> <p>16 JUDGE GENTILE: That was... I think</p> <p>17 that... hold on one second, I was going to pull my</p> <p>18 rules. Can we take a break for five minutes? It`s</p> <p>19 about 10:30 right now. That will give you... that</p> <p>20 put you at 55 minutes at this point. 55 more anyway,</p> <p>21 I should say. I`m trying to keep track.</p> <p>22 MR. NAIMI: So a total of an hour 10,</p> <p>23 right?</p> <p>24 JUDGE GENTILE: Yeah, she has an hour</p> <p>25 and 10 so far. We`ll take a quick break. I`ll take</p>	<p style="text-align: right;">Page 61</p> <p>1 pursuant to duly imposed law. And I think that`s</p> <p>2 what they do. Obviously, the way they give it is</p> <p>3 really the issue from your perspective, I think, Mr.</p> <p>4 Naimi, because we see this come in all the time in</p> <p>5 these cases and what they represent.</p> <p>6 MR. NAIMI: I would like to note</p> <p>7 another objection just for the record.</p> <p>8 JUDGE GENTILE GENTILE: Okay. You may.</p> <p>9 MR. NAIMI: It`s also accumulative.</p> <p>10 He`s already testified for the percentages of this</p> <p>11 and that and the other. And so, to some extent it is</p> <p>12 accumulative. You can rule on the objection. I just</p> <p>13 want to notify...</p> <p>14 JUDGE GENTILE GENTILE: Okay,</p> <p>15 overruled, allowed in. But I understand the... your</p> <p>16 point again is noted and... I don`t know yet of what</p> <p>17 it says. But obviously, the weight of that evidence</p> <p>18 is what it matters.</p> <p>19 MR. NAIMI: Thank you, Your Honor.</p> <p>20 JUDGE GENTILE: Mm-hmm.</p> <p>21 Q: So, Mr. Ferraro, looking at Exhibit</p> <p>22 F2, and so, Your Honor, we have moved to admit F2</p> <p>23 it`s admitted.</p> <p>24 JUDGE GENTILE: Admitted, yeah.</p> <p>25 Q: Mr. Ferraro, looking at that</p>

Page 62

1 exhibit, turning to Defendant 267, and again, I think
2 you testified earlier that this is regarding the Kerr
3 City Elementary School where Evan would attend if you
4 were to move to New York, correct?
5 A: Correct.
6 Q: And this was data for 2013, '14 you
7 had said. What was the enrollment in that period?
8 How many students are in that school?
9 A: Six hundred and ninety-one.
10 Q: Okay. And how does that compare to
11 the school where Evan is now?
12 MR. NAIMI: Your Honor, I'm going to
13 object to this line of questioning. The document
14 speaks for itself.
15 JUDGE GENTILE: I was just going to
16 say, why don't we skip that because that way we can
17 conserve time too. I agree with you the document
18 does speak for itself. Let's just skip over that.
19 Q: How does that compare to the school
20 where Evan is enrolled now?
21 A: It's half the size, smaller.
22 Q: Okay. And let's go to 269. Can
23 you... if you look through that column, there's a
24 category percentage of teachers with master's
25 degrees.

Page 63

1 MR. NAIMI: Again, Your Honor, I'm
2 going to object to hearsay and accumulative. This is
3 already in evidence. We don't need to go through
4 this whole document.
5 JUDGE GENTILE: Same document?
6 Q: It is the same document. Are you
7 going to read it, Your Honor? There are things that
8 we want to call your attention to.
9 JUDGE GENTILE: Yes, I will. Yeah.
10 Here's what I would expect you to do; in closing,
11 tell me the things that you want me to see in the
12 documentary evidence and I will, of course, look at
13 it. Absolutely.
14 Q: Okay. Fantastic.
15 Were there any other things about the
16 Rocky Point School District that impressed you but we
17 haven't discussed already?
18 A: Yes, they have a gymnasium, they
19 have special classes, art, P.E., phys ed, library,
20 computers.
21 Q: Anything else?
22 A: Yes. They have on-site security
23 full time from 6:30 in the morning to 6:30 p.m.
24 before, during and after school?
25 Q: Does Evan's current school have

Page 64

1 that?
2 A: No.
3 Q: Why do you think that's important?
4 A: The way the world is today with the
5 scares. I encountered, myself, several months ago at
6 Evan's current school a lock down - which was
7 extremely scary - and there was no security on site.
8 In fact, the principal himself was walking the
9 streets looking for an armed gunman and my brother
10 was with him and encouraged him to get back inside
11 and think of his family.
12 Q: Why do you want Evan to relocate to
13 New York?
14 A: It's my home. It's my community.
15 It's where I live. It's his friends. The community
16 relationships that I have as a hockey player and my
17 family business for almost 50 years and these
18 community connections I will pass along to Evan. The
19 school systems, financial resources, to save on
20 financial resources for my travels back and forth to
21 Las Vegas. I'd like to dedicate those resources
22 solely to Evan and his future. His sports, his
23 activities, his friendships, his life in New York.
24 Q: So we've talked about the family
25 that he has there, that your family business has been

Page 65

1 there for 50 years. Is that in Long Island?
2 A: Close to 50 years, yes. On Long
3 Island, yes.
4 Q: Did you ever play hockey in New
5 York?
6 A: Yes, I did.
7 Q: When?
8 A: When?
9 Q: Yes.
10 A: As a professional or throughout?
11 Q: All the times and all the
12 capacities that you played hockey.
13 A: Yes. I spent my whole childhood
14 virtually developing in New York and there was a time
15 where I moved to prep school up in Boston and then
16 the Midwest to play junior hockey. And I went to
17 university...
18 Q: Did you play professionally in New
19 York?
20 A: Yes, I did for the New York Rangers
21 and the New York Islanders.
22 Q: All right. You also talked about
23 extracurricular activities for Evan. Why can't he do
24 those here?
25 A: Las Vegas is not my home and I

<p style="text-align: right;">Page 66</p> <p>1 don't have the community connections that I have here 2 as I have in New York. And...</p> <p>3 Q: Lots of kids play extracurricular 4 activities. They don't have to have community 5 connections for that.</p> <p>6 A: Sandra is not dedicated...</p> <p>7 MR. NAIMI: Objection, is there a 8 question from counsel?</p> <p>9 JUDGE GENTILE: Yeah. What's the 10 question?</p> <p>11 Q: So let me bring you back around to 12 the question. The question is: why can't he do 13 extracurricular activities in Las Vegas? And you 14 talked about community connections. The children do 15 not necessarily have to have community connections in 16 order to engage in extracurricular activities. Why 17 can't Evan engage in extracurricular activities?</p> <p>18 MR. NAIMI: Objection, compound.</p> <p>19 JUDGE GENTILE: No, it's fine. She was 20 laying the foundation for the question. I don't 21 think he was understanding the question.</p> <p>22 Q: Do you understand the question, Mr. 23 Ferraro?</p> <p>24 A: I do.</p> <p>25 Q: You can answer.</p>	<p style="text-align: right;">Page 68</p> <p>1 dedication, commitment, working with others, taking 2 instruction from coaches, highs, lows, failures, 3 rewards, succeeds, all these skills are critical to 4 life and career. In fact, athletes are proven to be 5 better students, be better in the job world, in the 6 workforce, and they are more prone to stay away from 7 drugs and alcohol and live a more focused, dedicated 8 life.</p> <p>9 Q: How do you co-parent with Sandra?</p> <p>10 A: I will be the first to admit that 11 Sandra and I had many challenges from the start. And 12 Maura Pickard as our parent coordinator had helped, 13 and our current counsel, I believe, has helped. But 14 she does not view or work co-parenting. She looks at 15 it as harassment. And it's an ongoing pattern and 16 cycle. I asked her, I give her all the benefits. 17 She says no and then she turns around and says that 18 it's harassment. For example, private schools, I've 19 tried to ask numerous times here are the benefits, 20 here are the reasons why, I will pay full tuition. 21 From 3,000 miles away all I ask is you drive him 22 there and pick him up. They have a great curriculum. 23 They have after school programs. They have a 24 gymnasium. We toured the facility together. She 25 says no for no various reason. No strong reason.</p>
<p style="text-align: right;">Page 67</p> <p>1 A: Sandra is not committed to 2 enrolling Evan into sports and other extracurricular 3 activities.</p> <p>4 Q: Why would you say that?</p> <p>5 A: Because she has proven to deny Evan 6 opportunities. I have on numerous occasions since 7 preschool, I've tried to encourage Sandra to enroll 8 Evan into private school and have been denied on 9 numerous occasions in sports. She will not 10 contribute to his hockey. She will not contribute to 11 MMA, soccer, any of these activities.</p> <p>12 Q: Are you talking about a financial 13 contribution?</p> <p>14 A: Not at all. I would take care of 15 the financial tuition.</p> <p>16 Q: Well then, what do you mean she 17 won't contribute?</p> <p>18 A: She will not participate in 19 enrolling him during her timeshare while I'm not 20 here, and that upsets Evan.</p> <p>21 Q: Why are extracurricular activities 22 so important to you?</p> <p>23 A: Sports, extracurricular activities 24 are critical for development. Sports is... the life 25 skills you learn from sports: respect, preparation,</p>	<p style="text-align: right;">Page 69</p> <p>1 And after that, I reconvene and asked her, ``The 2 following year would you reconsider?`` Same thing. 3 ``Here are the benefits.`` ``No. Stop harassing 4 me.`` So, that's an ongoing pattern with both 5 sports, extracurricular activities and education, and 6 I don't understand why you would not want your child 7 to have a better opportunity if he's able to have 8 that opportunity.</p> <p>9 Q: Can you still afford private school 10 for Evan?</p> <p>11 A: Can I still?</p> <p>12 Q: Yeah.</p> <p>13 A: It's becoming more challenging from 14 my current financial situation.</p> <p>15 Q: How do you perceive that relocation 16 will improve Evan's life?</p> <p>17 A: Not to sound repetitive, but 18 just... it's my home. He has tremendous 19 relationships there, friendships, he's got a stable 20 home there in New York, he's got stable friends, the 21 school systems. My availability to Evan, I have a 22 very flexible schedule that I am with Evan virtually 23 at all times, and community relationships that I will 24 pass along to Evan for his overall benefit and 25 development.</p>

Page 70

1 Q: And how would his relocation
2 benefit you?
3 A: Along the same scale, I get back to
4 work right away. First of all, so I can earn a salary
5 to dedicate those resources to Evan. I have aging
6 parents that I would like to share my life and Evan's
7 life with them. Save on financial resources, have
8 the time to raise Evan and be with him.
9 Q: How old is your mom?
10 A: She's seventy.
11 Q: How is her health?
12 A: She has some health issues.
13 Q: Do you know what specifically what
14 she has?
15 A: Yeah, she has diverticulitis and
16 she's a little overweight. So my brother and I care
17 for her. But she's very available.
18 Q: And how about your dad, how old is
19 your dad?
20 A: He's 68.
21 Q: And how's his health?
22 A: He moves around faster than anyone.
23 Still going.
24 Q: Now, you talk about getting back to
25 work, getting back to Ferraro Brothers Hockey. Why

Page 71

1 can't you do that in Las Vegas?
2 A: I don't have the relationships
3 here. Ferraro Brothers Hockey is based in New York.
4 I've never taken Ferraro Brothers Hockey outside of
5 New York, and that's where my client base is.
6 Q: Do you have a proposed visitation
7 for Sandra?
8 A: Yes.
9 Q: Relocation should be allowed?
10 A: Yes.
11 Q: What would that be?
12 A: Starting in winter break on my
13 year, we would alternate that on my year. I would
14 have Evan until Christmas. And then from the 26th to
15 December 30th, Sandra will have Evan. The following
16 year Sandra will have Evan from school lets out till
17 December 30th. Then there would come a mid-winter
18 recess, which is in February, which we would
19 alternate, which you don't have here in Las Vegas,
20 but we have in New York, and we would alternate. But
21 on my year, Sandra is... I would facilitate her
22 travel. I wouldn't pay for it, but I would
23 facilitate time for her to visit Evan during that
24 time. If he's involved in a hockey tournament, for
25 example, or school activity, I would invite her to

Page 72

1 come support that.
2 Spring break, same concept. We would
3 alternate. Then there would be Memorial Day which
4 was... would be a three-day weekend that I would push
5 to see if we can extend that to a five-day weekend,
6 have Sandra come in on a Thursday night, have Evan be
7 with Sandra from Thursday through Monday. And then
8 it would be Columbus Day, which we celebrate in New
9 York. I know you don't celebrate here, and I would
10 do the same to push the three-day to five-day. And
11 we're closing in on Thanksgiving where we would
12 alternate.
13 And with all that being said, I would
14 facilitate, help facilitate with Sandra once a month
15 her to come in to be with Evan for some time. And I
16 would waive child support so she could use those
17 finances to travel.
18 Q: So let me back up to Christmas.
19 You had said that in the years that you have Evan on
20 Christmas day, she would have him the 26th to the
21 30th.
22 A: Correct.
23 Q: But if the break is longer than the
24 30th, could she have him longer?
25 A: Yes.

Page 73

1 Q: Okay. And that's going to be in
2 Las Vegas, correct? That she would have Evan?
3 A: Yes.
4 Q: Okay. And you're going to pay for
5 Evan's travel to Las Vegas?
6 A: Yes.
7 Q: And then for the alternating
8 February and April breaks, when it's Sandra's year to
9 have Evan, Evan would go to Las Vegas. Correct?
10 A: Correct.
11 Q: And you would pay for that travel?
12 A: Correct.
13 Q: You talked about Memorial Day
14 weekends and Columbus weekends. Would those be in
15 New York or Las Vegas?
16 A: They could be in Las Vegas.
17 Q: Okay. So and then we didn't talk
18 about the summer at all, but what time would she have
19 in the summer?
20 A: The first three weeks. If there's
21 nine weeks in the summer she would have Evan the
22 first three weeks. I would have him three weeks in
23 the middle and then she would have him three weeks at
24 the end.
25 Q: Why would you split it up like

Page 74

1 that?

2 A: Because right in the heart of the

3 summer, in those months in New York is a prime time

4 for hockey camps and clinics and sports activities

5 and... it's to Evan's benefit during that time.

6 Q: Has Evan ever seen any doctors in

7 New York?

8 A: Yes.

9 Q: Is Sandra aware of that?

10 A: Yes.

11 Q: Is your timeshare with Evan a

12 perpetual vacation?

13 A: It's the furthest thing from it. He

14 has structure, he has a schedule, he is very active,

15 he's very engaged. In his younger years, he attended

16 the learning experience pre-school. He's involved in

17 multiple activities, education, athletics.

18 Q: Let's talk about the current school

19 year, the first grade that just ended. So all of the

20 times that he was in school, you came here. So he

21 stayed in school. Correct?

22 A: Yes.

23 Q: And walk me through a typical

24 school day when you were here with Evan.

25 A: Typical school day, I would get him

Page 75

1 up, breakfast. If we had time, we'd go to the park.

2 Right before school, he'd ride a scooter into school.

3 I go grab a cup of coffee, grab him lunch, come back

4 to the school and volunteer for recess and lunch and

5 bring Evan a healthy lunch, both myself and my

6 brother. From there he would finish school. I'd

7 pick him up at 3:21 and I had his activities lined up

8 immediately after school, whether it was from the

9 hockey ring to the soccer field, to MMA, to play

10 dates. Of course, the most clear and obvious was do

11 your homework and you will be rewarded to do these

12 other activities.

13 Q: It was homework first and then the

14 other activities?

15 A: Correct. It didn't always happen

16 that way. But that was the goal.

17 Q: Who's Judith Tolman?

18 A: She is Evan's therapist.

19 Q: And how long had she been Evan's

20 therapist?

21 A: I believe three years.

22 Q: How frequently does Evan go to

23 therapy?

24 A: Weekly.

25 Q: Does he go during your timeshare?

Page 76

1 A: He does not.

2 Q: Is Evan argumentative with you?

3 A: No.

4 Q: Is he argumentative with any of

5 your family members?

6 A: No.

7 Q: Does Evan act annoyed?

8 A: No more, no less than any other

9 child that I've come across. I've coached thousands

10 of kids. I've interacted with thousands of kids.

11 No.

12 Q: Does Evan blame others for his

13 behavior?

14 A: Very little.

15 Q: Does he refuse to do things you ask

16 him to do?

17 A: Very little.

18 Q: How's his attention span?

19 A: Very good.

20 Q: How are his listening skills?

21 A: When I'm on the ice and I'm

22 coaching, he's leading the drills. He's

23 demonstrating the drills. So he's doing a very good

24 job being a leader.

25 Q: Does he rush through his homework?

Page 77

1 A: He does. That's one thing I'd like

2 him to slow down on. And he's aware of it.

3 Q: What happens when Evan misbehaves

4 with you?

5 A: I'm not big into punishment. We

6 negotiate, come to a compromise, we discuss it. I

7 give him positive examples, negative examples, and I

8 give him the opportunity to problem-solve on his own

9 and he does a terrific job. And all these symptoms

10 that you're referring to, he does not exhibit these

11 types of symptoms on my timeshare. And it is my job

12 as a parent to walk him through this and work with

13 him. That's my responsibility. Not a therapist.

14 It's the parent's responsibility. And I believe

15 Sandra uses therapy to substitute as parenting, and

16 it's unfair.

17 Q: So what's your response to Ms.

18 Tolman's recommendation that Evan remain in weekly

19 therapy?

20 MR. NAIMI: Objection, Your Honor,

21 assumes facts not in evidence.

22 JUDGE GENTILE: Sustained.

23 Q: Let's turn to... do you know where

24 Judith's report is?

25 MR. NAIMI: Ms. Tolman will be

Page 78

1 testifying at a later day. We can get the recording
2 at that time. At this point, it's a hearsay
3 document, Your Honor.
4 JUDGE GENTILE: Right, right.
5 Q: We'll do it in a different way. Do
6 you think that Evan should be in weekly therapy?
7 A: No.
8 Q: Why not?
9 A: He does not exhibit those symptoms
10 during my timeshare, nor does he exhibit this type of
11 symptoms or diagnosis in school. I've never had one
12 teacher or staff member say he has poor listening
13 skills, he's argumentative, he has aggressive
14 behavior. In fact, in his latest report card says
15 that he's a bright, cooperative student with great
16 problem solving skills.
17 Q: Have you ever observed Evan
18 implement his problem solving skills?
19 A: Yes, I have.
20 Q: When?
21 A: At recess, at lunch, play dates.
22 Q: How? Give us an example.
23 A: In sports, if a certain... if
24 they're out playing recess, they're playing
25 basketball or they're playing football and he's with

Page 79

1 a group of kids, students that don't agree with how
2 the game is being played, Evan has that leadership
3 where he takes charge and comes to a compromise and
4 they resume, and he does a very good job. And if
5 there are times where he needs my assistance, I step
6 in, give him the pros and the cons and he manages his
7 skills very well.
8 Q: Mr. Ferraro, if you turn to
9 Exhibit... well, let me just double check it so that
10 is the one I want... yeah, Exhibit J. While you're
11 turning there, can you tell me; is Evan hyperactive?
12 A: He's active. He's not hyperactive.
13 What I mean by active is he's involved and engaged in
14 sports and extracurricular activities and he does a
15 lot.
16 Q: So now looking at Exhibit J, do you
17 recognize the pages in this exhibit?
18 A: Yes, I do.
19 Q: What are these?
20 A: These are Evan's weekly report,
21 progress reports from first grade this year.
22 Q: And how do you receive these?
23 A: Well, the first progress report...
24 Q: How do you get them?
25 A: Okay. I'm sorry. My timeshare

Page 80

1 starts on usually every third Friday of the month at
2 3:21 when school ends. And this progress report is
3 in Evan's folder when I receive it on Friday on my
4 first day of my ten-day timeshare.
5 Q: We'd move to admit Exhibit J.
6 MR. NAIMI: No objection.
7 JUDGE GENTILE: Okay.
8 Q: Chris, that first report, if you
9 note at the very bottom of the page it says DEFT404.
10 A: Yes.
11 Q: Are you looking at that?
12 A: Yes.
13 Q: And that says it's the week of
14 October 12 through 16. Was that during your
15 timeshare?
16 A: No.
17 Q: Looking at the next page, November
18 9 through 13. Was that during your timeshare?
19 A: No.
20 Q: And then the third and final page,
21 Defendant 799, November 16 to 20, was that during
22 your timeshare?
23 A: Yes.
24 Q: Let's go to Exhibit B, please?
25 Looking at B1, do you recognize the pages of this

Page 81

1 Exhibit?
2 A: Yes.
3 Q: Generally speaking, what are these?
4 A: These are pictures of me with Evan
5 during our timeshare.
6 MR. NAIMI: B or D?
7 Q: B as in boy.
8 MR. NAIMI: B, thank you.
9 Q: Alright. And then in B2, generally
10 what are those?
11 A: Pictures of Evan during my
12 timeshare.
13 Q: And B3, there's a disc, actually.
14 And it says Fall 2015, baseball. What's on that
15 disc?
16 A: On that disc is me bringing Evan to
17 the park and practicing his baseball skills with him.
18 Q: And what significant... why did you
19 provide this disc?
20 A: Most importantly, developing his
21 catching skills, his baseball skills to be ready
22 for... we organize baseball in the fall because he
23 only works on those skills with me during my
24 timeshare. But there was an interesting part of this
25 where Evan stopped his skill set and started running

Page 82

1 and I want to do more, I want to do more, I want to
2 do more, and just kept running.
3 Q: And that was Evan asking for more
4 activity, correct?
5 A: Yes.
6 Q: All right. We move to admit
7 Exhibit B, 1 to 3.
8 MR. NAIMI: No objection.
9 JUDGE GENTILE: Okay.
10 [Background conversation]
11 Q: So, Your Honor, what Mr. Naimi and
12 I were just talking about was that I had asked one of
13 our witnesses to be here for 11 o'clock. So I'm
14 imagining that he's here. And Mr. Naimi has
15 indicated that he's going to reserve his cross
16 examination for his direct examination of Mr.
17 Ferraro.
18 JUDGE GENTILE: Mr. Ferraro? Okay.
19 MR. NAIMI: For a couple of reasons,
20 Your Honor. One, we do... we recognize that they do
21 have witnesses that are from out of town. So, of
22 course, for their sake and courtesy to them. In
23 addition, I just think it would be easier for Your
24 Honor to calculate the time. I mean I'll be at my
25 time tomorrow and there's no question as to who took

Page 83

1 what time throughout the day and then, yeah.
2 JUDGE GENTILE: All right. Perfect.
3 All right. So are you... you're not finished with
4 him yet. Are you close?
5 Q: Let me just double check my
6 outline. But I think that...
7 JUDGE GENTILE: Okay. All right. Take
8 your time.
9 [Background conversation/whispers]
10 Q: That's all for Mr. Ferraro.
11 JUDGE GENTILE: That's all? Okay. All
12 right.
13 Q: You know what, I take that back.
14 As soon as I said that I realize that I want more
15 there. We need to do it.
16 JUDGE GENTILE: Okay. You're fine. Go
17 ahead.
18 Q: I think it was with the timeshare.
19 Mr. Ferraro, would you turn to G1? Are you there?
20 A: Yes.
21 Q: Do you recognize this?
22 A: Yes.
23 Q: What is this?
24 A: This is timeshare calculation that
25 I've... the actual days I spent with him.

Page 84

1 Q: Okay. And how was this created?
2 A: Clear calendars and flight records.
3 Q: Okay. Are those calendars
4 maintained by you?
5 A: Yes.
6 Q: Okay. And those are records of
7 your flights with Evan?
8 A: Correct.
9 Q: And then how did you count... how
10 are the number of days counted on here, the days of
11 timeshare? So if you notice in the third column, it
12 says number of days with dad. How was that arrived
13 at?
14 A: I'm sorry, where are you looking?
15 Q: So just looking at the page marked
16 Defendant 278.
17 A: Okay. Yes.
18 Q: How did you arrive at those number
19 of days?
20 A: Sixteen, seven... it's 11 days, 16,
21 17 through the 26th. My pickup date was the 16th and
22 the drop-off date was the 26th.
23 Q: Okay. So you think that should
24 actually be 11 days?
25 A: Yes.

Page 85

1 Q: And with that whole trip for the
2 remainder of the way that all of the other timeshare
3 days were calculated as well, you add one to each?
4 A: Yes.
5 Q: Your Honor, we move to admit
6 Exhibit B1.
7 MR. NAIMI: No objection.
8 JUDGE GENTILE: Okay. It's B1. Is it
9 G1?
10 Q: I'm sorry, I think I just
11 misspelled. It is G.
12 MS. COOLEY: It's G. Yes, G.
13 MR. NAIMI: As in George.
14 Q: That was my fault. I misspoke. G.
15 JUDGE GENTILE: G1, all right.
16 Q: G1. So Chris, if we added right
17 now it's sitting at 138. How many days would we add
18 to that timeshare?
19 MR. NAIMI: Actually, I'll object to
20 vague and ambiguous.
21 JUDGE GENTILE: I don't think she was
22 finished with her question. Maybe I...
23 Q: Oh, no I was. So we have
24 established that he thinks that the day is one-day
25 shy of his actual timeshare, right? Go through again

<p style="text-align: right;">Page 86</p> <p>1 Chris how you would calculate the number of days.</p> <p>2 A: Well, I would add one day in</p> <p>3 January, one in February, one in March, one in April,</p> <p>4 one in May, one in September, October, November and</p> <p>5 December.</p> <p>6 Q: So we'd add 12 days, correct?</p> <p>7 A: Correct.</p> <p>8 Q: And if we add 12 to 138, we come up</p> <p>9 with 150, is that correct?</p> <p>10 A: Correct.</p> <p>11 Q: And then on the next page, this was</p> <p>12 the timeshare for 2014. Would you do the same thing</p> <p>13 there?</p> <p>14 A: Yes.</p> <p>15 Q: So Chris, is it your testimony that</p> <p>16 in 2015 you had Evan in your timeshare for 150 days?</p> <p>17 A: Yes.</p> <p>18 Q: And then looking at the 2014</p> <p>19 schedule, you said that you would do the same. You'd</p> <p>20 add one day to each timeshare, correct?</p> <p>21 A: Yes.</p> <p>22 Q: And you had 154 days as previously</p> <p>23 calculated, adding 12 would give you 168 days. Is</p> <p>24 that correct?</p> <p>25 A: Correct.</p>	<p style="text-align: right;">Page 88</p> <p>1 JUDGE GENTILE: Okay. And those dates</p> <p>2 are all laid out on the calander?</p> <p>3 A: Yes.</p> <p>4 JUDGE GENTILE: And are the times laid</p> <p>5 out on there as well? I haven't looked at it yet.</p> <p>6 MR. NAIMI: We'll take care of it</p> <p>7 tomorrow.</p> <p>8 FEMALE: Correct.</p> <p>9 Q: Okay. So...</p> <p>10 MR. MOODY: Your Honor, we're just</p> <p>11 cleaning up exhibits to make sure we've offered and</p> <p>12 received what we want to through this witness.</p> <p>13 Q: Actually, Mr. Ferraro, can I have</p> <p>14 you turn to Exhibit K1? And look at K1 and also K2,</p> <p>15 and let me know when you're done.</p> <p>16 A: I'm done.</p> <p>17 Q: Do you recognize these documents?</p> <p>18 A: Yes.</p> <p>19 Q: What is K1?</p> <p>20 A: K1 is a text message from Judith</p> <p>21 Tolman, Evan's therapist, to me on... I believe the</p> <p>22 date was November 5th, 2015 informing me with a link</p> <p>23 here that I should click on.</p> <p>24 Q: And what was she informing you?</p> <p>25 A: She shared with me a document,</p>
<p style="text-align: right;">Page 87</p> <p>1 Q: And is it your testimony that in</p> <p>2 2014, sorry, math error, 154 plus 12 is 166.</p> <p>3 Correct?</p> <p>4 A: Your math is better than mine.</p> <p>5 Yes.</p> <p>6 Q: All right. And so is it your</p> <p>7 testimony that you had Evan in your timeshare 166</p> <p>8 days in 2014?</p> <p>9 A: Yes.</p> <p>10 Q: And then in 2013, would you do the</p> <p>11 same thing? Would you add one day to each month of</p> <p>12 timeshare?</p> <p>13 A: Yes.</p> <p>14 Q: So if you did that, then you would</p> <p>15 have 155 days with Evan. Is that correct?</p> <p>16 A: Correct.</p> <p>17 Q: So is it your testimony that in</p> <p>18 2013 you had Evan in your timeshare for 155 days?</p> <p>19 A: Yes.</p> <p>20 JUDGE GENTILE: Can you explain to me</p> <p>21 why... I must have missed. Why are you adding the</p> <p>22 one day to each month?</p> <p>23 A: Because my pickup day is, for</p> <p>24 example, on January 16 and goes through to 26, so 16,</p> <p>25 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.</p>	<p style="text-align: right;">Page 89</p> <p>1 which is on K2 that explains that delayed</p> <p>2 kindergarten enrollment dramatically reduces ADHD in</p> <p>3 children, study shows.</p> <p>4 Q: When was Evan enrolled in</p> <p>5 kindergarten?</p> <p>6 A: 2015.</p> <p>7 Q: Well, he started first grade in</p> <p>8 2015, correct?</p> <p>9 A: I'm sorry. Yes.</p> <p>10 Q: So he enrolled in 2014?</p> <p>11 A: Correct.</p> <p>12 Q: How old was he when he started</p> <p>13 kindergarten?</p> <p>14 A: He was five.</p> <p>15 Q: When was he first eligible for</p> <p>16 kindergarten?</p> <p>17 A: When he was four.</p> <p>18 Q: And why did he not start when he</p> <p>19 was four?</p> <p>20 A: His birthday is September 30th,</p> <p>21 which was the exact cutoff date to enroll him. And</p> <p>22 in fact, if I were to enroll him during that time, he</p> <p>23 would have been a four-year-old enrolled into</p> <p>24 kindergarten and he would've been the youngest in his</p> <p>25 class?</p>

<p style="text-align: right;">Page 90</p> <p>1 And I did extensive research. I spoke 2 with Judith. I actually spoke with Margaret Pickard, 3 our parent coordinator. She talked with a similar 4 situation. She had a young son that was dealing with 5 the same and she said it's beneficial to hold young 6 boys back because they mature... they don't mature 7 like girls do. And then I did extensive research 8 with teachers from Las Vegas and teachers in New York 9 and, unanimously, they said it's the proper thing to 10 do to hold Evan back another year as he would benefit 11 from another year of development maturity wise. 12 Q: We move to admit K1 and 2. 13 MR. NAIMI: I would object to it being 14 hearsay, accumulative and relevancy. At this point, 15 he's already in school. It's irrelevant now. 16 JUDGE GENTILE: Oh my goodness, I'm 17 going to cough again. Sorry people. Any exception? 18 Q: It's not being offered for its 19 truth. The truth of it would be in fact be that it 20 is beneficial the whole kids back. We're just 21 showing that Judith Tolman sent this information to 22 Mr. Ferraro after a dispute between the parties. 23 JUDGE GENTILE: Sorry. I will allow 24 it. It's fine 25 Q: Thank you.</p>	<p style="text-align: right;">Page 92</p> <p>1 JUDGE GENTILE: Mm-hmm. Although at 2 this point I've let it in on the other two. So, 3 yeah. I mean... I sustain. 4 MR. NAIMI: It's sustained. 5 JUDGE GENTILE: It's sustained. Yeah. 6 MR. NAIMI: It's not in evidence. 7 JUDGE GENTILE: Pardon me? 8 MR. NAIMI: It wouldn't be an evidence 9 on the basis. 10 JUDGE GENTILE: On the relevance basis, 11 you're right. So hold on one second here. I'm 12 sorry. I'm in the midst of like a coughing fit and 13 trying to make sure I do this correctly. So I 14 overruled on those two grounds, sustained on the 15 relevance ground so it wouldn't come in on that 16 other... I really don't think it's relevant. 17 Q: Well, it's relevant to a dispute 18 between the parties. 19 JUDGE GENTILE: Pardon me? 20 Q: It's relevant to what has been a 21 dispute between the parties. I can go back and... 22 JUDGE GENTILE: I guess then you need 23 to tell me about that. 24 Q: Lay the foundation of the dispute. 25 Was there ever a dispute between you and Sandra as to</p>
<p style="text-align: right;">Page 91</p> <p>1 JUDGE GENTILE: I mean it is an offer 2 for the truth of the matter asserted. I mean he's 3 testified about what his belief was after contacting 4 numerous sources. 5 MR. NAIMI: Can I get rulings on each 6 objection, Your Honor? 7 JUDGE GENTILE: Uh-huh. 8 MR. NAIMI: First, was hearsay? 9 JUDGE GENTILE: I'm going to say no 10 or... 11 MR. NAIMI: Accumulative or relative. 12 JUDGE GENTILE: Accumulative, 13 overruled. 14 MR. NAIMI: And then third was 15 relevancy. 16 JUDGE GENTILE: Well... 17 MR. NAIMI: You should sustain 18 relevance. 19 JUDGE GENTILE: Yes, I was going to 20 say. Yeah, sustained. I mean from that perspective, 21 I mean we've already... like he said, we've already 22 enrolled him in school and you know that they did it 23 based upon all these recommendations. So with that I 24 will sustain. 25 MR. NAIMI: Thank you, Your Honor.</p>	<p style="text-align: right;">Page 93</p> <p>1 when to enroll Evan in kindergarten? 2 A: Yes. It was an ongoing dispute 3 where Sandra fought me on this matter after doing 4 extensive research with experts in the education 5 field and having numerous conversations with Margaret 6 Pichard, our parent coordinator as well with Judith 7 Tolman. 8 JUDGE GENTILE: Okay. See, that wasn't 9 clear to me earlier. 10 A: I'm sorry. I failed. 11 JUDGE GENTILE: No, no. It's okay. 12 It's not your fault. 13 MR. NAIMI: Despite the fact that it was 14 a dispute, this was a dispute clearly two and a half 15 years ago, three years ago? So the relevancy of 16 which... remember, this is a relocation case. 17 JUDGE GENTILE: I understand that. 18 MR. NAIMI: So how was it relevant to 19 the purposes of determining whether Evan should be 20 relocated? 21 JUDGE GENTILE: Hold on, Mr. Naimi. 22 I'll tell you why it's relevant now. 23 MR. NAIMI: Okay. 24 JUDGE GENTILE: And I'm going to 25 reverse myself on that one because you're both here</p>

Page 94

1 talking about what's in this child's best interest.
2 And one of those issues is co-parenting and the
3 ability for these two parties to communicate. That
4 was not clear to me about why this is being brought
5 in initially, and the issue of the child going to
6 school at five or four wasn't clear. So now I
7 understand it. I allow them. I think it's relevant.
8 Overruled on all of your objections.
9 How's that?
10 MR. NAIMI: No problem. No problem.
11 JUDGE GENTILE: All right. Sorry about
12 that. I need to clarify that.
13 A: Sorry.
14 JUDGE GENTILE: No, no, it's not your
15 fault. It's not your fault.
16 Q: All right. Thank you, Mr. Ferraro.
17 You can step down.
18 [Background conversation]
19 Q: Mr. Hungerford, it could be just
20 about a half-hour witness. So I would suggest that
21 we... you normally take lunch at 12. I'll call Mr.
22 Hungerford?
23 JUDGE GENTILE: Okay.
24 Q: Could we use your 73?
25 MR. NAIMI: Yeah. That's deposition

Page 95

1 transcript, Your Honor.
2 JUDGE GENTILE: Oh, perfect.
3 MR. NAIMI: Seventy-three.
4 Q: I don't think it's his transcript.
5 I think it's...
6 BAILIFF: Remain standing, raise your
7 right hand, face the court.
8 MS. MCCULLOCH: Do you solemnly swear
9 the testimony you're about to give in this action
10 shall be the truth, the whole truth, and nothing but
11 the truth, so help you God?
12 MR. HUNGERFORD: I do.
13 BAILIFF: So 73, Your Honor.
14 JUDGE GENTILE: That's his records.
15 BAILIFF: Records.
16 DIRECT EXAMINATION
17 BY: Shannon Wilson
18 Q: Good morning, Mr. Hungerford, we've
19 met previously, I'll remind you. I'm Shannon Wilson,
20 I represent Christopher Ferraro. And I very much
21 appreciate your appearance today, we'll try to get
22 you out of here as quickly as possible. Can you
23 please... have we sworn the witness?
24 JUDGE GENTILE: Yes.
25 Q: Would you please state and spell

Page 96

1 your name for the record?
2 A: My name is Daniel Hungerford, D-A-
3 N-I-E-L, Hungerford, H-U-N-G-E-R-F-O-R-D.
4 Q: Do you recognize the man sitting to
5 my left in a blue suit?
6 A: I do.
7 Q: And who is he?
8 A: Mr. Ferraro.
9 Q: And do you recognize the woman
10 sitting to my left in a green dress?
11 A: I do.
12 Q: Who is she?
13 A: Evan's mom.
14 Q: Oh, to my right. Thank you. And
15 how do you know Mr. Ferraro and Ms. Nance?
16 A: I'm their child school principal.
17 I see them at the school.
18 Q: And what is your current business
19 address?
20 A: 655 Park Vista Drive, Las Vegas,
21 Nevada 89138.
22 Q: What's located at that address?
23 A: Givens Elementary School.
24 Q: And let's do just a little bit of
25 background about you. Can you tell us about your

Page 97

1 education and work history before becoming a
2 principal at Givens?
3 A: I got my undergraduate at
4 Youngstown State University in Ohio, where I'm from,
5 Youngstown, Ohio. I taught their middle school for
6 two years before moving to Nevada where I taught for
7 several years before becoming an assistant principal
8 and then principal for the past 12 years. This fall
9 will be my 18th year in the district.
10 Q: Have you testified in court cases
11 before?
12 A: I have.
13 Q: What kind?
14 A: Similar to this one, family custody
15 situations.
16 Q: And was that in your capacity as a
17 principal?
18 A: Yes.
19 Q: What are your responsibilities as a
20 principal at Givens Elementary?
21 A: Students safety and student
22 achievement, creating a warm environment for kids to
23 come to school, making sure they have quality
24 teachers, quality curriculum, maintaining good
25 communication with the parents, students, community

Page 98

1 basics. Running of an elementary school.

2 **Q: What interactions do you have with**

3 **the children as principal?**

4 A: I see the kids daily coming on and

5 off the buses, moving through the hallways and the

6 cafeteria at lunchtime, in the classrooms during

7 classroom observations. Back onto the buses or into

8 cars, or onto bicycles for the dismissal home.

9 **Q: How frequently you do classroom**

10 **observations?**

11 A: Every day.

12 **Q: And do you do them every day in**

13 **every classroom?**

14 A: No. Too many classrooms. I try to

15 visit at least three or four classrooms daily to try

16 to hit 20 or so a week.

17 **Q: And how many classrooms total are**

18 **in your school?**

19 A: If you count classrooms and

20 specialist, there's about 60.

21 **Q: So about three weeks to go through**

22 **a rotation then?**

23 A: With the three administrators. So

24 we pretty much get in every classroom each week.

25 **Q: But you yourself...**

Page 99

1 A: Me personally? Yeah, every two to

2 three weeks, I'd say, I go through each environment.

3 **Q: What is the protocol if a child has**

4 **behavioral issues?**

5 A: If a child has behavioral issues,

6 it's usually the classroom teacher that would first

7 notice that. He or she would get recommended to like

8 our behavior team or our response intervention team

9 and we create like a behavior plan. Or if it was

10 severe like aggressive kind of thing they'd get sent

11 directly to me, things just happen on a per incident.

12 But if it's someone who feel like they have a

13 behavior problem, we would go through our response

14 intervention team. A behavior plan would be written.

15 We would take data on that plan, work with the

16 parents, and try to remediate the behavior through

17 response intervention.

18 **Q: Has Evan ever had a plan like that?**

19 A: No.

20 **Q: Is there a protocol if children**

21 **show signs of mental health issues?**

22 A: In any kind of mental health issue,

23 we would immediately refer that student to the

24 counselor or to me if she went on campus that day.

25 Mental health is such a broad statement. That could

Page 100

1 be something as simple as you're just having a bad

2 day or a student that witnessed an event that morning

3 or the day prior when coming to us with a concern.

4 So we would take each case as they occur because

5 they're so different.

6 **Q: Sure. What about students**

7 **diagnosed with ADHD? What's the protocol with them?**

8 A: We don't diagnose students with

9 ADHD. That's... doctors do that, and not school

10 administrators.

11 **Q: Let me back up. So I'm not**

12 **suggesting that you diagnose.**

13 A: Sure.

14 **Q: How about students who exhibit**

15 **behaviors of ADHD?**

16 A: If we have students that show those

17 behaviors, then what I had mentioned earlier about

18 the response intervention, letting parents know,

19 sharing with parents outside resources that they

20 could go to to help them, or if we feel it's ADHD, we

21 wouldn't make an armchair diagnosis where we'd say,

22 ``Hey, talk to your pediatrician, talk to your

23 doctor.``

24 **Q: Would that also be the same**

25 **protocol for children exhibiting signs of**

Page 101

1 **oppositional defiant disorder?**

2 A: Sure. Yes.

3 **Q: Has Evan ever had a referral to the**

4 **counselor for any of those issues?**

5 A: No. Evan is a good guy. He

6 behaves well at school and attends in class. He's

7 never been referred to my office for any kind of

8 behavior. He's a good guy. I don't... I'm certain

9 he's never been down to the counselor for any kind of

10 mental health concerns or major behavioral concerns.

11 He's a grizzly but does his job every day.

12 Behaviorally, academically, he's a model student.

13 **Q: I was just about to ask you your**

14 **general impression of Evan, but I think you just gave**

15 **it.**

16 A: To sum that up. I really like him.

17 He's a good guy.

18 **Q: Has anyone at any time brought any**

19 **concerns about Evan to your attention?**

20 A: I mean parents will always approach

21 me with concerns. Concern is also a broad statement.

22 I have 1,200 students. I'm sure that over his two

23 years he's been at Givens, kindergarten and first

24 grade, I'm sure I've talked to both mom and dad just

25 briefly on the side on how he's doing. And I would

Page 102

1 consider that a concern as well. I don't think
2 there's ever been anything major brought to my
3 attention by either mom or dad saying, ``Hey, are you
4 worried about Evan for this, that, or the other?``
5 Other than how he's doing with the situation with the
6 parents and the living situation.
7 Academically, I don't think that I've
8 talked to either one about academic concerns or
9 behavioral concerns in the classroom or in the
10 school.
11 **Q: So you've been Evan's principal now**
12 **for two years, kindergarten and first grade. Is that**
13 **right?**
14 A: Correct.
15 C: And do you recall Evan missing a
16 number of days during kindergarten?
17 A: I have to go back and look at the
18 records. Anytime the student has over 20 absences,
19 that becomes a concern for us as a school. And I
20 don't believe that he had over 20 absences that year.
21 Again, without that... if I had my database in front
22 of me, I could tell you that. But again, if we got
23 into attendance concern, that's something we would
24 bring to the attention of mom and dad and we sit down
25 and talk about it.

Page 103

1 **Q: Did you ever have any concerns**
2 **about Evan advancing to the first grade?**
3 A: No. No.
4 **Q: Have you ever observed Evan**
5 **engaging in any unusual behaviors?**
6 A: No.
7 **Q: Did you ever see Evan's chew his**
8 **clothing?**
9 A: Ever see him?
10 **Q: Chew his clothing.**
11 A: No. But not uncommon for
12 elementary school kids to... you look at pencils
13 around the classroom usually the tops are chewed.
14 You know what I mean? The kids are finicky at that
15 age. They get restless. But never anything that
16 would have brought a concern to the teacher. Or if
17 it did, that teacher never brought it to my
18 attention.
19 **Q: Are you familiar with parent's**
20 **participation in school?**
21 A: Sure.
22 **Q: Are you familiar with Mr. Ferraro's**
23 **participation in school?**
24 A: Mm-hmm. Yes.
25 **Q: What has his participation been**

Page 104

1 **this year?**
2 A: I see him frequently. He'll come
3 and volunteer in the lunchroom and he'll maybe have a
4 lunch with his son. I've seen him in a field day on
5 any kind of community event from Grizzly's. I think
6 there's Grizzly's after dark, but we're going all the
7 way back to fall. I want to say that the last time I
8 remember seeing him, kindergarten graduation again,
9 going back to last year. I see Mr. Ferraro very
10 often at the school.
11 **Q: And was that the same last year as**
12 **well, kindergarten year?**
13 A: Yeah. Absolutely.
14 **Q: And what about Ms. Nance?**
15 A: I see Ms. Nance at school. She too
16 has been in the lunchroom. She's volunteered, come
17 into some school events. I see her in the drop-off
18 lane, when I'm at the drop-off lane. I'm not always
19 at the drop-off lane each morning. But when I see
20 her, she's usually dropping Evan off and then onto
21 middle school or high school for the siblings.
22 **Q: I don't think that you were asked**
23 **to bring any records with you today. Did you?**
24 A: I was not asked. No, I did not.
25 **Q: All right. You were previously**

Page 105

1 **deposed in this case. Correct?**
2 A: Correct.
3 **Q: And did you provide records at that**
4 **time?**
5 A: I did.
6 **Q: Okay. There is a binder in front**
7 **of you. Of the three, it is marked plaintiff's trial**
8 **exhibits. Do you see that one?**
9 A: Yes.
10 **Q: And if you would turn to page 73 or**
11 **Exhibit 73... Your Honor, this is a stipulated**
12 **exhibit between the parties. It's in the**
13 **plaintiff binder.**
14 JUDGE GENTILE: Seventy-three?
15 **Q: Mm-hmm. Seventy-three.**
16 A: Okay.
17 **Q: Take a moment to just browse**
18 **through the pages in that exhibit. Let me know when**
19 **you're done.**
20 A: Does it begin with my business
21 card?
22 **Q: Yes, it does.**
23 A: Okay. Yeah, I recognize. Yes, I
24 recognize all this information.
25 **Q: What do you recognize it as?**

Page 106

1 A: This would be basically... a lot of
2 it would be again my business card. The first page
3 says present summary report from campus that would
4 give us pertinent contact information to reach out to
5 the parents if we need to by phone or mail. The next
6 is an email from his kindergarten teacher talking
7 about absences. From the birth certificate on to
8 this stuff that we'd find in a student's cumulative
9 folder. Cumulative folder would have any kind of
10 court documents, which is in here, registration paper
11 works, such as media release, doctor's release, or
12 who my doctor is, that kind of a thing.
13 Q: If you noticed, the pages have
14 numbers in the lower right hand corner.
15 A: Okay.
16 Q: Do you see that?
17 A: Yes.
18 Q: If you can turn to the page number
19 511. It's the birth certificate.
20 A: Yes.
21 Q: Have you ever seen a void birth
22 certificate before?
23 A: It depends on... sometimes when we
24 get a copy of a birth certificate, it'll come out
25 with that on it. So, that will happen from time to

Page 107

1 time.
2 Q: All right.
3 A: But then we usually request one
4 that has an official birth certificate through our
5 registrar.
6 Q: What is the child's name on this
7 birth certificate?
8 A: Evan Daniel Nance.
9 Q: Do you know who enrolled Evan in
10 school?
11 A: I don't.
12 Q: Please turn to page 515.
13 A: Okay.
14 Q: This appears to be a fax from Mr.
15 Ferraro to you. Do you recall why Mr. Ferraro sent
16 you this fax?
17 A: No, we're going back to the
18 kindergarten year. And again, there are close to
19 1,200 students at my school. I remember the facts.
20 I remember the facts coming with information from the
21 Margaret Pickard who I believe was their like a
22 mediator, if I remember correctly. And it had like
23 the custody arrangement and parental sharing
24 information that we need at the school so that we can
25 make sure that when we've dismissed students, we're

Page 108

1 dismissing a student to the proper parent. I believe
2 that's why I was faxed this going back two years
3 though.
4 Q: It's a little dark. But let's go
5 to 536.
6 A: Yeah.
7 Q: It looks like we have another birth
8 certificate. What's the name on that birth
9 certificate?
10 A: That one says Evan Daniel Ferraro.
11 It's very hard to read though.
12 Q: And then if we could just go
13 through the medical records quickly that begin at
14 540?
15 A: Okay.
16 Q: Can you explain to us how to read
17 these medical records?
18 A: Any time a student gets sent to the
19 nurse's office, there is a person that works in the
20 nurse's office and her name is at the top of this.
21 It says Taitano FASA, Judy. FASA, Judy. FASA stands
22 for First Aid Safety Assistant. And that person is
23 on campus daily or a school nurse is shared between
24 multiple schools. So anytime a student is sent to
25 the health office, they go down with like a little

Page 109

1 pass and then it gets logged in to the system so that
2 if it's something serious, we have notes on it. Or
3 if it's something simple, we want to be able to at
4 least contact parents to say, "Hey, your kiddo is
5 down here and they scraped their knee, bumped their
6 head," whatever it may be.
7 In this particular one, it looks like
8 they called mom because he had... he got a small cut
9 something in class scissors, paper, who knows. It
10 looks like they cleaned it and band-aided it and send
11 him on back to class.
12 Q: So in the comments section then is
13 where we would find the reason that the child
14 reported to the nurse?
15 A: Correct. And again, if it's
16 something... sometimes kids just need a minute and
17 they'll say nothing, and that happens too. Like the
18 second one, nothing was written there. It could've
19 been something as simple as just there are having a
20 moment where they needed to go to the nurse. That
21 happens all the time in elementary school.
22 Q: I apologize if you... you may have
23 already answered this. Does it tell us on this
24 record whether the child was dismissed home or not?
25 I don't mean on this particular record. Like

Page 110

1 generally speaking, where would we find that
2 information?
3 A: It would be like on check-in,
4 check-out, we have a different system for when a
5 parent comes in and checks the student out of school.
6 And that would... if a kid went home sick, it may be
7 noted in here as well as when the parent... but then
8 when the parent comes in and they show their ID or
9 they check their student out, that's done in a
10 different system. This is just for like health
11 related when they come in and out of the health
12 office.
13 Q: Thank you. I'll pass the witness.
14 CROSS EXAMINATION
15 BY: Shelly Cooley
16 Q: All right. Hi, Mr. Hungerford.
17 How are you?
18 A: Good.
19 Q: I'm Shelly and I am along with my
20 co-counsel, Jason Naimi, we present Sandra in this
21 matter. I'd like to take you through your testimony
22 a little bit.
23 A: Sure.
24 Q: Now, you were deposed by Ms.
25 Wilson, correct?

Page 111

1 A: Correct.
2 Q: Do you remember the date of that
3 deposition?
4 A: I don't off the top of my head.
5 Q: Could it have been in December
6 2015?
7 A: It could've been.
8 Q: Okay. And prior to your
9 deposition, you talked to a number of individuals of
10 the school. Correct?
11 A: Oh yeah.
12 Q: Do you recall?
13 A: Mm-hmm.
14 Q: Did you have a conversation with
15 the school counselor?
16 A: I did.
17 Q: Okay. And how about Evan's teacher
18 at the time?
19 A: Yes.
20 Q: Okay. Now, and you've also
21 testified that as you understand it currently, Evan
22 is not having any concerns at school, correct?
23 A: Correct.
24 Q: Okay. So the school counselor at
25 your school, is it the same counselor that it was

Page 112

1 when Evan was in kindergarten, first grade?
2 A: Yes.
3 Q: Okay. So what is the school
4 counselor's name?
5 A: Alison Rava.
6 Q: Okay. And you asked her whether or
7 not she had any social, emotional or social or
8 emotional concerns about Evan?
9 A: Correct.
10 Q: And what did she say?
11 A: She said no because I don't
12 think... because I looked back through my records to
13 see if he's ever been referred, and he had not.
14 Q: Okay. She also confirmed that Evan
15 had not been down to her office. Correct?
16 A: Correct.
17 Q: Prior to your deposition?
18 A: Correct.
19 Q: And do you know if she... if Evan
20 had been to her office after the time that you did
21 your deposition and now?
22 A: I don't... I'm not positive. I
23 don't know because I don't remember asking her since
24 then.
25 Q: Okay. Perfect. We'll just go with

Page 113

1 those dates then.
2 A: Mm-hmm.
3 Q: And Ms. Rava confirmed to Evan have
4 not been referred by teachers, parents or himself,
5 correct?
6 A: Correct.
7 Q: Okay. And Ms. Rava also confirmed
8 that Evan is having a great school year. Do you
9 recall that?
10 A: Yes.
11 Q: Okay. And prior to the deposition,
12 you spoke with Evan's first grade teacher. Correct?
13 A: Correct.
14 MS. WILSON: I'm going to object to
15 leading questions. He's not an adverse witness.
16 Q: This is my cross examination, Your
17 Honor. This is based on his testimony. I can lead
18 the witness.
19 MR. NAIMI: Absolutely.
20 JUDGE GENTILE: Yeah. I'm going to
21 overrule that objection.
22 Q: Okay. Yeah. No, he's not my
23 witness. It's hers. Okay. Thank you, Your Honor.
24 And you asked Ms. Slater if she had any concerns
25 about Evan, correct?

<p style="text-align: right;">Page 114</p> <p>1 A: Correct.</p> <p>2 Q: And did she have any concerns about</p> <p>3 Evan?</p> <p>4 A: No.</p> <p>5 Q: No. She indicated that Evan was</p> <p>6 performing very well academically, right? And that</p> <p>7 Evan was performing very well socially.</p> <p>8 A: Correct.</p> <p>9 Q: And that he was doing an excellent</p> <p>10 job.</p> <p>11 A: Yeah.</p> <p>12 Q: And that he was right on par for</p> <p>13 first grade, right?</p> <p>14 A: Yeah.</p> <p>15 Q: Okay. And are you a mental health</p> <p>16 professional by any chance? I heard your testimony</p> <p>17 regarding your background. But I just wanted to</p> <p>18 confirm.</p> <p>19 A: Am I mental health professional?</p> <p>20 No.</p> <p>21 Q: Okay. So you're a school</p> <p>22 principal, your education is background, right?</p> <p>23 A: Mm-hmm.</p> <p>24 Q: All right. And are you aware that</p> <p>25 Evan is diagnosed with ADHD combined presentation</p>	<p style="text-align: right;">Page 116</p> <p>1 A: Mm-hmm.</p> <p>2 Q: Okay. You said that Evan love</p> <p>3 school.</p> <p>4 A: He does.</p> <p>5 Q: And that Evan is a grizzly.</p> <p>6 A: Yes.</p> <p>7 Q: And what's a grizzly?</p> <p>8 A: Our school mascots, the grizzlies.</p> <p>9 Q: Okay. And what does that mean?</p> <p>10 He's a grizzly?</p> <p>11 A: Just enjoys being at school. He's</p> <p>12 kind of proud to be there.</p> <p>13 Q: What are the grizzly attributes? I</p> <p>14 mean, right? This is how you fire the kids up.</p> <p>15 Right?</p> <p>16 A: Sure.</p> <p>17 Q: You guys are grizzlies. What's a</p> <p>18 grizzly?</p> <p>19 A: Grizzly is a bear.</p> <p>20 Q: Okay. And what's so special about</p> <p>21 a grizzly?</p> <p>22 A: I guess there's nothing special</p> <p>23 about a grizzly. It's just something we say at</p> <p>24 school for kids to have some ownership in the school.</p> <p>25 Q: Okay. So Evan has a lot of</p>
<p style="text-align: right;">Page 115</p> <p>1 moderate level?</p> <p>2 A: Only if the parent shared that with</p> <p>3 us.</p> <p>4 Q: And has the parent shared that with</p> <p>5 you?</p> <p>6 A: No.</p> <p>7 Q: Okay. And are you aware that Evan</p> <p>8 is diagnosed with oppositional defiance disorder?</p> <p>9 A: No.</p> <p>10 Q: Okay. And are you aware that Evan</p> <p>11 is diagnosed with generalized anxiety disorder?</p> <p>12 A: No.</p> <p>13 Q: Okay. Are you aware that Evan</p> <p>14 participates in cognitive behavioral therapy?</p> <p>15 A: No.</p> <p>16 Q: All right. Are you aware that he</p> <p>17 participates in cognitive behavioral therapy on an</p> <p>18 approximately weekly basis?</p> <p>19 A: No.</p> <p>20 Q: All right. And just to confirm,</p> <p>21 Evan is not taking any medication required to be</p> <p>22 admitted at school. Correct?</p> <p>23 A: Not to my knowledge.</p> <p>24 Q: Okay. Perfect. You testified your</p> <p>25 general impression of Evan just now.</p>	<p style="text-align: right;">Page 117</p> <p>1 ownership in the school?</p> <p>2 A: I would say so. Yes.</p> <p>3 Q: All right. And Evan really enjoys</p> <p>4 being at the school.</p> <p>5 A: From my perspective, yes.</p> <p>6 Q: Okay. And he's quick to make</p> <p>7 friends.</p> <p>8 A: Yeah. Mm-hmm.</p> <p>9 Q: And you've described him as being</p> <p>10 smart.</p> <p>11 A: He is.</p> <p>12 Q: And athletic.</p> <p>13 A: Yeah.</p> <p>14 Q: And he's fun to talk to.</p> <p>15 A: He is.</p> <p>16 Q: He's a great kid.</p> <p>17 A: He is.</p> <p>18 Q: And you've said repeatedly that</p> <p>19 he's a good guy.</p> <p>20 A: I have. Yes.</p> <p>21 Q: Okay. And in your deposition, and</p> <p>22 actually just now, you testified that in</p> <p>23 kindergarten, Evan had missed some school.</p> <p>24 A: Yeah.</p> <p>25 Q: Do you remember how many days he</p>

<p style="text-align: right;">Page 118</p> <p>1 missed?</p> <p>2 A: If you direct me back to that page,</p> <p>3 I could...</p> <p>4 Q: I will. That was my next request.</p> <p>5 Can you please, it's in Exhibit 73.</p> <p>6 A: Okay.</p> <p>7 Q: It's page 0514. If you need help</p> <p>8 finding that, let me know. I can help you.</p> <p>9 A: No, I got it.</p> <p>10 Q: Perfect. All right. How many days</p> <p>11 did Evan miss in kindergarten?</p> <p>12 A: Nine.</p> <p>13 MS. WILSON: Shelly, what page are you</p> <p>14 on?</p> <p>15 Q: 0514. Exhibit 73.</p> <p>16 A: From this snapshot here, it would</p> <p>17 show that it's nine. But two pop up as absent</p> <p>18 because of the staff development days, the ones that</p> <p>19 are called SDD. And it shows his am/pm because</p> <p>20 that's just the way the system works, unfortunately.</p> <p>21 Traditionally, in Clark County Schools, we've been</p> <p>22 am/pm kindergarten.</p> <p>23 Q: Okay.</p> <p>24 A: Evan went to a full day program.</p> <p>25 So we took attendance in the morning and attendance</p>	<p style="text-align: right;">Page 120</p> <p>1 A: No.</p> <p>2 Q: Would you describe that as him</p> <p>3 being truant?</p> <p>4 A: No.</p> <p>5 Q: What is a truant child? What is</p> <p>6 the definition of a truant child in Clark County</p> <p>7 School District?</p> <p>8 A: Truant. Well, truant would be if</p> <p>9 they have missed multiple days in a row. We don't</p> <p>10 know where... we do not know their whereabouts or if</p> <p>11 they exceed 20 days within a school year. We can go</p> <p>12 towards educational neglect under truancy.</p> <p>13 Q: Okay. Now, were all of these</p> <p>14 absences arranged or were they not arranged? Do you</p> <p>15 know.</p> <p>16 A: If I go down the list from the very</p> <p>17 top, the first one unverified, we would not know.</p> <p>18 That means he just did not come to school and a note</p> <p>19 was not provided by the parents.</p> <p>20 Q: Okay.</p> <p>21 A: CIR would be circumstance. That</p> <p>22 could be something as parents brought a note and said</p> <p>23 kiddo has got a doctor appointment or like you shared</p> <p>24 earlier, maybe at a counseling session or something</p> <p>25 like that. Circumstance would be someone that gave</p>
<p style="text-align: right;">Page 119</p> <p>1 in the afternoon. So the total appears to be 22, but</p> <p>2 there's really only 11 with nine of them being parent</p> <p>3 responsibility, the other two are staff development</p> <p>4 day.</p> <p>5 Q: Okay. So as far as the full day</p> <p>6 program, he had missed 11 days.</p> <p>7 A: Nine. Nine instructional days, two</p> <p>8 are uninstructional; staff development days that are</p> <p>9 coded SDD on the third and fourth of November 2014.</p> <p>10 Q: Got it. Okay.</p> <p>11 A: Those are not compulsory days for</p> <p>12 kids to go to school because we're training the</p> <p>13 teachers on those days. So they're not instructional</p> <p>14 days. So he missed nine instructional days.</p> <p>15 Q: So I guess parents could send their</p> <p>16 kids, right, and they get credit for attending?</p> <p>17 A: No.</p> <p>18 Q: Okay. So it's a... they must be</p> <p>19 recorded as absent.</p> <p>20 A: Correct.</p> <p>21 Q: Okay. So he missed nine days in</p> <p>22 kindergarten.</p> <p>23 A: Yes.</p> <p>24 Q: Would you describe that as</p> <p>25 excessive?</p>	<p style="text-align: right;">Page 121</p> <p>1 us some knowledge of why they're going to miss</p> <p>2 school, orthodontist, whatever.</p> <p>3 Q: Okay. Do you remember testifying</p> <p>4 in your deposition about Evan's absence since</p> <p>5 kindergarten?</p> <p>6 A: I don't.</p> <p>7 Q: You don't.</p> <p>8 A: If you share with me, I'm going</p> <p>9 to...</p> <p>10 Q: Do we have the deposition. I'll</p> <p>11 move on, Your Honor. Let's see. Court's indulgence</p> <p>12 for just a moment. Oh, when you first started</p> <p>13 testifying, when Ms. Wilson asked, he was sitting to</p> <p>14 the left of her, you identified... okay, I'll</p> <p>15 withdrawl that question. All right. You talked</p> <p>16 about the involvement of Evan's parents in school.</p> <p>17 A: Uh-huh.</p> <p>18 Q: And you said that, in your</p> <p>19 deposition in your testimony, that Ms. Nance is there</p> <p>20 occasionally.</p> <p>21 A: Yeah.</p> <p>22 Q: How often is that?</p> <p>23 A: I see her in the lunchroom, at</p> <p>24 least a half a dozen times this year that I could</p> <p>25 think of. And I've seen her in the drop-off lane. I</p>

Page 122

1 don't know. So many cars come through. I saw her
2 very often dropping her kid off. But I'm not always
3 right at that drop-off lane there. So, a couple of
4 times a week.
5 Q: Do you consider the drop-off lane
6 to be volunteering at school?
7 A: No. That would not be volunteering
8 in school.
9 Q: Okay. And how about Mr. Ferraro?
10 How often would you say that he's at school?
11 A: He's there more often. I see him
12 around town, around school I should say, more often.
13 He would come in and help in the lunchroom, have
14 lunch with his kid, that kind of thing, up in the
15 classroom.
16 Q: So he's at school more often than
17 Ms. Nance, correct? That's your testimony?
18 A: Yeah, I would say that.
19 Q: Okay. You've looked at the
20 visitation schedule the parties are following.
21 Correct?
22 A: Yes.
23 Q: Okay. And off the top of your
24 head, if you can remember, do you know how many days
25 Mr. Nance are... I'm sorry, Mr. Ferraro has? I

Page 123

1 apologize.
2 A: How many days he has?
3 Q: He has with Evan each month.
4 A: If you direct me to the page, I
5 could look at it. But I don't remember.
6 Q: Let's see. Can you please turn to
7 page, let's see. Oh, okay. She'll stipulate that
8 it's ten days. So dad has ten days a month.
9 A: Okay.
10 Q: Correct?
11 A: Yeah.
12 Q: So you said that you see him
13 regularly.
14 A: Yeah, during those ten days, he's
15 there for Evan.
16 Q: Okay. Is he volunteering at
17 school?
18 A: Yeah, he'll help out with the
19 teacher, running copies, that kind of thing, or in
20 the lunchroom. We help the kids if they need a
21 spork, a napkin, ketchup packet, that kind of thing.
22 Q: So you see him during each of those
23 ten days in Evan's classroom. Correct?
24 A: I wouldn't say every one of them.
25 But often during his ten day. Usually we know that

Page 124

1 it's... his timeframe that he's with his kiddos
2 because he'll be at school pretty often.
3 Q: And you have a three-week rotation
4 approximately where you had each teacher's classroom,
5 right?
6 A: Yes.
7 Q: Court's indulgence for just a
8 moment. One more question; when you see Mr. Ferraro
9 at school, is he there volunteering by himself or is
10 he with anyone else?
11 A: Sometimes by himself, sometimes
12 with his brother. I met his brother as well.
13 Q: Can you give me an approximation;
14 how often would you say he's by himself versus with
15 his brother?
16 A: If I see him like volunteering in
17 the classroom or volunteering in the lunchroom, he's
18 usually solo. If he's dropping off, sometimes
19 picking up, I see him with his brother. But his
20 brother has also volunteered. I've seen his brother
21 at the school or during the school day.
22 Q: Okay. Court's indulgence. I'll
23 pass the witness, Your Honor.
24 CROSS EXAMINATION
25 BY: Shannon Wilson

Page 125

1 Q: So even though Chris only has ten
2 days of timeshare per month, you've seen him more
3 frequently in the last school year...
4 MR. NAIMI: Objection, leading...
5 JUDGE GENTILE: Can't lead. Sustained.
6 Q: How much more frequently do you see
7 Mr. Ferraro in this case?
8 MR. NAIMI: Objection, asked and
9 answered.
10 JUDGE GENTILE: Overruled. Go ahead.
11 A: Answer that one?
12 JUDGE GENTILE: Yes, please.
13 A: I definitely... when it comes to
14 like volunteering in the classroom, volunteering in
15 the lunchroom, aside from drop off and pick up, I see
16 him much more frequently than Ms. Nance. But to put
17 a number onto that, I don't know. But definitely
18 more often.
19 Q: Do you still happen to have that
20 open to 514?
21 A: I do.
22 Q: Okay. Were the majority of Evan's
23 absences excused absences?
24 A: I count three unexcused. One, two,
25 three, January 7th, or January 9th, January 7th and

Page 126

1 then it looks like December 15th.
2 Q: So that was how many?
3 A: Three.
4 Q: Three, out of?
5 A: And those are actually tardies, not
6 even absences. There were the three tardies that
7 also appear to the right. The ones that read as
8 unexcused in this instruction are showing here as
9 tardies. So he would've come to school late.
10 Q: Okay. Are you aware of the... when
11 Mr. Ferraro volunteers at the school, is he there all
12 day long?
13 A: No.
14 Q: And when he volunteers at the
15 school, are you aware of what percentages of time
16 he's volunteering in the lunchroom and recess versus
17 in the classroom?
18 A: Yeah, I wouldn't know that. Yeah.
19 Q: All right. Thank you.
20 MR. NAIMI: No further questions.
21 JUDGE GENTILE: Okay. You may step
22 down. Thank you very much. It's 12:07... it's
23 almost 12:10 using that clock which apparently we're
24 a little behind up there. Are you through with him?
25 Hold on.

Page 127

1 MS. COOLEY: Jason we have to ask if
2 there are volunteer logs. No, hold on. Hold on.
3 BAILIFF: Go ahead.
4 MS. COOLEY: Yeah.
5 MR. NAIMI: I guess we have one more
6 question.
7 MS. COOLEY: Yeah, just one question.
8 That's it. It'll be very brief. I apologize.
9 MR. NAIMI: Sorry, Your Honor.
10 MS. COOLEY: Sorry, Your Honor.
11 JUDGE GENTILE: That's okay. Thank
12 you. We're still on the record. Thank you.
13 CROSS EXAMINATION
14 By: Shelly Cooley
15 Q: Thank you. Are there volunteer logs
16 that volunteers are required to sign in and out of
17 when they're volunteering in the classrooms or at
18 school?
19 A: It's the same check-in, checkout
20 system for when a parent checks the student in and
21 out of school. So if they check in to the school,
22 they would check in and they might write volunteer.
23 But they're not required to write volunteer.
24 Q: But if they visit the school, they
25 are required to sign in?

Page 128

1 A: Yeah.
2 MS. NAIMI: Okay. No further
3 questions.
4 JUDGE GENTILE: Okay. I think that's
5 it? All right. So it's now 12:10. We'll... I'll see
6 you back here at 1:30 for the lunch break.
7 MR. NAIMI: Thank you, Your Honor.
8 JUDGE GENTILE: I didn't keep good
9 track of when she started, but I'll figure that out
10 so that we know.
11 MR. NAIMI: It was about three minutes,
12 Your Honor.
13 MS. COOLEY: Maybe five.
14 JUDGE GENTILE: Yeah.
15 MS. COOLEY: Definitely not more than
16 that.
17 JUDGE GENTILE: All right. I'll figure
18 that out and we'll do the calculation when we start.
19 MR. NAIMI: Fair enough.
20 JUDGE GENTILE: Okay. Very good.
21 MR. NAIMI: Thank you, Your Honor.
22 JUDGE GENTILE: Thank you.
23
24 JUDGE GENTILE: Back on the record in
25 the Nance-Ferraro matter. It is D46817, and Ms.

Page 129

1 Wilson.
2 MS. WILSON: We have stipulated
3 exhibits to put on the record, Your Honor.
4 JUDGE GENTILE: Okay.
5 MS. WILSON: Okay. Well, I will tell
6 her mine and you can tell her yours. How about that?
7 MR. NAIMI: Okay, that works. You got
8 it. Okay.
9 MS. JUDGE: That would help. That way
10 I can look at them while you are addressing them
11 rather me...
12 MR. NAIMI: Yeah.
13 MS. WILSON: Okay. So, on defendant's
14 side there is a stipulation on A1, A2, B1, B2.
15 MS. JUDGE: So, Mr.... you are saying
16 Mr. Naimi's stipulated to these? Okay.
17 MS. WILSON: Right.
18 MS. JUDGE: These are your exhibits?
19 Okay.
20 MS. WILSON: And there would be a
21 stipulation on B3 as well, but that is already in.
22 MS. JUDGE: That is the reciprocal
23 photos included.
24 MS. WILSON: Correct.
25 MS. WILSON: Then F2...no, I take that

Page 130

1 back. F2 is not stippled, it is just admitted.
2 MR. NAIMI: Correct.
3 MS. WILSON: G1 is stippled but also
4 admitted, L1 is stippled but also admitted, M is
5 stipulated, but I think you have her financial
6 disposure.
7 MR. NAIMI: It is a pleading.
8 MS. WILSON: And that is it for
9 stipulations on our side.
10 MR. NAIMI: And yours. You got it?
11 MS. COOLEY: Okay.
12 MR. NAIMI: Shall I?
13 MS. COOLEY: Okay. All right, for ours,
14 Your Honor, we are stipulating 2, 3, 4, 5, 6, 16, 17,
15 18, 20, 21, 22, 23, 24, 30, 46, 47, 48, 55, 57, 61,
16 62, 63, 64, 65, 68, 69, 73, 74, 80, 81, and that is
17 it.
18 MR. NAIMI: Okay.
19 JUDGE: Right. Those will all be
20 admitted.
21 MR. NAIMI: Okay.
22 JUDGE: Ms. Wilson, we are at your next
23 witness.
24 MS. WILSON: We call a person most
25 knowledgeable for Rampart Casino.

Page 131

1 BAILIFF: Please remain standing, raise
2 your right hand, face the court.
3 MS. MCCULLOCH: Do you solemnly swear
4 that the testimony you are about to give in the
5 faction shall be the truth, the whole truth, and
6 nothing but the truth, so help you God?
7 MR. LONG: I do.
8 DIRECT EXAMINATION
9 BY: Shannon Wilson
10 Q: Good afternoon. Thank you for
11 appearance today. We'll do our best to get you out as
12 quickly as possible. My name is Shannon Wilson. I
13 represent the parties in this matter. Will you kindly
14 state and spell your name for the record.
15 A: Daniel Long. D-A-N-I-E-L L-O-N-G.
16 Q: All right. Do you know Christopher
17 Ferraro?
18 A: No.
19 Q: Do you know Sandra Nance?
20 A: No.
21 Q: Who is your employer?
22 A: Rampart Casino, from their JW
23 Marriott, Las Vegas.
24 Q: And what is your business address?
25 A: 221 North Rampart Boulevard, 89145,

Page 132

1 Las Vegas, Nevada.
2 Q: What is your job title?
3 A: Director of Marketing.
4 Q: And how long have you been employed
5 by Rampart Casino?
6 A: Just a little over 4 years.
7 Q: And how long have you held your
8 present position?
9 A: A little over a year.
10 Q: Can you please lead us about your
11 job responsibilities.
12 A: My job responsibilities are to
13 oversee the club, all of the database activities,
14 advertising for both the casino and the hotel, online
15 presence; a little bit of everything.
16 Q: Okay. And within those
17 responsibilities, will you be among the persons most
18 knowledgeable to explain records generated by Rampart
19 Casino in response to a subpoena duces tecum for
20 records of member's activity based on their customer
21 loyalty or member card?
22 A: Yes.
23 Q: In front of you there is an
24 exhibit, it says 'Defendant's Exhibits volume 2.
25 A: Yes.

Page 133

1 Q: All right. And you can push the
2 others to the side if you like.
3 A: Okay.
4 Q: And open that binder to tab N, as
5 in Nancy, 1.
6 A: Okay.
7 Q: Please take a few moments to look
8 through the records contained therein and let me know
9 when you are done.
10 A: Okay.
11 Q: Do you recognize these as records
12 of Rampart Casino?
13 A: Yes.
14 Q: And would you turn. If you notice
15 the records are numbered in the bottom right hand
16 corner, with the prefix D, E, F, T, R, A, M, P?
17 A: Yup.
18 Q: If you turn to page 2. Do you know
19 who Robin Barbie is?
20 MR. LONG: Yes. Robin Barbie is our
21 Cage Manager.
22 Q: Your Honor, we had moved to admit
23 exhibit N1 as a business record and being
24 authenticated by Ms. Barbie in a custodian
25 department's affidavit.

<p style="text-align: right;">Page 134</p> <p>1 JUDGE GENTILE: Any objection?</p> <p>2 Q: No objection.</p> <p>3 JUDGE GENTILE: It will be admitted.</p> <p>4 Q: All right. Now, Mr. Long, what I</p> <p>5 would like to ask you to do is to turn to page marked</p> <p>6 10.</p> <p>7 A: Okay.</p> <p>8 Q: Do you recognize what this is?</p> <p>9 A: Yes. This is an overview of all the</p> <p>10 documents following as backup to what we submitted.</p> <p>11 Q: Okay, and the next page?</p> <p>12 A: Is a picture of a driver's license</p> <p>13 from our system. We have ID scanners of all the</p> <p>14 player's club.</p> <p>15 Q: And is that linked to a particular</p> <p>16 player's card?</p> <p>17 A: Correct.</p> <p>18 Q: And page 12 please.</p> <p>19 A: On to the next page, it describes</p> <p>20 the player's card associated with the ID on the first</p> <p>21 page.</p> <p>22 Q: Okay. And is each individual</p> <p>23 assigned their own card?</p> <p>24 A: Correct.</p> <p>25 Q: Looking at page 13 please.</p>	<p style="text-align: right;">Page 136</p> <p>1 on the total, the 900 and 1072, because there is</p> <p>2 nothing on the attendant-paid pay-out, it matches the</p> <p>3 adjusted win-loss. That close column subtract from</p> <p>4 each other for the adjusted win-loss.</p> <p>5 Q: And if they were not the same, what</p> <p>6 would that represent?</p> <p>7 A: A jackpot hit on the machine.</p> <p>8 Q: Are dollars in and coin in the</p> <p>9 same?</p> <p>10 A: Yes.</p> <p>11 Q: And you used the term pit. What did</p> <p>12 you mean by that?</p> <p>13 A: ID play on the table games</p> <p>14 department.</p> <p>15 Q: Is there any other information on</p> <p>16 this page that we have not reviewed?</p> <p>17 A: Nope.</p> <p>18 Q: So turning now to page 15.</p> <p>19 A: This is the same basic statement,</p> <p>20 just broken up into pit and slot rather than by</p> <p>21 individual dates.</p> <p>22 Q: So what would the date range for</p> <p>23 this particular exhibit B?</p> <p>24 A: January 1st 2013 thru December 31st</p> <p>25 2013.</p>
<p style="text-align: right;">Page 135</p> <p>1 A: Page 13 is a sum of what we are</p> <p>2 going to go over in the next few pages.</p> <p>3 Q: Okay. So turn the page please in</p> <p>4 14, and what I would like you to do is if you could</p> <p>5 explain to us what this record is, and what each of</p> <p>6 the columns represent.</p> <p>7 A: This is a win-loss statements</p> <p>8 separated by day. If you look at gaming area that is</p> <p>9 the date of that day the person played on their</p> <p>10 player's card. Dollars in is the amount of coin in or</p> <p>11 total in based on the pit play, which is any moneys</p> <p>12 played. Dollars out would be anything removed from a</p> <p>13 slot machine or table game. Win-loss, any negative</p> <p>14 amount is one for the casino, any positive amount is</p> <p>15 one for the player. Attendant paid pay-out would be</p> <p>16 any jackpots on a slot machine, anything over \$1200.</p> <p>17 Adjusted win-loss is the win-loss minus the attendant</p> <p>18 paid pay-outs, so you get a total for what that</p> <p>19 adjusted win-loss would be. On this one there does</p> <p>20 not seem to be one that is why the calls match up.</p> <p>21 W2G level pay-out would be anything over \$1200 and</p> <p>22 then what those pay-outs would be.</p> <p>23 Q: Can you explain the matching</p> <p>24 columns again?</p> <p>25 A: The win-loss there is, if you see</p>	<p style="text-align: right;">Page 137</p> <p>1 Q: So, calendar year 2013?</p> <p>2 A: Correct.</p> <p>3 Q: Okay. And the explanation remains</p> <p>4 the same for the dollars in vs. dollars out?</p> <p>5 A: Correct.</p> <p>6 Q: And as slot as it sounds, it is a</p> <p>7 slot getting as supposed to a table game?</p> <p>8 A: Correct.</p> <p>9 Q: Now, when we talk about dollars in</p> <p>10 dollars out, do we mean literally raw dollars?</p> <p>11 A: No.</p> <p>12 Q: Okay. Explain what we mean.</p> <p>13 A: Every time the button is hit on the</p> <p>14 slot machine. So, as you play a slot machine</p> <p>15 sometimes you win a little bit, you lose a little bit</p> <p>16 as you continue to go. Every time you hit the button</p> <p>17 it is rated as coin in. When you look at the actual</p> <p>18 losses, the win-loss and the adjusted win-loss</p> <p>19 columns, that is what we use as what their actual</p> <p>20 loss is or win, depending.</p> <p>21 Q: Then turning to page 16.</p> <p>22 A: This will be January 1st of 2014</p> <p>23 thru December 31st of 2014.</p> <p>24 Q: And is there anywhere in the</p> <p>25 records that we can look and we can see exactly how</p>

<p style="text-align: right;">Page 138</p> <p>1 much money an individual put into a machine?</p> <p>2 A: No.</p> <p>3 Q: And then turning to page 17, this</p> <p>4 is the same type of record but for calendar year</p> <p>5 2015, correct?</p> <p>6 A: Number 17? It is 2015.</p> <p>7 Q: Right.</p> <p>8 A: Yes.</p> <p>9 Q: I am sorry if I said that wrong.</p> <p>10 And then turning to page 18, what do we have here?</p> <p>11 A: 18 starts a daily play of how much</p> <p>12 was wagered and played each day, for a breakdown from</p> <p>13 December 1st 2012 to the present of when we received</p> <p>14 the information. So, if you add it all this up it</p> <p>15 would equal the pages for each calendar year. This is</p> <p>16 just a daily breakdown of everything that happened</p> <p>17 during that time period.</p> <p>18 Q: Okay. And it looks like it provides</p> <p>19 us day-by-day play, correct?</p> <p>20 A: Correct.</p> <p>21 Q: What is the trip column?</p> <p>22 A: Trip column is how many trips the</p> <p>23 person made during a time period. If you are from out</p> <p>24 of state, we qualify trip on 7 days, if you are a</p> <p>25 local we qualify as 1 day. So you can have anywhere</p>	<p style="text-align: right;">Page 140</p> <p>1 out, would this represent a cumulative total of those</p> <p>2 2 machines?</p> <p>3 A: That is the entire time that the</p> <p>4 card was inserted into the machine.</p> <p>5 Q: Okay. And here, the columns are</p> <p>6 entitled total in, total out. Is that the same as</p> <p>7 dollars in and dollars out?</p> <p>8 A: The same as dollars in and dollars</p> <p>9 out</p> <p>10 Q: Thank you. And then the actual win,</p> <p>11 does that correspond onto the prior pages that we</p> <p>12 looked at to win-loss?</p> <p>13 A: Correct. That would be total in</p> <p>14 minus total out minus any attendant-paid pay-outs</p> <p>15 will give you your actual win column on this report.</p> <p>16 Q: And then what is the theoretical</p> <p>17 win?</p> <p>18 A: Theoretical win is something that</p> <p>19 casinos use to calculate where your play is so we can</p> <p>20 average your offers and make a more normalized idea</p> <p>21 of where you actually play, but if you pit come in</p> <p>22 and hit a big jackpot we do not want to give you less</p> <p>23 of an offer because you won money. So, we use</p> <p>24 theoretical to get an idea of where your normal play</p> <p>25 is and how much you would have lost that day to base</p>
<p style="text-align: right;">Page 139</p> <p>1 between 1 and 7 as if you are from out of town but as</p> <p>2 locals they just get 1 day of play. So that is a trip</p> <p>3 and play. If you are from out of town you had 6 days</p> <p>4 played and there is a 7-day trip, you would have 7 in</p> <p>5 the trip column and 6 in the play column. But because</p> <p>6 it is a local it is just 1 in 1.</p> <p>7 Q: Okay. So, does that represent then</p> <p>8 that...so taking as example the first line slot,</p> <p>9 November 27, 2015 start date, end date; that</p> <p>10 represents that they came into the casino one time in</p> <p>11 that day?</p> <p>12 A: On that day.</p> <p>13 Q: Now, if they had come in more than</p> <p>14 1 time; if they had put their card into a machine</p> <p>15 twice, would it show us too? Or would it still show</p> <p>16 us 1?</p> <p>17 A: It would not. It would just show</p> <p>18 the time played call and overall the law on the far</p> <p>19 right. So it will only show us 1 but you would see</p> <p>20 how much time they played.</p> <p>21 Q: Okay. And would that be a</p> <p>22 cumulative total? So for example if I went into the</p> <p>23 casino and I had player's card and I put my card into</p> <p>24 1 machine and I played and then I cashed out and I</p> <p>25 went to another machine and I played and I cashed</p>	<p style="text-align: right;">Page 141</p> <p>1 our offers on.</p> <p>2 Q: That seems to go on for several</p> <p>3 pages. So let us skip past that report and I think 36</p> <p>4 begins the next...actually no. Let's see. The 28th.</p> <p>5 Page 28, there is a different kind of record.</p> <p>6 A: This is a redemption record for</p> <p>7 December 1st 2012 to present. As you go across the</p> <p>8 ticket number as a system-generated number for what</p> <p>9 that redemption was, the nickname associates to the</p> <p>10 player's card, then you have an issue redemption</p> <p>11 date, status of whether it has been settled or</p> <p>12 voided. If it is settled, it has been complete; if it</p> <p>13 is voided it was never a completed transaction. The</p> <p>14 types are all described in the last final page to</p> <p>15 make it very easy. If you look at page 35...</p> <p>16 Q: Yes.</p> <p>17 A: ...you have all the different types</p> <p>18 there: prize equals the prize winning, comp equals</p> <p>19 complimentary, PBPSL is points earned and downloaded</p> <p>20 with personal pin number directly to a machine, point</p> <p>21 redeem are any points earned or redeemed at any</p> <p>22 outlet or restaurant, and then settled are obviously</p> <p>23 things that were settled in the system. And as you</p> <p>24 walk across any points would be points redeemed for</p> <p>25 any type of cash value. The points column directly</p>

<p style="text-align: right;">Page 142</p> <p>1 relates to the cash value call and would just be the 2 points column divided by 200 as what is in our 3 player's club. So every 200 points equals a dollar of 4 cash that comp free slot play. Anything that 5 associates back so, for example, as you go across you 6 can look at that top column and see that it is 800 7 points for \$4 cash and points to promo redeem is a 8 free slot play redeemed and that is the machine 9 number that it was redeemed at. And then the other 10 column for comp dollars, if you go down a little bit 11 you can see there is a comp for 31.98 as associates 12 to any comp dollars received based on discretionary 13 comps, and this one was to the buffet for dinner. 14 Q: All right then to page 36. 15 A: 36 is a screenshot of the lifetime 16 for our player. Total available is the points that 17 they currently had available on their account at the 18 time that this screenshot was taken. Earned are 19 lifetime points earned. Adjusted are any points that 20 were adjusted to the account based on the promotions. 21 Bonus would be any point multiplier points that were 22 earned during that time period. And then if you go 23 down towards the bottom, you see redeemed - would be 24 the points removed from the account based on the 25 redemptions that you can see in the other exhibit.</p>	<p style="text-align: right;">Page 144</p> <p>1 these kinds of promotions? 2 A: The points are earned based on play 3 on slot machines and video poker machines, and a 4 video poker machine, it is \$2 of coining gives you 1 5 point. On a video real or real slot game it is \$1 of 6 coining equals 1 point. Based on different 7 qualifications and different offers, their mailers 8 are based on their tier levels depending upon a lot 9 of different factors as we kind of calculate those 10 out. Dependents on where their mail actually falls. 11 Q: So a player earns their rewards 12 based on the amount of money that they play with? 13 A: Correct. 14 Q: All right. Moving to page 50? 15 A: Okay. This was just an overview of 16 our player packet where we said that the points are 17 accrued dollar to dollar coin in for 1 point for \$1 18 on real slots or video real slots and \$2 on video 19 poker machines, and table games player pit play does 20 not earn points. 21 Q: And then 51 and 52, those are just 22 the casino's promotional materials? 23 A: Correct. This is our promotional 24 packet that we hand out to anybody that comes up to 25 the club and explains our program and our rules for</p>
<p style="text-align: right;">Page 143</p> <p>1 Cash value directly relates back to the points, so 2 everything is just 200 divided by the number of 3 points gives you the cash value in each one of those 4 columns. And then comp dollars were just stationery 5 comps that were earned in the table games department 6 in the earned column and then removed or redeemed 7 based on a play. 8 Q: Then moving on to page 37. 9 A: 37 relates to promotional free slot 10 play. Promotional free slot play is free play that 11 were given in mailers or downloaded to the player's 12 club for any type of different mailers or swipes that 13 they got at the kiosk, different things that they 14 associate with them, which is different than 15 downloading your points to free slot play, which is 16 in the points report. 17 Q: Okay. So these, in the amount 18 column, the dollar values would actually represent 19 the dollar value of what the player could play based 20 on those promotions? 21 A: That was the amount downloaded to 22 the machine, so for example, on the 12-3-2012 to 12- 23 04, \$10 got downloaded to a machine on this player 24 account. 25 Q: How does a player earn points or</p>	<p style="text-align: right;">Page 145</p> <p>1 everything that we have going. 2 Q: All right. Just a moment please. 3 A: Absolutely. 4 Q: Is there anything within the record 5 that tells us the total amount of time played on this 6 card? 7 A: If you added up all the columns in 8 exhibit D, starting on page 18, if you added up that 9 time played column all the way throughout, that would 10 give you the entire time played since December 1st of 11 2012. I do not think there is a total column on what 12 I have here. 13 Q: And I think you already testified 14 that there really is no way to determine the total 15 money spent on this card. 16 A: Correct. If we use the win-loss 17 number, the actual win number, as kind of our number 18 for what we gauge to that. But, no, there is no way 19 to tell how much exact money was put in on that card. 20 Q: Okay. So if you are looking at a 21 win-loss, that is going to include the wins during 22 the time of play, correct? 23 A: Correct. So that is part of the 24 total out and the attendant-paid payouts. 25 Q: So if we look at, for instance, a</p>

Page 146

1 defendant ramp 15, page 15, back towards the
2 beginning...

3 A: Okay.

4 Q: ...in 2013 we had a dollar in and
5 slot paid \$127,752?

6 A: Correct.

7 Q: Is there a way for you to determine
8 how much of that was actual cash?

9 A: No. We just look at the win-loss
10 and see that there was \$6200 in loss on that account
11 and then you can see there is attendant paid payouts
12 for \$8251 for an adjusted win-loss of \$2000.

13 Q: Okay. Thank you. Pass the witness.

14

CROSS EXAMINATION

15 BY: JASON NAIMI

17 Q: My name is Jason Naimi. I have the honor
18 and privilege of representing Sandra Nance, who
19 I believe as the bearer of the records that you
20 have there. Your testimony here earlier today
21 was simply based off the records alone, right?

22 A: Correct.

23 Q: You have no personal knowledge of this
24 player right here?

25 A: No.

Page 147

1 Q: In fact, you do not even know whether or
2 not she is the player using the player's card?

3 A: Correct.

4 Q: These records that you have before you
5 simply track the player's card?

6 A: Correct.

7 Q: So if a player were to hypothetically
8 lend that card out to family, friends, whomever, that
9 is what these records reflect?

10 A: Correct.

11 Q: There is no way of identifying if you
12 know in fact it was this player using that card?

13 A: Correct.

14 Q: To be more clearer, the system has no
15 ability to verify the identity of the actual player
16 on the card to find?

17 A: No. It just knows what card is inserted
18 in the machine.

19 Q: And it is conceivable that players tend
20 to loan their cards out to friends and family and so
21 on?

22 MS. WILSON: Objection. Speculation.

23 Q: Have you ever know of any player to ever
24 lend their card out to other people to use it?

25 A: Yes.

Page 148

1 Q: And they do so because they rack up more
2 rewards by doing that dumping?

3 A: Correct.

4 Q: And by racking up rewards they get those
5 benefits?

6 A: Correct.

7 Q: Benefits like pool time or comps at
8 restaurants, perhaps a comp on hotel rooms?

9 A: Correct.

10 Q: You have no personal knowledge of Sandra
11 Nance?

12 A: No.

13 Q: You do not know her to be a player at
14 the Rampart Casino?

15 A: I do not.

16 Q: No further questions.

17 DIRECT EXAMINATION

18 BY: Shannon Wilson

19 Q: To follow up, does the casino have any
20 rules or regulations regarding the use of the
21 individual player card?

22 A: Would you have rules on our player's
23 club brochure if you look back in there that say that
24 player must play on their own card.

25 Q: And when points or bonuses are redeemed,

Page 149

1 does the casino verify the person who is redeeming
2 them?

3 A: Depending upon the redemption. If they
4 go to an actual person to redeem the offer, yes. if
5 they walk up to a slot machine, they would have to
6 know the pin number on that account, but there is no
7 person there to verify unless they have that pin
8 number.

9 Q: Thank you. No more questions.

10 CROSS EXAMINATION

11 BY: Jason Naimi

12 Q: Quick follow up to that. I think you
13 answered this a moment ago when I wanted to just be
14 clear, you do not identify players using the cards on
15 a regular basis?

16 A: Correct.

17 Q: And it is certainly possible that
18 someone benefiting or taking advantage of any reward
19 points that the player's card has been issued? It is
20 possible that it is not in fact the player who has
21 that card?

22 MS. WILSON: Objection. Speculation.

23 Q: I asked if whether or not it is
24 possible.

25 MS. JUDGE: Yeah. Overruled. Go ahead.

Page 150

1 A: It is possible.
2 Q: Thank you. No further questions.
3 JUDGE GENTILE: You can step down. Thank
4 you.
5 MS. WILSON: He is just going to go to
6 the restroom but we can proceed. Gold Coast.
7 BAILIFF: Raise your right hand, face
8 the court.
9 MS. MCCULLOCH: Do you solemnly swear
10 the testimony you are about to give this action shall
11 be the truth, the whole truth, and nothing but the
12 truth, so help you God?
13 MR. HARKINS: I do.
14 DIRECT EXAMINATION
15 BY: Shannon Wilson
16 Q: Good afternoon, sir.
17 A: Hi.
18 Q: Hi. My name is Shannon Wilson. I
19 represent one of the parties in this matter and
20 I really appreciate your time today.
21 A: Sure.
22 Q: Trying to get you out just as quickly as
23 we possibly can. Would you kindly state and
24 spell your name for the record?
25 A: My name is David Harkins. H-A-R-K-I-N-S.

Page 151

1 Q: And do you know who Christopher Ferraro
2 is?
3 A: No.
4 Q: Do you know who Sandra Nance is?
5 A: No.
6 Q: Who is your employer?
7 A: Boyd Gaming.
8 Q: And do you work for a specific facility
9 for that?
10 A: We do the accounting of the Orleans for
11 both the Orleans and the Gold Coast.
12 Q: And what is your business address?
13 A: 4500 West Tropicana Avenue.
14 Q: And what is your job title?
15 A: Assistant controller.
16 Q: How long have you been employed by Boyd?
17 A: Going on 11 years.
18 Q: And how long have you held your current
19 position?
20 A: Three years.
21 Q: What are your job responsibilities in
22 the position?
23 A: Handling all the financial statements
24 for both properties and closing during entries, just
25 all around.

Page 152

1 Q: Within your job responsibilities, would
2 you be among the persons most knowledgeable to
3 explain records generated by Gold Coast and
4 Orleans in response to a subpoena for records of
5 a player's customary loyalty or rewards program?
6 A: Yes.
7 Q: If you would, there is a binder in front
8 of you. Turn to N2, as in Nancy. So it should be
9 the one right in the middle. It should be
10 Defendant's Exhibit volume 2.
11 A: Okay.
12 Q: And take just a few moments if you would
13 to browse thru those and let me know when you
14 are done.
15 JUDGE GENTILE: Ms. Wilson, can you
16 state your full name again for the record,
17 please.
18 A: David Harkins. H-A-R-K-I-N-S.
19 JUDGE GENTILE: Okay. Thank you.
20 A: Okay.
21 Q: Do you recognize these as records
22 of the Orleans and Gold Coast?
23 A: Yes.
24 Q: And if you noticed there, the pages
25 are numbered in the lower right-hand corner.

Page 153

1 A: Uh-hmm.
2 Q: D-E-F-T-O-R-L-E and then followed
3 by a number. Looking at page 1 of this-- is it a
4 Custodian of Records Affidavit and it was, in fact,
5 completed by you. Correct?
6 A: Yes, it was.
7 Q: Your Honor, we'd move to admit
8 exhibit N 2 under the business records...
9 MR. NAIMI: No objection.
10 JUDGE GENTILE: Okay. Will be
11 admitted.
12 Q: All right. So Mr. Harkin, what I'd
13 like to do now is just have you quickly explain these
14 records to us. So if you could start with page 2...
15 A: Page 2?
16 Q: ...tell us what we're looking at.
17 A: This would be a trip history by
18 day, and it would show you whether the card holder or
19 club holder won or lost, win-loss for the day.
20 Q: So the days actually go across the
21 top from left...
22 A: Yes.
23 Q: ...to right?
24 A: Yes, ma'am.
25 Q: All right. And so that's a day-by-

Page 154

1 day win-loss number. Do I understand that correctly?
2 A: Yes.
3 Q: All right. What does win-loss
4 represent?
5 A: Between the coin in and coin out in
6 that particular...for that particular day.
7 Q: So if we look, for example, at the
8 first column, August 7, 2015, does that represent
9 that the player lost \$25?
10 A: Correct.
11 Q: Can you also explain what
12 the...under the earn potential. What does that
13 number reflect?
14 A: That number would reflect any
15 complementaries that would be available...
16 Q: So comp...
17 A: ...for the customers.
18 Q: I'm sorry to interrupt you.
19 A: That's all right.
20 Q: So you mean complementaries earned
21 based on their play that day?
22 A: Correct.
23 Q: And then there's actually a
24 category called Complementary.
25 A: Yes.

Page 155

1 Q: Would that reflect a redemption?
2 A: Correct.
3 Q: If you would turn to page 12, we
4 are looking now at a slightly different kind of
5 record.
6 A: Uh-hmm.
7 Q: What is this?
8 A: This would be the actual slot
9 rating information that would show the total coin in,
10 the win-loss. Then on the far hours played, that
11 would be based on 60-minute increments. So on this
12 particular day, on the 7th, she would have played 18
13 minutes.
14 Q: If you would just continue through
15 those till we get to the different kind of record.
16 Fifty one might be the next one.
17 A: Okay. Yeah. This would be the
18 information from New Orleans.
19 Q: So if we...we don't have to turn
20 back to page 2, but page 2 would have been
21 information for the Gold Coast, then?
22 A: Exactly.
23 Q: Okay. And then page 51 begins...
24 A: Starts with New Orleans.
25 Q: There's no differences between the

Page 156

1 information provided by Gold Coast versus Orleans, is
2 that...?
3 A: No. The same system.
4 Q: And then similarly, Orleans
5 provided a daily record of coin in and estimated win-
6 loss in the template, correct?
7 A: Correct. Correct.
8 Q: And that's also based on the 60-
9 minute increment?
10 A: Yes exact same.
11 Q: Is there any record that tells us
12 the total win-loss or would we have to add through
13 all of the columns?
14 A: It would be...yeah, that's...when I
15 submitted this originally, that's why I put a tape on
16 it, but that's...
17 Q: Okay. So if you look at page 51,
18 there's an image of a tape. So that's \$105 loss.
19 A: Correct. Yes.
20 Q: And if we look at page 2, you have
21 the tape on there.
22 A: Uh-hmm. 3
23 Q: It reflects a loss of \$4,227?
24 A: Correct.
25 Q: And is there...is the time played

Page 157

1 totaled anywhere or would we have to add that up
2 individually?
3 A: That would have to be added up
4 individually.
5 Q: Okay. Pass the witness.
6
7 DIRECT EXAMINATION
8 BY: Jason Naimi
9 Q: Good afternoon.
10 A: Good afternoon.
11 Q: My name is Jason Naimi. I have the
12 privilege of representing Sandra Nance whose records
13 you have before you. Sorry, I apologize for
14 redundant your Honor.
15 JUDGE GENTILE: Fine. It's okay.
16 Q: The testimony you gave here long
17 ago was based on these records alone.
18 A: Correct.
19 Q: You have no personal knowledge of
20 Ms. Sandra Nance.
21 A: No.
22 Q: In fact, you don't know her to be a
23 player at any of your casinos?
24 A: No.
25 Q: Your system does not verify the

<p style="text-align: right;">Page 158</p> <p>1 identity of the player, correct?</p> <p>2 A: Correct. That's all based on the</p> <p>3 cards.</p> <p>4 Q: Who places the card?</p> <p>5 A: Yes.</p> <p>6 Q: And if a player were to lend their</p> <p>7 card out to family, friends and so on, that's what</p> <p>8 its tracking?</p> <p>9 A: Correct.</p> <p>10 Q: It's the card in the machine, not</p> <p>11 who's using it.</p> <p>12 A: Correct.</p> <p>13 Q: And you wouldn't know who is using</p> <p>14 it, because you're not there watching...</p> <p>15 A: Monitoring? Correct.</p> <p>16 Q: In fact, you guys don't have a</p> <p>17 system for monitoring who's using the card. You're</p> <p>18 just tracking the card.</p> <p>19 A: Exactly.</p> <p>20 Q: You don't ID players who are using</p> <p>21 cards at any point of the day?</p> <p>22 A: No.</p> <p>23 Q: It's possible that a player forgets</p> <p>24 their card in the machine and someone else comes in</p> <p>25 and continues to play on that same card?</p>	<p style="text-align: right;">Page 160</p> <p>1 casinos have a policy that requires one player...</p> <p>2 MR. NAIMI: Objection, leading.</p> <p>3 Q: ...one card?</p> <p>4 5 GENTILE: Yeah. Sustained. Re-</p> <p>5 phrase.</p> <p>6 Q: What are the tax ramifications with</p> <p>7 respect to a player's win-loss ratio?</p> <p>8 MR. NAIMI: Objection. This person is</p> <p>9 not a tax expert and can't... comment... can't</p> <p>10 testify on taxes.</p> <p>11 JUDGE GENTILE: Sustained.</p> <p>12 Q: Does the casino issue any tax</p> <p>13 records to players based on their win-loss ratios?</p> <p>14 A: Depending on if they have a</p> <p>15 reportable jackpot.</p> <p>16 Q: And what's a reportable jackpot?</p> <p>17 A: \$1,199.</p> <p>18 Q: And they would be expected to...</p> <p>19 you'd remit that to the IRS, correct?</p> <p>20 A: Correct.</p> <p>21 Q: Thank you. No further questions.</p> <p>22 JUDGE GENTILE: Okay.</p> <p>23 MR. NAIMI: Nothing further.</p> <p>24 JUDGE GENTILE: All right. Witness may</p> <p>25 step down. Thank you.</p>
<p style="text-align: right;">Page 159</p> <p>1 A: Certainly.</p> <p>2 Q: It would still rack up points. It</p> <p>3 would still show time in the machine.</p> <p>4 A: Uh-hmm.</p> <p>5 Q: It would still appear to you in</p> <p>6 your records as though that card is still being used</p> <p>7 by that player.</p> <p>8 A: Correct.</p> <p>9 Q: Nothing further.</p> <p>10</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY: Shannon Wilson</p> <p>13 Q: Does Boyd have a policy regarding</p> <p>14 utilization of a card by an individual player?</p> <p>15 A: They do not.</p> <p>16 Q: Pardon me?</p> <p>17 A: Do they have a policy?</p> <p>18 Q: Yes. Is it one card per player, or</p> <p>19 can a player share their card with multiple people?</p> <p>20 A: It should be just for that</p> <p>21 particular individual.</p> <p>22 Q: Okay. And why would that be?</p> <p>23 A: Because that's who the card is</p> <p>24 registered to.</p> <p>25 Q: Okay. Is one of the reasons that</p>	<p style="text-align: right;">Page 161</p> <p>1</p> <p>2 MS. WILSON: Next one is going to be...</p> <p>3 so yes, Suncoast.</p> <p>4</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY: Shannon Wilson</p> <p>7 BAILIFF: Please stand, raise your</p> <p>8 right hand and face the clerk.</p> <p>9 MS. MCCULLOCH: You do solemnly swear</p> <p>10 the testimony you're about to confess shall be the</p> <p>11 truth, the whole truth, and nothing but the truth, so</p> <p>12 help me God?</p> <p>13 A: I do.</p> <p>14 Q: Good afternoon, and thank you for</p> <p>15 your attendance here today. We appreciate you taking</p> <p>16 your time to come. We will try to get you out as</p> <p>17 quickly as we possibly can. My name is Shannon</p> <p>18 Wilson. I represent one of the parties in this case.</p> <p>19 Could you kindly state your name for the record?</p> <p>20 A: James Fremont.</p> <p>21 Q: Spell your last name, please?</p> <p>22 A: F-R-E-M-O-N-T.</p> <p>23 Q: Do you know Christopher Ferraro?</p> <p>24 A: No, ma'am.</p> <p>25 Q: Do you know Sandra Nance?</p>

<p style="text-align: right;">Page 162</p> <p>1 A: No, ma'am.</p> <p>2 Q: Who is your employer?</p> <p>3 A: Boyd Gaming Corporation.</p> <p>4 Q: Do you work for a specific division</p> <p>5 of Boyd?</p> <p>6 A: Yes, the Suncoast.</p> <p>7 Q: And what is your job title?</p> <p>8 A: Director of Finance.</p> <p>9 Q: How long have you been employed by</p> <p>10 Boyd at Suncoast?</p> <p>11 A: Boyd overall, 15 years; eight years</p> <p>12 at Suncoast.</p> <p>13 Q: And how long have you held your</p> <p>14 present position?</p> <p>15 A: Eight years.</p> <p>16 Q: Can you briefly discuss your job</p> <p>17 responsibilities for us?</p> <p>18 A: I am, in addition to custodian of</p> <p>19 records, I also handle the oversight of production of</p> <p>20 financial statements and maintenance over a system of</p> <p>21 controls as well as reimbursing of the cage, the</p> <p>22 counter room and receiving, that type of thing.</p> <p>23 Q: And within those job</p> <p>24 responsibilities, would you be among the persons of</p> <p>25 most knowledgeable to explain records generated in</p>	<p style="text-align: right;">Page 164</p> <p>1 admitted.</p> <p>2 MR. NAIMI: Sorry, no objection. I</p> <p>3 apologize, your honor.</p> <p>4 JUDGE GENTILE: Ms. Cooley was way</p> <p>5 ahead of you.</p> <p>6 Q: All right.</p> <p>7 MR. NAIMI: I'll take the asking, Your</p> <p>8 Honor.</p> <p>9 JUDGE GENTILE: It's okay.</p> <p>10 MR. NAIMI: That would be all.</p> <p>11 JUDGE GENTILE: Got you. It's all</p> <p>12 right.</p> <p>13 MR. NAIMI: Ask my wife. I can't do</p> <p>14 it.</p> <p>15 Q: Mr. Fremont, would you kindly turn</p> <p>16 to the next page, page 2? What I'm going to do now</p> <p>17 is sit and have you go through each category of</p> <p>18 records and explain to us what we're looking at.</p> <p>19 A: Okay.</p> <p>20 Q: Starting with number 2. What are</p> <p>21 we looking at here?</p> <p>22 A: That page labeled Customer Status</p> <p>23 Inquiry just shows basic information about the</p> <p>24 customer's name, address, bank information, that type</p> <p>25 of thing.</p>
<p style="text-align: right;">Page 163</p> <p>1 response to a request for information related to an</p> <p>2 individual's player card?</p> <p>3 A: Yes.</p> <p>4 Q: If you would, there's a binder in</p> <p>5 the middle of the desk in front here. Open it. The</p> <p>6 first tab is N. If you go to N-3.</p> <p>7 A: Okay.</p> <p>8 Q: And then take just a few moments,</p> <p>9 if you would, to look through those records there and</p> <p>10 let me know when you're done.</p> <p>11 A: Okay.</p> <p>12 Q: Do you recognize these as records</p> <p>13 that you produced in response to a subpoena duces</p> <p>14 tecum?</p> <p>15 A: Yes.</p> <p>16 Q: In fact, if you've noticed too,</p> <p>17 there is a number at the lower right corner of each</p> <p>18 page. Number 1 was that Affidavit of Custodian of</p> <p>19 Records prepared by you.</p> <p>20 A: Yes, it was.</p> <p>21 Q: Your Honor, we move to admit</p> <p>22 Exhibit N-3.</p> <p>23 JUDGE GENTILE: No objection?</p> <p>24 MS. COOLEY: No.</p> <p>25 JUDGE GENTILE: Okay. It'll be</p>	<p style="text-align: right;">Page 165</p> <p>1 Q: Okay. And how about page 3?</p> <p>2 A: Similarly, it just goes through a</p> <p>3 few more details as far as social security number,</p> <p>4 contact information, ID number.</p> <p>5 Q: How about page 4?</p> <p>6 A: That gives a summary in this case</p> <p>7 from December of 2012 through mid-December of 2015,</p> <p>8 and gives us a summary overall of the gaming</p> <p>9 activity.</p> <p>10 Q: So let's look at that in a little</p> <p>11 more detail. So it identifies about five lines down</p> <p>12 on the first column, it says WN/LS. What does that</p> <p>13 represent?</p> <p>14 A: That represents an instance of,</p> <p>15 during that time period the particular patron had</p> <p>16 lost \$580.</p> <p>17 Q: That's actual money lost, is that</p> <p>18 correct?</p> <p>19 A: Correct.</p> <p>20 Q: So that doesn't reflect some point</p> <p>21 in, point out number. That's the dollar value lost</p> <p>22 by that card?</p> <p>23 A: Correct.</p> <p>24 Q: And then does that refer to table</p> <p>25 games?</p>

Page 166

1 A: Yes.
2 Q: And slots refers to any kind of
3 video machine?
4 A: Correct.
5 Q: And then what is the next section?
6 EP?
7 A: That stands for earnings potential,
8 which would be the expectation of win or loss for a
9 theoretical hold percentage for that level of play.
10 Q: Can you state that in lay person's
11 terms? What does that mean?
12 A: Sure. That means that if, in the
13 example where it says pit plus \$102, it might mean,
14 based on typical percentages for the amount wagered
15 that someone might, in a lot of cases, had an
16 opportunity to win that \$102.
17 Q: But that was not, in fact, what
18 happened?
19 A: No, ma'am.
20 Q: Okay. And is that number based on
21 the amount of dollars played?
22 A: Yes. And just to be very clear,
23 the earnings potential would be for the casino that
24 you would expect that the win would be the \$102 on
25 the casino's side of things.

Page 167

1 Q: And then the next category is comp.
2 What is that?
3 A: It gives an approximate value of
4 any comps that the patron received.
5 Q: Is that comps that they actually
6 tendered?
7 A: Correct.
8 Q: And then sort of the left-hand
9 column, it begins date range and bonus points. Can
10 you describe that section to us?
11 A: Yes. For the range specified in
12 the header, it means that the patron would have
13 earned the \$236,924 bonus points. A couple of lines
14 down, promotional would be number of points awarded
15 for promotions that were not necessarily awarded
16 based on play. Credits and debits would be any
17 adjustments to the account. And finally, redeemed
18 would be points that were cashed in, if you will, for
19 some sort of value.
20 Q: And then in the far column where it
21 reads \$1,685.90 is that the dollar value of the
22 points?
23 A: Correct. Points that were then
24 redeemed and it correlates to the left-hand column in
25 terms of where there's comp rooms and comp food and

Page 168

1 beverage.
2 Q: Moving on then to page 5, is this
3 the same kind of record we just reviewed?
4 A: Yes, ma'am, it is. The difference
5 would be in the middle and to the right-hand edge.
6 That data would be specifically related to table
7 points; which it does not look like we have activity
8 here for.
9 Q: And page 6, what's the difference
10 of that record?
11 A: In that case, it is referring to
12 card score which is not honestly a category I deal
13 with with any irregularity.
14 Q: And then it looks like the next
15 page, the difference is that it's describing bonus
16 points.
17 A: On this page, the left-hand column
18 breaks down details of pit game activity or table
19 game activity.
20 Q: And then I see... so what is the
21 first bet column?
22 A: First bet, in this case, is zero.
23 I'm not sure that's an area that we use regularly.
24 Right below that, the average bet is something that
25 we will routinely track in terms of scoring someone's

Page 169

1 gaming activity in the table area.
2 Q: So does that actually mean that
3 that player's card average bet is \$17?
4 A: Correct.
5 Q: And then hours played, is that an
6 average or is that a raw number?
7 A: I believe that is a total raw
8 number of 4.7 hours during that whole span of time.
9 Q: What is cash buy-ins and wagers?
10 A: That would be at the tables.
11 Meaning that money actually put at risk would be the
12 \$1,085.
13 Q: So that's the actual cash amount
14 that was wagered by the individual holding the card?
15 A: Correct.
16 Q: And then the estimated win-loss,
17 again, that's the actual loss by the player?
18 A: Patron. Yes.
19 Q: Okay. And looking at the next
20 page, this would appear to be similar information but
21 for slot games. Is that right?
22 A: Correct.
23 Q: Okay. And does this show us the
24 hours played?
25 A: Yes, ma'am. So in that roughly

Page 170

1 three-year time span, it would have been 397.2 hours.
2 Q: And then it also tells us... again,
3 it tells us the loss and your earning potential.
4 Then I see number of days played as well.
5 A: Yes, ma'am.
6 Q: Is that the number of times the
7 card goes into a machine or is that a number of days?
8 A: That would refer to the number of
9 days or in some of the other documentation referred
10 to as trips.
11 Q: So 234 days played over that
12 roughly three-year window?
13 A: Correct.
14 Q: And on page 9, it looks like we
15 have something called the "Other Games." What would
16 that be?
17 A: Other Games - things like bingo,
18 racing sports, that type of thing, which doesn't look
19 like we have much activity there.
20 Q: And then on page 10, what are we
21 looking at here?
22 A: That is a standard win-loss
23 statement and it looks like it's for 2013.
24 Q: And do you issue those annually for
25 every card?

Page 171

1 A: Upon request.
2 Q: And then looking at page 11, what
3 are we looking at here?
4 A: That would be details. Here again
5 for 2013, which would give day-by-day activity that
6 would sum the overall win-loss statement on page 10.
7 Q: So we have a day column and we have
8 an hours column. How is the fraction calculated
9 there? Is it based on 60 minutes?
10 A: Yes, it is. It would be however
11 many minutes basically divided by 60.
12 Q: And so if we added that column, it
13 would come to the number that was on one of the prior
14 pages that we reviewed?
15 A: Yes, ma'am.
16 Q: And then it looks like it also
17 tells us the daily win-loss.
18 A: Correct.
19 Q: And then turning to page 18, page
20 14 has that information for 2014. And then page 18
21 and 19 has the same information for 2015, correct?
22 A: Yes.
23 Q: And then I see something called the
24 grid transaction log. What's that?
25 A: That is a detailed record of cash

Page 172

1 activity that is captured by our systems that are
2 meant to just accumulate anything that could have any
3 relevance at all to the anti-money laundering type
4 record keeping.
5 Q: Page 29, what is that?
6 A: That is a listing of W-2Gs issued
7 for the given patron.
8 Q: That's a tax record that's issued
9 when they win money over a certain amount?
10 A: Yes, ma'am.
11 Q: And the pages 30 through to 43,
12 those look like the comps redeemed. Is that what
13 we're looking at there?
14 A: Yes.
15 Q: Okay. And then turning to page 44,
16 are these daily records of what was summarized at the
17 beginning?
18 A: Correct. That from 44 for quite a
19 ways then, it lists that summary for each trip or
20 each day as is tracked in the system.
21 Q: Is there any other kind of record
22 after that?
23 A: No, ma'am.
24 Q: I pass the witness.
25

Page 173

1 DIRECT EXAMINATION
2 BY: Jason Naimi
3 Q: Good afternoon. My name is Jason
4 Naimi. I have the privilege of representing Sandra
5 Nance whose records you're in possession right now.
6 Just to clarify, the testimony you gave here today is
7 based off of records alone?
8 A: Correct.
9 Q: You have no personal knowledge of
10 this player or this player's card?
11 A: No, sir.
12 Q: You don't know Ms. Sandra Nance?
13 A: No, Sir.
14 Q: The system is designed to track the
15 card itself, not the player?
16 A: Correct.
17 Q: You wouldn't know whether or not...
18 or the system wouldn't know whether or not...
19 wouldn't know who was using the card?
20 A: Correct. And... I'm sorry.
21 Q: If a player were to lend his or her
22 card out to friends and families and so on, you guys
23 would have no idea?
24 A: In terms of slots. Correct.
25 Q: Simply... right, right. Simply

Page 174

1 just the carding machine.
2 A: Correct.
3 Q: That's how you track it?
4 A: Exactly.
5 Q: You have no records of how many
6 copies of cards are out there?
7 A: No, sir.
8 Q: So if a patron loses a card and
9 gets another, it's conceivable that two cards are
10 being played at the same time, same identity?
11 A: Absolutely.
12 Q: You don't ID players when they're
13 using their card in the slots machines?
14 A: For slots, only upon jackpots.
15 Q: It's possible that a player may
16 forget their card in the machine, correct?
17 A: Uh-hmm.
18 Q: But another player might come in
19 and keep playing on that card, and you have no idea
20 that's a different player playing that card because
21 it is forgotten in the machine.
22 A: There are certain aspects of the
23 system that require a PIN number...
24 Q: Okay.
25 A: ...to be entered.

Page 175

1 Q: Other than that, it would stay
2 there for a while and it's continued to be played
3 upon even if it's another player.
4 A: Sure.
5 Q: I have no further questions.
6 DIRECT EXAMINATION
7 BY: Shannon Wilson
8 Q: Does the Suncoast have a policy
9 regarding what player can use a card?
10 A: Each player is ideally identified
11 separately. In general, we don't really allow shared
12 accounts. You need to have your own card, at least,
13 as a design of the system.
14 Q: Why is that?
15 A: For proper tracking of not only IRS
16 documentations but the anti-money laundering, et
17 cetera.
18 Q: And you had said that you do verify
19 players when they win a jackpot. Is that a jackpot
20 of a certain amount or of any amount?
21 A: Anything that would be, I believe,
22 \$1,200 or more would require an ID prior to pay.
23 Q: No more questions.
24 JUDGE GENTILE: I've a quick question.
25 They're ID-ed if they play at a table?

Page 176

1 A: Generally.
2 Q: Okay. Nothing further. Thank you
3 for your time. Wynn.
4
5 BAILIFF: Please stand. Raise your
6 right hand and face the clerk.
7 MS. MCCULLOCH: Do you solemnly swear
8 that testimony you are about to give in this action
9 will be the truth and nothing but the truth so help
10 you God?
11 MR. WHELAN: I do.
12 DIRECT EXAMINATION
13 BY: Shannon Wilson
14
15 Q: Good afternoon, sir. Thank you for
16 your time today. We really appreciate it. We'll try
17 to finish this as quickly as we can. I represent one
18 of the parties in this case. Can you kindly of
19 state... my name is Shannon Wilson and I represent
20 Mr. Ferraro. Can you kindly state your name and
21 spell your last name for the record?
22 A: Lawrence Whelan. W-H-E-L-A-N.
23 Q: And, Mr. Whelan, who is your
24 employer?
25 A: Wynn Las Vegas?

Page 177

1 Q: And do you know Christopher
2 Ferraro?
3 A: No.
4 Q: Do you know Sandra Nance?
5 A: No.
6 Q: What is your current job title?
7 A: Compliance officer.
8 Q: And how long have you been employed
9 by Wynn?
10 A: Over 12 years.
11 Q: How long have you held your
12 present position?
13 A: Almost a year.
14 Q: What are your job responsibilities?
15 A: I'm responsible for the properties
16 compliance with all applicable laws and regulations.
17 Q: In that capacity, would you be
18 among the persons who's most knowledgeable to explain
19 records generated by Wynn pursuant to a subpoena
20 duces tecum for records associated with member
21 loyalty program?
22 A: Yes.
23 Q: With that, would you kindly,
24 there's a binder right in front of you right, one in
25 the middle of the desk there. Would you turn to

Page 178

1 Exhibit N-4. Take a moment to look through the pages
2 in that exhibit and let me know when you're done.
3 A: Finished.
4 Q: Do you recognize these as records
5 produced by Wynn?
6 A: Yes.
7 Q: And if you will notice, there is a
8 number in... sometimes on the lower right-hand
9 corner, and then depending on the orientation of the
10 page, sometimes it's in the upper right-hand corner.
11 But if you return to D-E-F-T-W-L-V 003.
12 A: Yes.
13 Q: Who is Kristina Espinosa?
14 A: Sorry, maybe I'm on the wrong page?
15 Q: There's a Certificate of Custodian
16 of records at the title.
17 A: Yes.
18 Q: Do you know Ms. Espinosa?
19 A: Yes.
20 Q: Who is she?
21 A: She is a Wynn Las Vegas employee.
22 Q: And, Your Honor, we move to admit
23 Exhibit N-4 as the records were produced pursuant to
24 a subpoena duces tecum and pursuant to the Custodian
25 of records.

Page 179

1 MR. NAIMI: I'm paying attention this
2 time.
3 JUDGE GENTILE: Objection?
4 Q: Objection.
5 JUDGE GENTILE: Okay. It'll be
6 admitted.
7 Q: All right, thank you. And I
8 apologize for the smallest of the print. We printed
9 these from a disk that we got from Wynn, so I hope
10 you don't need readers. If you would turn to...
11 there is a page that is marked WL15 and that's going
12 to be one of those words. The orientation is
13 landscape, so the number is going to be on the upper
14 right-hand corner.
15 A: Yes, I see it.
16 Q: Okay. Can you explain to us what
17 are we looking at here?
18 A: It's a summary report that shows
19 the customer's gaming activity at Wynn Las Vegas.
20 Q: And by what periods does it show
21 that activity?
22 A: It is for the years 2014 and 2015.
23 Q: It looks like a monthly summary.
24 Is that correct?
25 A: There's a section that's summary by

Page 180

1 month. Yes.
2 Q: And then I see, if we're looking at
3 the summary by month section and we follow the
4 columns across, we have days and trip. Does that
5 reflect the number of times that the card went into a
6 machine or just it could have gone into a machine
7 multiple times in one day?
8 MR. NAIMI: Objection, leading.
9 JUDGE GENTILE: Sustained.
10 Q: Can you explain what the trip total
11 means?
12 A: That's the number of days that a
13 customer had gaming activity at Wynn Las Vegas.
14 Q: And what is TG Cash Buy in? What
15 does that reflect?
16 A: TG stands for Table Games, and Cash
17 Buy in is the dollar value of cash that was presented
18 at a table game in the pit.
19 Q: And then what is the time played?
20 How was that calculated?
21 A: Time played is calculated in
22 seconds.
23 Q: And what actual win is that? What
24 it suggested is that's what the player actually won
25 or lost?

Page 181

1 A: The actual win column is in terms
2 of the casino where it's recorded. So the actual win
3 column, if it's negative, that's what the casino
4 lost. If it's positive, that's what the casino won.
5 Q: And is that still reflecting table
6 games? Is that what the TG reflects? Table games?
7 A: That's correct.
8 Q: Okay. And then the next column is
9 slot coin in. What does the Coin in Number reflect?
10 A: Coin in is the dollar value of
11 wagers that were made in the slot machine.
12 Q: So not necessarily the amount of
13 money that was put into the machine, but the amount
14 of money plus wins and losses throughout the duration
15 of play?
16 A: It's the amount of money played,
17 wagered at the slot machine.
18 Q: Would you explain what that is?
19 How you would explain it?
20 A: It means that if you put one dollar
21 in the slot machine, you may win the hand and you may
22 receive credit back on the slot machine.
23 Q: And that those credits would be
24 added to the slot? Okay.
25 A: If you wager those credits again,

Page 182

1 then that is the coin in for the slot machine.
2 Q: And then going to the last column;
3 slot actual win, again that represents, if it's a
4 positive number, that was the casino's win?
5 A: That's correct.
6 Q: And then the next section looks
7 like we just have the summary by year, correct?
8 A: That's correct.
9 Q: And those are all same kinds of
10 columns. Is that right?
11 A: That's correct.
12 Q: What is summary by trip?
13 A: It's the total amount of activity
14 for the trip for the customer.
15 Q: So what does trip number reflect?
16 A: Each customer's visits are
17 categorized and organized in a trip fashion. So it
18 represents the amount of time the customer stayed at
19 the casino. So...
20 Q: So... continue.
21 A: Trip number, in this case, three is
22 the customer's third trip.
23 Q: I see. And turning the page, what
24 is ratings?
25 A: Rating is the individual

Page 183

1 measurement of the customer's gaming activity during
2 the course of the trip. So each gaming session is
3 considered a rating.
4 Q: Why is that used?
5 A: To track the customer's wins and
6 losses.
7 Q: And then if you would turn to page
8 18, it's marked in the upper right-hand corner.
9 A: Yes.
10 Q: What document is this?
11 A: It's a win-loss letter that Wynn
12 Las Vegas provides to customers.
13 Q: Is that on a yearly win-loss?
14 A: Yes.
15 Q: And that would be the same for
16 pages 19, 20, and 21. Correct?
17 A: Yes.
18 Q: I pass the witness.
19 DIRECT EXAMINATION
20 BY: Jason Naimi
21
22 Q: Good afternoon. I'm Jason Naimi.
23 I have the honor representing Sandra Nance whose
24 records you got before you. This is in a custody
25 matter, believe it or not. Your testimony here today

Page 184

1 is based off those records itself. You have no
2 personal knowledge in this case?
3 A: That's correct.
4 Q: You have no personal knowledge of
5 Sandra Nance.
6 A: That's correct.
7 Q: You, in fact, didn't know whether
8 she's a player at the casino or not?
9 A: That's correct.
10 Q: So it's solely on those records
11 that you have before you?
12 A: That's correct.
13 Q: The system you have to track the
14 player's cards is designed to identify the card game
15 playing itself. Is that correct?
16 A: That's correct.
17 Q: Not the player.
18 A: No.
19 Q: Let me ask you, if a player were to
20 hypothetically lend their card out to other people
21 and those persons were using that card, you wouldn't
22 know whether it was the owner of the card or someone
23 else using the card?
24 A: Correct. Up until a certain dollar
25 value where identification would be required.

Page 185

1 Q: Okay. And if they don't ever hit
2 that dollar amount, you would never ask for that?
3 A: Correct.
4 Q: It's possible also that a player
5 might leave a card in the machine and walk away,
6 someone else might come back in and potentially use
7 the card for a little while?
8 A: Correct.
9 Q: And so as a result of that, it
10 doesn't specifically track the dollar figure that the
11 player is using or the card owner is using. It could
12 be a few people using the same card and that's where
13 the dollars come from. Is that correct?
14 A: That's correct.
15 Q: And possibly rewards affected by
16 that as well.
17 A: That's correct.
18 Q: No further questions.
19
20
21 DIRECT EXAMINATION
22 BY: Shannon Wilson
23 Q: How do tie a player to a card?
24 A: At the time of the enrollment, in
25 the loyalty club when the card is issued, the player

<p style="text-align: right;">Page 186</p> <p>1 is asked to present their identification before 2 receiving the card.</p> <p>3 Q: Does Wynn have a policy regarding 4 use of those cards by individuals other than the 5 person that's registered to?</p> <p>6 A: The card is to be used only by the 7 account holder. Yes.</p> <p>8 Q: Why is that?</p> <p>9 A: To prevent incorrect totals from 10 being reflected on the customer's activity.</p> <p>11 Q: What's the significance of that?</p> <p>12 A: Customer could qualify for benefits 13 at Wynn Las Vegas - complementaries that would not be 14 attributable to that customer's play.</p> <p>15 Q: Are tax statements ever issued 16 based on that card?</p> <p>17 A: No.</p> <p>18 Q: Are tax statements issued based on 19 wins associated with the player?</p> <p>20 A: Slot wins, yes.</p> <p>21 Q: Does Wynn typically ID players at 22 table games?</p> <p>23 A: Yes.</p> <p>24 Q: And when you're playing a slot 25 game, is the PIN number required to your card?</p>	<p style="text-align: right;">Page 188</p> <p>1 MR. NAIMI: It is part of the...</p> <p>2 JUDGE GENTILE: Which one did you just 3 refer for two?</p> <p>4 Q: It's two. I sincerely apologize. 5 There appears to be problem with the bate numbering. 6 It looks like they initially started them with 7 DEFTWLV, but then they changed it to WLV. So it's 8 WLV-2.</p> <p>9 JUDGE GENTILE: I have a hard time 10 figuring out.</p> <p>11 MR. NAIMI: Would you like me to 12 approach to help?</p> <p>13 JUDGE GENTILE: Yeah.</p> <p>14 MR. NAIMI: And is it...</p> <p>15 JUDGE GENTILE: You may. I saw it. 16 Thank you.</p> <p>17 Q: In Wynn's own system, what is this?</p> <p>18 A: A scanned image of the customer's 19 driver's license.</p> <p>20 Q: It's associated with the particular 21 player card?</p> <p>22 A: Yes.</p> <p>23 Q: Thank you. No further questions.</p> <p>24</p> <p>25 CROSS EXAMINATION</p>
<p style="text-align: right;">Page 187</p> <p>1 A: No.</p> <p>2 JUDGE GENTILE: What was your question 3 again? When playing what? Slot game.</p> <p>4 Q: When you're playing a slot game, is 5 a PIN number required for the card?</p> <p>6 If you would just quickly turn to page 7 2, it looks like there's a mis-number. There are two 8 twos in there and I apologize for that. It's 9 actually page 5 not 2. It's the one that has a 10 driver's license on it.</p> <p>11 A: Marked 2?</p> <p>12 Q: Yes.</p> <p>13 A: Yes?</p> <p>14 Q: What is that record?</p> <p>15 MR. NAIMI: Objection. Calls for 16 hearsay.</p> <p>17 Q: He's testifying from his business 18 records.</p> <p>19 MR. NAIMI: That's hearsay within 20 hearsay, Your Honor.</p> <p>21 JUDGE GENTILE: Wait, wait, wait. Hold 22 on one second.</p> <p>23 Q: I asked...</p> <p>24 JUDGE GENTILE: Is it part of the 25 record already?</p>	<p style="text-align: right;">Page 189</p> <p>1 BY: Jason Naimi</p> <p>2</p> <p>3 Q: Just a brief question. Certainly, 4 you issue a player card to a player. It's not 5 unheard of, though, that player cards have been 6 shared with other players. Is that correct?</p> <p>7 A: That's correct.</p> <p>8 Q: Thank you. Nothing further.</p> <p>9 JUDGE GENTILE: Okay. Anything more?</p> <p>10 MS. WILSON: No.</p> <p>11 JUDGE GENTILE: Okay. You may step 12 down. Thank you.</p> <p>13</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY: Shannon Wilson</p> <p>16</p> <p>17 BAILIFF: Can you remain standing. 18 Raise your right hand, face the clerk.</p> <p>19 MS. MCCULLOCH: You do solemnly swear 20 the testimony you're about to give in this action 21 shall be the truth, the whole truth, and nothing but 22 the truth, so help me God?</p> <p>23 A: Yes.</p> <p>24 Q: Good afternoon, Sir. My name is 25 Shannon Wilson and I represent one of the parties in</p>

Page 190

1 this case. Could you kindly state your name for the
2 record and spell your last name?
3 A: John Pourciau. Last name is P-O-U-
4 R-C-I-A-U.
5 Q: And Mr. Pourciau, do you know
6 Christopher Ferraro?
7 A: No.
8 Q: Do you know Sandra Nance?
9 A: No.
10 Q: Who is your employer?
11 A: Station Casinos.
12 Q: And what is your business address?
13 A: 1505 South Pavilion Center Drive.
14 Q: And what is your job title?
15 A: Corporate Director of Database
16 Marketing and Marketing Strategy and Analytics.
17 Q: And how long have you been employed
18 by Station Casinos?
19 A: A little over five years.
20 Q: And how long have you held your
21 present position?
22 A: Three years.
23 Q: And can you briefly describe your
24 job responsibilities for us?
25 A: Responsible for all of the database

Page 191

1 related to player tracking, loyalty programs, direct
2 mail, marketing strategy in terms of promotions,
3 property-specific campaigns, et cetera.
4 Q: Thank you. So within those job
5 responsibilities, would you be among the persons most
6 knowledgeable to be able to explain records generated
7 by Station Casinos in connection with an individual
8 player card?
9 A: With a boarding pass? Yes.
10 Q: If you would, there's a binder in
11 the middle of the desk in front of you. Turn to N5.
12 Take a moment or two to look through those records
13 there and let me know when you're done.
14 A: Okay.
15 Q: Do you recognize these as being
16 records generated by Station Casinos?
17 A: Yes.
18 Q: If you notice, there is a number in
19 the lower right-hand corner of the records. If you
20 would turn to... it begins DEFTSTAT, if you turn to
21 number 9.
22 A: Okay.
23 Q: Do you know Kendra Deno?
24 A: Yes.
25 Q: Who is she?

Page 192

1 A: She works in the legal department.
2 Q: Is she a Custodian of Records for
3 Station Casinos?
4 A: Yes.
5 Q: All right. Your Honor, I move to
6 admit Exhibit N-5.
7 MR. NAIMI: No objection, Your Honor.
8 Although I would like to point out if everyone would
9 turn to the DEFTSTA 0010.
10 JUDGE GENTILE: Okay. So there's no
11 objection we can admit?
12 MR. NAIMI: No. It can be admitted.
13 Yeah.
14 JUDGE GENTILE: Okay.
15 MR. NAIMI: I just want to point out
16 that on that page, the third column over identifies
17 my client's social security number. I would ask that
18 that be redacted. Obviously for lots of...
19 JUDGE GENTILE: Okay. We'll do that
20 anyway.
21 MR. NAIMI: ...security reasons, we
22 want to make sure that the social security... And
23 quite frankly, Your Honor, admittedly, I have not
24 looked at the other records to see whether or not, in
25 anywhere, the social security number was. So perhaps

Page 193

1 we should just be cautious and...
2 JUDGE GENTILE: Okay.
3 MR. NAIMI: ...redact...
4 JUDGE GENTILE: Right.
5 MR. NAIMI: In all of the...
6 JUDGE GENTILE: It's required to be
7 done.
8 MR. NAIMI: Yeah, that's okay. 3
9 MS. SHANNON: Yes. If we find there
10 are social security numbers, we will submit redacted
11 versions for the court's record.
12 JUDGE GENTILE: Okay. So she's going
13 to have the trial exhibits that are going to be in
14 the vault. So we'll look through them to see if we
15 find... if you find anything...
16 MR. NAIMI: No. I absolutely do so.
17 JUDGE GENTILE: Okay.
18 MR. NAIMI: We will point it out. We
19 don't want inconvenience the court to make it your
20 job.
21 MS. MCCULLOCH: No. Of course, not.
22 JUDGE GENTILE: Right. So if you see
23 anything, let us know. In the meantime, we'll make
24 sure this is redacted from this particular page. If
25 you will strike through that, please?

Page 194

1 MR. NAIMI: All right. Thank you, Your
2 Honor.
3 JUDGE GENTILE: Uh-hmm.
4
5 Q: So what I'd like to do now is just
6 have you go through the records and explain to us
7 what we are looking at. So beginning with number 11.
8 What are we looking at here?
9 A: So annual summary of carded
10 transactions for the player account 4245925.
11 Q: It appears to be for multiple
12 Station Casino locations. Is that correct?
13 A: Correct.
14 Q: And then it has, for the years 2012
15 to 2015, correct?
16 A: Correct.
17 Q: And it summarizes for us actual
18 win. So is that a reflection of either the actual...
19 the dollar value won or lost by the player?
20 A: Which column?
21 Q: Card actual win amount?
22 A: With player in parenthesis?
23 Q: Yes.
24 A: That is from the player's
25 perspective.

Page 195

1 Q: Okay. So if it's a positive number
2 then, it was a win for the player?
3 A: That is correct.
4 Q: And a positive number would be a
5 loss for the casino?
6 A: Correct.
7 Q: What is the difference between
8 carded actual win and slot actual win?
9 A: Carded actual win player is a field
10 that will reflect the totality of their win-loss; and
11 slot is unique to the slot product. And the slot
12 actual win is going to, as you can tell, as all
13 flipped. So it's the house's perspective.
14 Q: Okay. Do we know whether these are
15 slot games or table games?
16 A: Yes.
17 Q: How do we know that?
18 A: The column that's labeled the slot
19 actual win amount will be for all slot games. If you
20 go over three columns to the right, the actual win
21 amount will be for pit games or table games.
22 Q: Okay. And the chip coin in and out
23 amounts, what are those a reflection of?
24 A: For slots, it'll be a reflection of
25 the aggregate amount of wagers played to a game; and

Page 196

1 for tables, it's the amount of cash that was dropped
2 at the table to begin action.
3 Q: Moving on to the next page then, is
4 this a similar kind of summary that just by location
5 by year?
6 A: It also includes by game or product
7 area.
8 Q: Where do we see that?
9 A: SoP in the third column, as
10 referring to slots, P referring to pit or table
11 games.
12 Q: And then moving on to 13. Explain
13 this record for us.
14 A: This is the detail of every
15 individual rating that will aggregate back to the
16 summary pages that we just reviewed.
17 Q: So this is a daily activity record?
18 A: It goes down to the granularity of
19 the date time that the rating began with the boarding
20 pass.
21 Q: So are you saying that if there
22 were... if the card was used for different machines,
23 or a machine versus a table, that it would log that
24 as separate sessions?
25 A: Right. If you look down under the

Page 197

1 Red Rock section, about halfway down on the page,
2 you'll see quite a few ratings for February 4, 2013.
3 Q: Right.
4 A: Every individual rating that they
5 have or move from one machine to another will
6 generate a new rating. Every time they pull their
7 card out, that will end the rating. See, they had
8 one minute of rating and then it went from 4:12 to
9 4:13, and 4:16 to 4:27, et cetera.
10 Q: So those were the actual times of
11 day that the card is in the machine?
12 A: Correct.
13 Q: And if you did the math, you could
14 figure out how much time they spent at that machine?
15 A: If you did the math. Yes.
16 Q: If a player loses a card and is
17 issued another card, and then they subsequently find
18 the card, can the same card number be utilized in the
19 machine simultaneously?
20 A: Yes.
21 Q: Is there a policy regarding use of
22 player cards by someone other than the person to whom
23 it's registered to?
24 A: There is.
25 Q: What is that policy?

<p style="text-align: right;">Page 198</p> <p>1 A: I do not have that policy</p> <p>2 memorized.</p> <p>3 Q: Do you have a general understanding</p> <p>4 of it? Is that allowed?</p> <p>5 A: It's not allowed.</p> <p>6 Q: And why isn't it allowed?</p> <p>7 A: The boarding pass is a unique</p> <p>8 identification of that person.</p> <p>9 Q: Are there particular reasons for</p> <p>10 that?</p> <p>11 A: GCB regulations.</p> <p>12 Q: Okay.</p> <p>13 A: Gaming Control Board.</p> <p>14 Q: Okay. So pursuant to a regulation</p> <p>15 of the gaming control board, a loyalty card is only</p> <p>16 supposed to be utilized by an individual person?</p> <p>17 MR. NAIMI: Objection, leading.</p> <p>18 JUDGE GENTILE: Sustained.</p> <p>19 Q: Can you explain to me generally the</p> <p>20 regulation by the Gaming Control Board?</p> <p>21 A: It's a one-to-one player</p> <p>22 identification. So, all of that individual has to be</p> <p>23 associated. All of that individual's activity has to</p> <p>24 be associated with that boarding capacity count</p> <p>25 number.</p>	<p style="text-align: right;">Page 200</p> <p>1 players who use the same card?</p> <p>2 A: Can you rephrase?</p> <p>3 Q: You've experienced instances, or</p> <p>4 you've heard of... I'll rephrase your Honor. You've</p> <p>5 heard of instances where a player lent their player's</p> <p>6 card out to others and those other people have been</p> <p>7 playing on that same card?</p> <p>8 A: I've heard of that.</p> <p>9 Q: It may be frowned upon, but it</p> <p>10 happens.</p> <p>11 A: I've heard of it happening.</p> <p>12 Q: And your records don't reflect</p> <p>13 who's using the card, just that the card is being</p> <p>14 used?</p> <p>15 A: Correct.</p> <p>16 Q: You don't ID players using slot</p> <p>17 machines? When they put a card in, it's not</p> <p>18 identifying them and you don't have someone going</p> <p>19 around making sure, "You're the right person using</p> <p>20 the right the card." Is that correct?</p> <p>21 A: Correct.</p> <p>22 Q: It's also possible that players</p> <p>23 forget their card in the machine?</p> <p>24 A: Sometimes.</p> <p>25 Q: And that someone else might come in</p>
<p style="text-align: right;">Page 199</p> <p>1 Q: Pass the witness.</p> <p>2</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY: Jason Naimi.</p> <p>5 Q: Good afternoon. I'm Jason Naimi. I</p> <p>6 have the honor and privilege of representing Sandra</p> <p>7 Nance who's present with us today. These are the</p> <p>8 records of Sandra Nance that you're referring to in</p> <p>9 this testimony.</p> <p>10 You are testifying based on those</p> <p>11 records alone. Is that correct?</p> <p>12 A: That is correct.</p> <p>13 Q: You have no personal knowledge in</p> <p>14 this case?</p> <p>15 A: None.</p> <p>16 Q: In fact, this is a custody case.</p> <p>17 It's not gaming case. All right. The system is</p> <p>18 designed to track the player's card. Is that</p> <p>19 correct?</p> <p>20 A: That is correct.</p> <p>21 Q: It's not designed to track the</p> <p>22 player?</p> <p>23 A: That is correct.</p> <p>24 Q: Because in some instances, it's</p> <p>25 known that players lend their cards out to other</p>	<p style="text-align: right;">Page 201</p> <p>1 behind them and continue playing on that card?</p> <p>2 A: It's possible.</p> <p>3 Q: It's possible. Real quickly, if you</p> <p>4 wouldn't mind going to document number 11. These</p> <p>5 records are from 2012 through to 2015. Is that</p> <p>6 correct?</p> <p>7 A: That is correct.</p> <p>8 Q: Your Honor, if you recall, there</p> <p>9 was a motion of limine ordered by you, or filed by</p> <p>10 the defendant, that reflected that we wouldn't have</p> <p>11 any evidence prior to 2013 or prior to this</p> <p>12 stipulation in the order we've entered. So I would</p> <p>13 just ask, "Though we don't object the admissibility</p> <p>14 of this exit, we would reflect that the 2012 records</p> <p>15 be redacted since they're longer...</p> <p>16 JUDGE GENTILE: Well, for sure, they</p> <p>17 won't be considered...</p> <p>18 Q: ...problem with this case.</p> <p>19 JUDGE GENTILE: In terms of...</p> <p>20 MS. WILSON: I'll stipulate too. If</p> <p>21 there are any records prior to November 30, 2012,</p> <p>22 those we can do that.</p> <p>23 JUDGE GENTILE: They just won't be</p> <p>24 considered by the court. That's fine.</p> <p>25 MR. NAIMI: Thank you, Your Honor.</p>

Page 202

1 Nothing further.
2 MS. WILSON: I have no further
3 questions.
4 JUDGE GENTILE: No further questions?
5 Okay. You may step down. Thank you very much.
6 A: Thank you.
7 MR. NAIMI: It doesn't matter.
8 MS. WILSON: Yeah. Okay.
9 JUDGE GENTILE: Let's take a brief
10 recess now. It is 3:15.
11 MS. WILSON: Okay.
12 JUDGE GENTILE: See you back here in a
13 few minutes. We'll take a brief recess.
14
15 (RECESS)
16 JUDGE GENTILE: We are back on the
17 record in the Nance versus Ferraro matter.
18 MS. WILSON: We would like to call Laura
19 Doyle who is one of our video conference witnesses.
20 JUDGE GENTILE: Okay.
21 MS. WILSON: Frank is it. Then we will
22 do Frank, excellent.
23 MR. NAIMI: Sorry, who is the witness,
24 Frank who?
25 MS. WILSON: Frank Pannacciulli.

Page 203

1 JUDGE GENTILE: There he is.
2 DIRECT EXAMINATION
3 BY: Shannon Wilson
4 Q: Good afternoon, Mr. Pannacciulli,
5 am I pronouncing your name correctly?
6 A: That's correct, good afternoon.
7 Q: Good afternoon.
8 JUDGE GENTILE: You have to swear him
9 in. Hold on one second.
10 CLERK: Can you please stand and raise
11 your right hand?
12 A: Sure.
13 CLERK: Do you solemnly swear the
14 testimony you are about to give in this action shall
15 be the truth, the whole truth and nothing but the
16 truth so help you God?
17 A: Yes, I do.
18 JUDGE GENTILE: Thank you.
19 Q: Mr. Pannacciulli, could you state
20 your full name and spell your last name for the
21 record.
22 A: My full name is Frank. The last
23 name is Pannacciulli, that's spelled P as in Peter,
24 A-N-N-A-C-C-I-U-L-L-I.
25 Q: What is your current address?

Page 204

1 A: 2302 2nd Street, East Meadow, New
2 York, 11554.
3 Q: Do you know Christopher Ferraro?
4 A: Yes.
5 Q: What is his relationship to you?
6 A: We are friends.
7 Q: Do you know Sandra Nance?
8 A: No.
9 Q: I am going to go through just a
10 quick bit of background with you, Mr. Pannacciulli,
11 and then we will talk more specifically about Mr.
12 Ferraro. Are you married, sir?
13 A: Yes.
14 Q: How long have you been married?
15 A: Sixteen years.
16 Q: Do you have any children?
17 A: Yes, one daughter.
18 Q: What is her name?
19 A: Lila, L-I-L-A.
20 Q: How old is she?
21 A: Nine.
22 Q: What's the highest level of
23 education you have completed?
24 A: Masters.
25 Q: In what sir?

Page 205

1 A: Business Administration,
2 specialization in finance.
3 Q: Are you employed currently?
4 A: Yes.
5 Q: Do you work full time?
6 A: Yes.
7 Q: Who is your employer?
8 A: Verizon.
9 Q: When did you first meet Mr. Ferraro?
10 A: Approximately November of 2014.
11 Q: How did you meet him?
12 A: I met him through my daughter and
13 his son, Evan. They met each other on the ice and
14 afterwards we were introduced.
15 Q: What is your relationship with Mr.
16 Ferraro today?
17 A: We are friends. Close friends you
18 could say.
19 Q: So is it fair to say that you met
20 Evan and Mr. Ferraro at the same time?
21 A: Yes.
22 Q: What was Lila doing on the ice?
23 A: I believe it was a public session
24 and she was out there skating and there were a bunch
25 of kids and somehow the two of them met, became

Page 206

1 friends. And while I was sitting outside watching,
2 they came off and wanted to play again together on
3 another day and that's how I was introduced to Chris.
4 **Q: Has Lila been coached by Chris?**
5 A: Yes, in the past.
6 **Q: When was that?**
7 A: I would say up until about last
8 summer.
9 **Q: So that would have been summer of**
10 **2015, is that correct?**
11 A: Yes.
12 **Q: When did she start being coached by**
13 **him?**
14 A: Start being coached by him, it was
15 before we met Evan. She used to attend the clinics
16 that Chris used to run.
17 **Q: When was that?**
18 A: I want to say around May, June of
19 2014.
20 **Q: Did Lila and Evan meet prior to**
21 **November of 2014?**
22 A: The best recollection that I have is
23 they met in the timeframe of November 2014. That was
24 the first time I was made aware that they were
25 friends.

Page 207

1 **Q: Okay. Did you have opportunities to**
2 **observe Chris coaching Lila?**
3 A: Yes.
4 **Q: What are your observations of Chris**
5 **as a coach?**
6 A: He is an excellent youth hockey
7 coach.
8 **Q: What makes him excellent?**
9 A: The kids connect with him. So my
10 daughter and other children, they just... if you had
11 any children and they played sports, they connect
12 with certain people and they don't connect with
13 others. My daughter connects with Chris.
14 **Q: Are there any other observations**
15 **that you have that makes Chris an excellent coach?**
16 A: I don't. The kids connect with him.
17 He is able to instruct them and they react to what he
18 says without prejudice. Sometimes things are
19 difficult to say and sometimes there are times for -
20 what's the right word - applause, and you did
21 something great and then there are times when you did
22 something wrong. She never left the ice upset with
23 her coach.
24 **Q: Even if she was being criticized for**
25 **something, she accepted that?**

Page 208

1 A: Yes.
2 **Q: Do you see Mr. Ferraro and Evan**
3 **outside of hockey?**
4 A: Since we became introduced in
5 November of 2014, yes.
6 **Q: What do you do when you see each**
7 **other outside of hockey?**
8 A: Normal. Maybe we will go to Chris`
9 home and the kids will play in the house on the video
10 games, in the pool. Evan will come to my house and do
11 the same kind of play dates, this is the best way to
12 describe it.
13 **Q: Is Chris at your home when the kids**
14 **are playing?**
15 A: Sometimes yes, sometimes no.
16 **Q: Are you at Chris` home when the kids**
17 **are playing?**
18 A: Sometimes yes, sometimes no.
19 **Q: When Evan is in New York, how**
20 **frequently does he see Lila?**
21 A: I would say every time he is in New
22 York.
23 **Q: Within that time, does he see her**
24 **just one time while he is there or multiple times?**
25 A: It depends on the scheduling,

Page 209

1 usually it's multiple times.
2 **Q: When was the last time Lila and Evan**
3 **got together?**
4 A: Two weeks ago on a Saturday. I want
5 to say the 21st or something like that.
6 **Q: Were there other times around that**
7 **time that they saw each other?**
8 A: No. He was in town, we got together
9 on a Saturday. The kids spent the day together and
10 then due to scheduling, we hadn't seen each other
11 since.
12 **Q: What is Evan's behavior when you see**
13 **him?**
14 A: I would classify it as normal.
15 **Q: Okay. What is normal behavior to**
16 **you?**
17 A: When he is at my home in the absence
18 of Chris, he is respectful, he listens. I don't have
19 any issues. He is polite. He is a well-mannered
20 kid.
21 **Q: What about when Chris is around, is**
22 **he disrespectful?**
23 A: No, outside of... Say that again?
24 **Q: No, go ahead. You were going to say**
25 **something more.**

<p style="text-align: right;">Page 210</p> <p>1 A: No, I mean he is not disrespectful. 2 He is a normal kid. You know, children get mad at 3 their parents based on their decision. So I wouldn't 4 say... I would not classify it as disrespectful. I 5 would say it is normal behavior. 6 Q: You are raising a daughter right 7 now, correct? 8 A: Yes. 9 Q: Have you spent time around children 10 other than yours? 11 A: Yes. 12 Q: Okay. When do you spend time around 13 other children? 14 A: I have two sisters, amongst them 15 they have five children. They all live locally. 16 They range in ages from 4 to 18. 17 Q: Thinking about these other children 18 that you know, do you find Evan to be any more or 19 less argumentative than other children? 20 A: No. 21 Q: Have you observed Evan to blame 22 others for his behavior? 23 A: No. 24 Q: Does Evan refuse to do things that 25 are asked of him?</p>	<p style="text-align: right;">Page 212</p> <p>1 hearsay. 2 A: No. 3 JUDGE GENTILE: Hold on. Your question 4 was does Chris- 5 Q: Talk about Evan's mom. It's not an 6 out of court statement offered for the truth. It's 7 simply does he talk about her. 8 JUDGE GENTILE: Correct, overruled. 9 Sorry, I did just like think that one through. 10 Q: Go ahead, Mr. Pannacciulli. Does 11 Chris talk about Evan's mom? 12 A: No. Chris talks about Evan's mom. 13 Q: That's the question. Does Chris 14 talk about Evan's mom? 15 A: No. 16 Q: Have you ever observed Chris to do 17 anything that would impede Evan's relationship with 18 his mother? 19 A: No, just the opposite. 20 Q: That's my next question. Have you 21 ever observed Chris to do anything that would foster 22 Evan's relationship with his mother? 23 A: The observations that I have been 24 involved with when we're together, he makes sure that 25 Evan contacts his mother especially given the time</p>
<p style="text-align: right;">Page 211</p> <p>1 A: No. 2 Q: Can you say anything about Evan's 3 attention span? 4 A: Can I say anything, I don't know. 5 MR. NAIMI: I'm actually going to object 6 to that question your honor. I don't think he is 7 qualified as a witness to- 8 JUDGE GENTILE: He can tell us what he 9 has observed about... I mean, what's his observation? 10 A: My observation is no different than 11 any other child including my own daughter. Attention 12 span, you know, if you are entering a room and it's 13 got children, sometimes they would pay attention or 14 their mind is focused on something else and they are 15 not paying attention. So my observation is no 16 different than any other child that I have been 17 around. 18 Q: Have you ever seen Evan bite his 19 nails? 20 A: His nails, no. 21 Q: Have you ever seen him chew his 22 clothing? 23 A: No. 24 Q: Does Chris talk about Evan's mom? 25 MR. NAIMI: Objection, calls for</p>	<p style="text-align: right;">Page 213</p> <p>1 difference. They might come in, let's say most in an 2 opportune time, but Chris is adamant about making 3 sure that Evan speaks to his mother. 4 Q: Pass the witness. 5 MR. NAIMI: A moment of the court's 6 indulgence. 7 JUDGE: Sure. 8 DIRECT EXAMINATION 9 BY: Jason Naimi 10 Q: I apologize if I... what's your 11 name, is it Mr. Pannacciulli? 12 A: That's correct. 13 Q: Okay, I apologize. How many times 14 has Evan hung out with Lila since November of 2014? 15 Maybe I can ask you this way. How many times has 16 Evan visited New York since November of 2014? 17 A: I couldn't give you the exact 18 number. I know that while he was in kindergarten, he 19 was more frequently visiting New York until he 20 reached first grade and the frequency of visiting New 21 York changed a little bit so... 22 Q: Okay, let's talk about 2015. In 23 2015, do you recall Evan coming out for Christmas 24 break? 25 A: Yes. I want to say yes.</p>

god 5:1 92:10	handles 67:10	high 20:3 84:9 115:9,11
good 3:4,11 4:18 5:5 26:13 39:8, 23 41:13 76:17,21 77:17 82:24 113:15 117:23,25 119:25 135:15 142:23 144:4 151:22 162:14	hang 81:25	highlighted 54:8,9
grade 60:5 134:10 135:22,24,25 136:9 140:1	hanging 109:9	him-- 57:12
grader 154:15	happen 98:2 105:2 109:11,16 137:25 162:10	historically 83:6
grades 140:3	happened 102:2,6 108:24 109:23 122:3 123:23 124:2 125:1 146:20 148:10 150:18	history 123:12
grandmother 111:6 119:6 146:4 155:10	happening 113:14	hit 162:6,11
grandparents 102:15	happy 115:3,4	hitting 110:12
grant 31:11 81:2	harassments 156:5,7	hobby 94:8
granted 82:14 87:9 123:12	hard 158:7	hockey 6:20 7:2,8,11,15,18,22, 25 8:2,8,9,12,23 9:6,7,13,22,24 10:2,3,4,7,10 29:2 40:6,9 79:22, 25 80:1 82:22 88:21,25 89:11 90:2,6,15,20 112:8 140:23
great 88:4 145:12	hasn't 96:16 139:13 145:13	hold 49:14 71:21 123:15
greatest 91:1	have-- 132:25 147:4 159:13	holiday 99:13
groceries 15:24	Hawaii 116:17	holidays 104:2,7 105:1,7
grocery 90:24 113:6	he-- 77:16	home 29:19 30:5,18 38:21 39:2 52:4 69:20 73:17,18 101:13 106:8,13 112:25 127:16 132:12 133:9,10,13 136:9 138:1 145:17, 18 155:7 156:22
gross 13:19,23 65:20	he'd 73:10	homes 38:22
group 94:14,21 95:12	he'll 110:3	homework 76:23 132:13
grow 88:23	he's 6:11 41:24 42:2,5,25 44:1,3, 5,7,9,11,13,15,20 55:13 58:1 76:22 78:7 86:10 102:15 115:19 117:19 120:24 123:8 129:11 139:23 140:12	Honor 3:4 4:9,19 10:22 22:9,13, 15,21 23:1,6 31:18 32:9,10 45:18 55:2,3,11 58:5,9 61:23 62:17 77:10 78:18 79:2,20 83:18 85:22 87:19 88:19 91:12 92:13 97:3,13 111:12 114:8 115:22 126:20 147:16 148:14,22 149:4,15,18 150:22 151:24 157:12,13 160:25 161:10
guaranteed 34:24	head 75:23 78:2	Hope 70:25
guess 31:21 79:24 114:14 117:19 137:20 140:2 144:15 147:5	Headaches 40:18	hospitalization-wise 132:1
guys 7:1,7 159:13	health 39:9,24 41:13 117:22,24 119:25 123:4 125:20	hospitalized 128:18
guys-- 95:12	hear 103:11 121:8 122:24 124:7 149:12 151:17 159:5,10	hotel 17:13 85:13
<hr/> H <hr/>		
had-- 52:9	heard 86:4 109:21 129:20	hotels 69:12
hadn't 138:11	hearsay 107:5 110:24 114:12 115:20 121:3,6 122:15 125:5 126:7,17,20	hour 27:6,10 91:19 112:19
had--i 77:15	Hedgemont 92:25	hours 3:21,22,23,24 101:3 158:10,13 161:10 162:3,8,9
half 27:10 33:15 91:19 112:20 158:10,13 162:8,9	held 135:16	house 69:22 106:6 108:6
half-brother 76:11	helped 106:10,11	How-- 154:4
half-sister 76:14	helpful 91:25	
Hamptons 38:21	helping 128:23	
hand 4:21 46:10 66:12	helps 83:14	
handle 117:16	Henderson 143:10	

huge 108:22 136:25

hundred 67:15

Hungerford 138:8

hungry 132:10

hurt 110:13

husband 38:23 141:10

I

I-- 22:23 42:16

I'd 56:3 107:7

I'll 12:14 24:22 47:14 48:12 49:14 52:3 58:25 59:2 62:15 72:10 91:19 97:11 111:8 121:11 122:10 124:1 156:24 158:12 159:10,11 162:13

I'm 7:16 9:20 13:2 16:8 19:6 23:16 30:22 32:1 39:13 40:3 42:12,16,19 58:11 61:19 62:3,12 67:10 68:15 69:12 71:25 77:7 79:17,25 82:21 85:19,21 86:1 87:21 88:18 90:9,13,17 91:1,3 94:3,5 96:14 97:10 103:20 105:17 110:7,21 113:22 115:4,14,23,25 118:25 120:14,15 121:5 122:18, 24 124:14 126:11,23 130:11 133:25 134:1 138:1 139:25 144:8, 9 146:24 149:24 150:5 151:1

I've 39:1 40:14 57:15 88:18 89:5 145:15 148:9 153:17

ice 121:13

idea 19:19 157:7

identified 30:12 31:9 47:24

identify 31:17

identifying 40:8

ill 101:10 142:15

illnesses 131:1,14,25

imagine 158:4

imagine-- 157:11

immediately 121:15

impact 148:24

impacts 148:16

imply 48:19

important 11:21 81:10

inaudible 149:21 157:16 159:23 162:13

incident 125:7,10

include 18:24 19:3

included 19:8 86:20 98:21 132:20

including 42:14 104:2,7

income 12:7 13:13,20,23 14:6 15:17,21

incorporated 7:1,4,10,14,15 8:10,12,23,25 9:7

incorrect 83:25 84:4

incurred 18:25 19:4,16

indulgence 22:13 32:8 61:22 94:23

industry 88:3

inform 110:12 116:10,13

information 5:15 93:9,14 123:23 130:22 140:25 143:23

informed 102:5 110:16,17

inherited 155:10

initial 9:23 11:23,25 63:24

initially 114:11

injuries 40:11 121:23 122:3 124:15 131:1,14,25

injury 75:23 124:21

instance 113:2 162:8

instances 108:21 148:15,17

instruction 89:11

instructor 10:4,7

insurance 130:12,14,20

intake 87:15,16 130:14

intended 74:16

interests 117:13 147:23,25 148:16,19

interfere 35:2

interference 34:22

interfering 37:23

interpretation 25:2

interrupt 123:11

introducing 147:19

investment 67:25 68:3

invoke 4:11

involved 104:24 137:6 146:21

involvement 115:13 137:8

Irritability 40:24

is-- 15:1 55:11 150:11

Island 83:6

Islanders 90:5

isn't 38:11 122:10 162:10

issue 148:8,25 149:13 152:2

issued 119:10,13

issues 41:1 116:15 148:23

It'll 88:2

it's 3:18 4:1 11:21 12:2 19:16 21:25 23:7 30:8 34:25 41:9 49:3 54:4,8,9,10,16 60:20,21 62:3,14 66:13 77:7,9,24 78:5 80:3,14 81:7,19 82:12 84:14,25 88:8 89:1 90:11 91:25 97:6,8 100:14,23 104:5,18,21 105:12,18 107:1 109:5,14 112:3 114:8 115:5,21,22 116:6 121:6,8,19 122:9 123:24 124:16,18 126:19 129:18 133:10 135:15 136:24,25 138:23 139:12 140:22 141:25 142:1 143:10 149:11 150:18,25 151:3,6,10,12, 13,16 155:7 156:25 158:8 159:12

it's-- 54:1 138:22

italicize 14:24

itinerary 29:5,17 50:6 51:6 52:13 53:11 79:4

its-- 124:7

J

Jace 154:10

January 5:8 11:5,17 13:16 18:18, 25 19:4,10,17 53:7,13,18,19 54:7 60:15 64:23 65:4,8,12

Jason 3:5 5:4,6 83:16 89:9

JEA 161:14	keeping 4:15 117:20	93:11 103:3,17,22
jets 102:4	kid-- 136:19	league 40:7 80:2,6,9
JFK 46:21 50:7 52:13,22 53:8,9 54:6,17,19 69:22	Kid's 125:4	League's 40:9
Joanna 153:13,16	kids 80:1 82:3 101:7,8 105:18 109:13,15,19 133:2 146:20 155:11	learn 72:14 73:6
job 26:13,15 44:24	kind 68:3 95:12 130:5,8,16	learned 72:25 126:17
joint 149:3	kindergarten 24:5 25:6,10,19 43:24 56:22 72:22,23 97:25 98:4, 5 99:10,11,17,20 100:7 101:24 109:22 134:11,13,18,24 135:3	leave 24:22 48:12 159:19
Joseph 141:10	kinds 146:9	leaves 115:3
judge 3:1,10,16,18 4:1,4,6,8,12, 17 10:23 22:10,14,19,22 23:4,11, 15 24:23 28:9 31:19,22 32:6,11 45:20 55:9 58:6,10,13,16,22,25 61:24 62:2,7,10,14,16,19 63:6,9 65:2 71:20 72:8 74:14 77:12,25 78:7,10,13,15,19,21,23 79:1,19, 21 80:5,10,18,21 81:9,20,23 82:6, 8 83:1,11,13 85:24 86:3,7,9,13 87:20,23 88:1,6,10,20,24 89:2,7 90:13 91:13,16,18,23 92:1,3,14 93:13 95:4 96:12,16,19,24 97:4,8, 14 103:4,8,11,18,22,24 104:1 107:6,12,18 111:1,10 114:4,6,10, 18 120:5,12,24 121:5,20,25 122:5,20 123:1,10,15,21 124:8,11 125:6,15,17 126:14,21 147:14 148:2,5 149:1,6,22 150:5,9,14 151:3,9,22 152:1,9 156:25 157:5, 6,9,17,22 158:2,5,11,25 159:2,5, 9,16,24 160:2,13,19 161:3,7,11, 24 162:4,12	kitchen 113:1 155:11	leaving 130:11
judicada 123:22 124:4 147:18,24	knew 12:22 134:22	left 3:23 29:10 110:9,14 130:7 162:3
Judith 72:16 130:7 157:24	knowledge 12:21 41:12 67:3 72:2 73:11 93:16 119:24 150:4,16	leg 124:21,22,23 125:1
July 21:18 43:15,23 47:11 48:1,5, 23 49:1,6,19 50:7 59:25 80:15 98:23 135:6 159:19,21	<hr/> L <hr/>	leges-- 148:1
jump 87:21	L1 68:11 83:18	legislature 148:14
June 21:18 43:5,9,13,15,17,22,23 45:24 46:3,5,14 47:1,3,4 57:23 58:13,15,16 59:20,21,23 80:13 81:20,24 98:23 110:15,17	L3 66:10	let's 18:7 35:23 62:7 98:6
just-- 96:18 113:21 130:17	LA 38:24 39:2	letter 10:19
<hr/> K <hr/>	Lacheva 153:22	letting 49:25
Kayla 45:14,16 76:15 145:1 146:24 147:2	lacks 111:9	level 115:7,11 135:22
Kayla's 145:6 146:12,15,22 147:6,7	laid 125:13	libido 41:5
	language 25:3,13 56:25 134:19	lieu 157:19 160:10
	large 40:7	life 62:24 63:3,11 124:20 131:2 132:4,24 144:6 156:1,2
	Las 17:8,11 18:1 24:9,18 25:7 28:14 45:10,16 46:13,16,20,25 47:9 50:7 51:3 52:13,22,25 53:8,9 54:6,19 55:15,21 56:20 84:10 85:11,15 87:24 89:12,19 92:25 99:19 100:5,7 142:2 144:9	likes 132:15
	last-- 148:11	limine 149:16
	late 132:14	limited 77:11 81:2
	law 94:14,15,21 95:12 124:3,16, 17 148:3	limiting 123:11,17 147:15
	lawsuit 40:1	Linda 134:5 139:21,25
	LAX 51:8 54:17 55:15,21	lines 129:14
	lay 39:18,19 148:6	list 14:6 78:8,11 153:10
	leader 44:13,25	listed 13:13 15:24 16:9 17:8
	leading 63:1 65:1,6 71:18 74:13	litigation 75:22,23
		little-- 20:5
		live 119:5 144:8,9,10,14 145:16, 18 147:6,9 155:19
		lives 111:17 155:13
		living 81:5 144:12 145:18
		LLC 6:22 7:2 8:9
		loan 66:16
		local 82:20

located 141:24 143:9	15 158:12,23 159:11 160:16 162:1	104:16 105:1,14
location 102:2 130:15		memory 71:23 79:11
locations 116:11	makes 5:10	mental 39:9,23 41:13 117:22 119:25 120:7 123:4,8 125:20
lodging 17:7 84:14 85:15	making 81:3 117:19 148:20 151:7	mention 8:11
log 43:11	MALE 9:18 97:6	mentioned 74:17 77:4 101:25 116:21
long 26:17 75:14 83:6 111:19 112:16 153:15,23 158:3,5,15 161:1	Mama-- 110:23	mentor 79:24
longer 64:9,23 65:5	March 8:13 54:19,23 61:1	message 47:24 48:16 51:15,17, 19
loose 109:8,25 110:9,10,11,14	Margaret 20:20 87:16 96:4 97:18 135:8	messages 47:18 51:9
Los 38:18 46:13,17,21 51:3 55:25 84:25	Margaret's 135:20	met 28:16 72:16 153:17
loss 12:7	Maria 154:3	Michael 39:15,16
lost 91:16,17,18 109:1,7 110:20 111:4 124:22 161:4,5,8	marked 66:13	Michelle 38:9,10,12 39:4
lot 16:2 88:7 91:2 102:19 106:4,5 119:21 148:10	market 88:8 89:1	Mild 40:19,21,23,25
lots 80:14	marks 136:20	mileage 18:9
lounge 137:22 138:13	marriage 144:21	milestones 134:18
love 106:5 139:21	marvelous 44:23	mind 11:8 13:4,11 14:10 15:11 16:6 18:17 23:20 45:22 46:8,9 47:23 48:22 50:18 51:2 55:17 76:25 77:3
loves 76:19 132:19 139:18,22 140:1	Mary 141:10	mine 138:23 140:11
lower 20:7 66:12	Mason 154:10	minimal 81:4
luggage 69:23	math 33:13 43:2 58:4 59:11,19	Minnesota 82:22 83:9 89:22
lunch 61:17 91:4 132:7 133:11 137:15,18 138:13	matter 5:13 11:3 93:2 126:22,23 146:20	minor 5:13 6:6 24:4 93:17
<hr/> M <hr/>		
machine 155:9	max 162:11	minute 109:6 121:25
mad 114:21	maximum 161:18,22	minutes 3:20,22 26:20,23 27:1,3 91:19 111:23 112:3,19 113:6,10 132:16 146:23 160:22 161:18,22
made 14:4,5 86:2 106:3,7 115:19, 25 130:5 135:1 147:21 162:14	MCCULLOCH 92:7,12	missed 105:17
magnitude 160:11	meals 133:6,8,12	missing 12:25 105:16,20 110:17
main 97:24	mean-- 103:8	misstates 9:18
maintained 146:6	means 30:5	mistake 23:12 29:13
majority 71:15 112:18 140:22	meant 100:14	mit 108:13,14,15
make 14:2 23:13 55:12 56:3 58:23 74:18 76:22 83:12 106:6,9, 12 109:22 113:14 121:1 122:6,9 124:4 130:14 132:6,7 135:9 144:11 147:22 150:21,23 157:13,	media 145:22	Mm-hm 22:14
	mediator 96:5	Mm-hmm 101:2,5
	medical 42:12,19 120:7 121:3,8 123:12 127:17,25	modeling 94:8
	medical-- 123:20	modification 93:5
	meet 51:23 95:10 117:8 139:9 141:18 162:6	modify 5:12
	member 40:3	
	members 81:17 90:18 116:3	
	Memorial 37:1 73:25 74:3,21	

mom 76:18,25 77:3 81:4 94:5 155:21	movies 133:4	156:11,13,15,17,19,21,23
moment 8:11 22:22 25:1 59:11 61:23 71:21 85:23 89:19 109:3 157:14	moving 40:9 102:19 130:11 148:21	next-- 51:12
Mommy 110:20	multiple 38:22	NFL 75:23
Monday 21:15 26:3,4,9 56:12 57:4,7,11 59:8,13,16 61:9,15,20 98:11,12 100:19 111:16 112:11	my-- 153:12	NHL 14:7 15:9 40:2 68:5,14,18 75:22 88:1,20 89:19
Mondays 26:2	<hr/> N <hr/>	NHO 120:9
money 95:11 110:4,6,7	Naimi 3:4,5,9,25 4:3,5,14,19 5:4, 6 9:20 10:18,21 22:9,11,18,20,24, 25 23:6,13,16,19 24:22,25 28:6, 11 31:18,24 32:1,5,8 38:13 45:18 55:2,7,10,16,20 58:4,9,11,15,18, 24 59:2 61:22 62:1,9,12,15,17 63:1,4,8 65:1,6 69:6 71:18 72:7 73:20 74:13 77:7,18,22 78:3,12, 17,24 79:2,3,9,20 81:3 83:16 88:4,18 89:5,9 90:9 91:12,17,21, 23,24 92:4 94:21,25 97:2,13 107:7,9,16,21 114:7 120:10,22 126:7,11,15 150:8,12,22 157:10, 19 158:1,4,7,14 159:1,4,7,12,17 160:9,18 161:9 162:1,5	nicely 90:21
money-- 16:2	Naimi's 77:14	niece 38:9,11,16,17 152:17
monies 75:9	names 144:25 153:9	night 27:3 113:2,3 132:16,18 137:5 146:22 159:19
Montauk 14:25 68:1,24	Nance 3:2,6 5:7 87:3 92:6,8,11, 19 151:6,14,19 157:21	Nineteen 76:13 145:5
month 14:6 15:3 16:1 17:2 21:11, 13,18 23:3,7 45:25 46:2 60:4 67:15 69:8 75:5,7 84:6,13,19 87:6,8 90:24 91:3,9 98:10,19 99:1 103:16 118:10,11 153:18	Nance's 158:1	no-- 37:21
monthly 14:15,17 25:17 83:22 84:5 98:7 99:25 100:3,6 103:15	narcotic 118:5	noise 40:16
months 15:15 21:23 56:17 71:14 95:23 98:21,24 124:20 129:21,24 130:10,19 138:18 143:3	narcotics 41:10	normal 109:14
Moody 3:15,17 28:4,7 31:20,25 54:24 57:25 92:2 93:11 96:12,18 103:3,17 107:5,8 110:24 111:8 114:2,17 115:20,23 120:4,6,20 121:1,18 122:2,24 123:10 124:6, 10 125:5,12 126:2,6,9,19 149:15 157:2,4,6	National 40:6,9	noted 4:18
morning 56:12 59:16 61:15 98:13 132:6 161:13	nature 143:25	notified 152:6
mother 31:10 32:21 33:11,15,24 34:9,25 35:5,14 36:4,12 37:1,14 38:1,7 39:4 44:21 66:24 67:10 78:4 117:18 119:4 146:4 147:4	nature-- 144:2	notify 73:3 130:21 143:22
mother's 26:6 106:7	needed 137:18 150:19	November 20:11 52:16,22 53:1 60:11 68:21 95:24 101:19 148:13
motion 5:12,15,19,21 6:4 31:9,14 32:16 62:23 63:3,11,24 64:2,5,14 85:22 86:14,17,20,23 87:11 93:3, 5 117:5 123:11 149:16	negative 77:5	number 3:16 13:5 20:10 46:10 47:19 48:4,8,18,25 49:5,13,17 58:3 104:11 147:1 155:25
Mountain 142:6	negatively 116:15 148:16,24	numbers 58:7
move 53:18 78:22 102:7 107:8 111:11 128:4 151:25 152:1	negotiated 96:8	numerous 73:8 108:3
moved 153:18	negotiations 96:14,20 97:11	<hr/> O <hr/>
	neighborhood 154:22 155:2	o'clock 61:19
	Neighborhood-- 154:24	oath 11:20
	Neil 82:25	object 77:7 85:21 90:10 122:7
	nephew 152:17	object-- 97:5
	Nevada 93:1 142:19 143:11 147:7 152:13,15 153:6,20 154:2,7	objecting 122:1
		objection 9:18 24:20 28:4,8 58:1 59:1 63:1,4 65:1,6 71:18 72:7 74:13 93:11 94:22 96:12 97:3 103:3,17 107:5 110:24 111:8 114:2,17 115:20 120:4,5,20 121:4,18 125:5 126:2,5,6,7,10,12 147:13 150:25
		objection's 78:25
		obligation 15:14 147:22

observation 114:8,13	ordeals 108:22	Parish 141:9
observations 113:23	order 30:10 123:17 124:3 147:15 148:13 149:3,16 150:1	parishioners 141:6
observed 122:4	ordered 96:4 116:25	park 140:16 154:25
occasion 72:25	organization 81:18	parks 154:24 155:3
occasionally 118:8 133:21 137:21	organizations 88:16	parole 96:13
occasions 112:20 113:1	Orlando 84:25 85:2,3,5,8	part 56:15 81:13 82:2 86:20 120:8
occupation 94:4	outbursts 129:12	participate 28:1 71:2 140:6 141:11
occur 24:9,14 25:7,11,14,18 99:18,21,22,25 100:4 114:23,24 125:7	outgrown 108:19	participated 116:21
occurring 115:5	outline 78:9	participates 140:14,20 141:1
occurs 104:25	outsiders 4:10	parties 24:2 25:24 27:19,20,22, 25 70:23 71:1 147:18 149:2 160:20
October 60:8 72:3	overly 41:3	parttime 94:8
odd 33:14,23 35:4,14 74:24	overrule 120:14 126:23	party 115:21 120:21,22 121:7 122:12 148:21
of-- 21:25 41:9 58:14	overruled 97:6,8 114:18 120:24 121:6,9 122:8	pass 62:18 156:24
offer 126:22	overruling 97:10	passed 119:7
offered 145:16	owed 18:21	passion 80:22
office 87:17 142:25 155:12	owns 131:22	past 85:5 106:3,11 115:19 116:1, 15 124:15 150:21
okay-- 35:23		pasting 137:23
older 102:18 108:10	P	pay 12:4 13:15 31:6 65:19,20,21 70:2 75:11
once-- 144:15	p.m. 132:22 160:10	paycheck 65:25
one-upping 107:25	paid 18:18 66:17 67:14 68:2,5 94:16,20 95:6	payment 67:16
ongoing 75:19 156:4	paragraph 11:25	paystub 66:4,6,22,25 67:2,3,6,8 68:8
open 88:5 144:3,16	paralegal 3:9 32:3 55:13,18,23	pediatrician 141:21,23 142:5,7, 12,18
open-minded 144:16	paramount 147:22	Pediatrics 142:6
opinion 114:3,14,15,20 115:6 120:14 121:3 139:16	Pardon 58:10 91:17 125:16	penalty 11:20,24
opinions 116:4	parent 114:9 116:2 117:20 139:15	pending 85:22 86:2,9
opponent 121:7 122:12	parent-- 137:20	people 111:2 119:3
opportunity 27:5,8 72:21 77:8 81:16 151:19 155:22	parental 78:18	Perfect 152:5
opposing 94:24	parenting 20:12,14,20 70:6,22 71:8 79:6 95:18,21 96:1,6,8,15 98:1,17 99:4 101:18 102:1 115:16 116:2,5,22 117:3 129:18 135:5,18 145:11 146:12 149:7,9	period 13:15 21:25 65:19 71:12 99:14 111:22 161:8,15,19
opposition 93:3,10,15	parents 71:1 77:17 81:5,19,25 82:2 100:14,15,17,21 108:1 109:19 137:20,25 152:16 155:15, 20 158:1	perjury 11:20,24
opposition/defiance 42:15		permission 31:11
oppositional 76:5		
oppositional/defiance 42:6		
optional 81:19 82:2		

permits 34:17 37:10,22	player's 118:15,21,24 119:11,16,20	prevent 147:24
permitted 34:17	players 40:8,10	previous 11:2 15:21 56:17,18 136:8
person 76:21	playing 132:15	price 95:9,10
personal 15:23 16:3 90:24	plays 89:22	primarily 85:20
personally 138:14	pleadings 149:8	primary 87:9 93:4
persuade 151:1	plenty 26:22	Principal 138:8
Pete 39:5	PLREB 49:3,15 51:13,18	principle 147:24
Peter 6:24 17:24 38:5 84:2,6,7	pocket 18:15	prior 29:14 43:17 76:8 123:13,19,23 124:2 138:11 147:20 148:10,11,13 149:17
phase 9:23	point 5:7 7:24 8:1 19:14 61:25 78:6 81:3 88:21 97:9 122:6 124:1 127:1 150:6,16	private 102:4
phone 26:12 47:19 48:8,18	points 76:17 119:17 150:20	pro 95:13,14
physical 39:9,23 41:13,16 87:9 93:4 117:24 119:25 123:4,8 124:19 125:20 127:15,17,18 131:1,14,25 149:3	policy 107:11,17	pro-- 103:2
Pichard 97:19 135:9	pool 40:7 119:21	problem 20:11 93:12 97:24 107:21
pick 56:6,8 61:11 127:5 128:7 132:8	popular 44:9,25	problems 97:20,23 156:5
Pickard's 87:17	portion 28:5	proceedings 96:2
picked 59:12 127:6,9 146:22	portions 81:14	professional 90:2,6,15
Pickert 20:20 96:5	positional 129:2	profit 8:17 12:7
picks 69:20 98:9	positive 76:24 77:2 146:7	program 80:9 82:13,17 83:3,4 132:17
picture 145:13	post 110:12	programming 82:17
Pierce 152:23,24 153:2 154:13	post-concussion 40:5	progress 136:9,12
pinball 155:9	preclude 147:18	proof 12:10
pins 124:22	precluded 151:15	propose 32:21
pitch 58:23	pregnant 121:13	proposed 31:10 32:12,18 33:14,23 34:8 35:4,13,22 36:3,11,16,25 37:13,25 73:20,24 75:3,12 81:1 86:21 87:13 104:12 105:13
place 98:2,4 112:5 114:25 160:4	prepare 113:11 160:14	proposes 105:14
placing 149:24	prepared 20:23 149:20	protect 40:10
plaintiff 40:12	prepares 133:6	prove 149:25 150:10
plan 20:12,15,17 21:1,4,8 22:3,6 23:21 25:17,21 27:14,16 70:6,22 71:8 75:12 79:6 82:11 87:13 95:18,21 96:1,6,8,15 98:1,8,17 99:4,24 100:9 101:18 102:1 129:18 133:2 135:5,18	preschool 134:16,17,19,22,25 135:13	provide 29:4 102:1
planned 132:11 135:17	preschoolers 134:20	provided 29:8,17 34:17,21 37:9,10,21 70:24
planning 102:19	presence 113:21 158:23	provider 70:25
play 81:25 123:6 132:17 155:11	present 3:6,13 71:8 115:6 121:11 127:10	provision 71:4 74:2,15,16
played 90:16,17 123:7	presented 32:13	psych 129:8
player 81:12 89:18	presently 39:8,23	pull 32:1
	presumptively 71:16	
	pretty 24:18 138:1	

purchase 108:18,20	ready 23:17,18 92:13 132:6 134:25	refresh 8:13
purchased 108:12,14	reason 50:15 101:13 126:15 143:20 155:25	regard 79:24 111:13 113:23 117:17 122:10,11 149:12
purpose 124:8	reasonable 93:6 121:20	registered 141:6
purposes 123:21 148:18	reasons 30:7,12 31:1 115:12 116:5,17 135:1 140:1 155:23	regular 23:2 24:8,12 41:7 56:2 80:4,13,17 81:15,18 118:1 147:3
pursuant 71:4	recall 8:5 9:2 28:24 30:22 47:10 72:6 79:13 87:15 95:17 118:20 123:1 142:13	regularly 26:6
push 159:21	receive 14:6 65:21 66:22 67:13, 16 70:7,11	related 40:11 124:15
put 65:18 72:11 113:5 128:6 150:24	received 66:3 67:8 79:5,8 110:18,19 125:3	relationship 44:18,21 78:4 102:12,13 105:22 106:15,23 107:24 108:4 120:10 142:22 144:1,3,15,16,18 145:11,16,17, 20,21,25 146:6,12,15
putting 96:5 135:4	receives 70:14	relationships 88:15,17 147:5
<hr/> Q <hr/>	receiving 14:25 15:5,8 68:14,18, 23 69:2	relatives 39:22 145:19
qualified 42:20 95:14	recent 12:4,15 137:13	released 128:19
Quest 125:4	recently 124:23	relevance 121:19 122:1
question 19:2 22:5 23:1 64:10 66:7 68:17 72:9,10 77:21 78:1 79:19 80:19 82:6 85:22 86:2,9 87:21 88:11 96:25 97:10 103:9, 12,19 122:7,21,25 123:2 125:13 126:10 140:18 158:8	recess 61:16,25 152:10 157:1	relevancy 90:10
questioned 131:10	Recessed 62:6	relevant 90:11 122:9
questioning 50:17 90:12	recesses 34:3,12 35:7 36:6,15	relief 68:5,14,18
questions 42:20 59:3 62:18 78:8,9 79:21 83:17 88:7 89:6	reciprocated 107:1	religion 141:4
quick 61:25 139:12	recognize 47:17	religious 141:12,16
<hr/> R <hr/>	recollection 8:14	relocate 5:22 30:7 31:1,11
raise 4:21 28:9 152:4	recommendation 134:22	relocating 102:23
raised 29:24 30:25 102:15 148:11 149:7,11 150:2,21 156:12	recommendations 135:9,12,20	relocation 5:13 63:24 64:3,6 82:14 148:21
raising 44:24	recommended 71:2 135:15 137:1	rely 12:22 91:2
range 20:6	reconciled 129:25	remained 71:6
Rangers 90:4	reconciling 71:13	remaining 162:8
rarely 29:18 111:25	record 3:1 23:1,14 41:10 58:5 62:8,11 78:24 92:18 95:5 104:1 121:1 127:25 149:23 150:5,17,24 151:5,13,17,20 152:3	remember 31:16 77:16 78:1 104:17,21 108:18 158:11 161:3
re- 161:20	record-- 151:8 162:15	remembering 40:22
re-cross 157:20	red 125:3,7,23 126:1 136:20	removed 71:14
reach 96:10,21 97:16	redirect 28:6,10 86:25 157:20 158:16 161:2,20	render 58:1
reading 43:11 132:18,19,20 150:25 151:13	referred 95:12	rental 17:5
reads 11:11 14:12 23:25 151:10	reflects 85:13	rentals 16:15
		repeat 7:13 53:10 72:8 103:4
		repeating 111:3
		rephrase 64:10 72:10

report 43:3	reviewed 104:12	22,24 37:25 73:21,24 75:6 86:21
reported 40:15	reward 136:14,16,24 137:2	94:12 96:11 97:17 98:7,14,16,22
reports 136:9,12,22 149:9	rink 112:8	99:25 100:20 101:8,20 103:21
represent 5:7	rinks 63:18 65:24 66:1,5 88:15	104:13 105:5,13 111:16 117:20
representation 95:15	Rock 125:3,8,23 126:1	143:4
reputation 90:19	role 4:11	scheduled 81:1
request 5:22 81:2 150:1	Roman 141:5	schedules 101:7,8 111:17 153:4
requesting 105:10	room 17:18 113:1 128:12 138:13	scheduling 26:11
required 126:1,3,9 127:4 132:20	155:9,11,17	school 21:12 24:5 33:19 34:3,4,
res 123:21 124:4 147:17,24	roughly 69:22	11,17 35:7 36:6,15,20 37:10,22
reside 92:24	round 82:13	42:25 56:9,11 57:3,10 59:5,9,15
residence 155:6,13	routine 143:2,3	61:16 74:6 75:6,14 76:22 98:3,13
resident 5:25 6:3	ruining 110:8	99:8 100:1,4 102:18,21,22 103:2,
residential 24:3	rule 96:13 122:11,15 126:12	7,14 104:22 105:15,16,18,20
resides 38:18 45:10,16	rules 107:14,18,19	106:4 109:19 115:1 116:11,12
resolved 75:20	ruling 97:3 121:2	117:19 132:6,8,9,16,20 134:3,24
resources 31:4	run 113:3 132:14 133:21 138:14	136:3 137:4,6,25 138:3,9,11,12,
respect 73:25 77:16	running 131:10	15,20,24 139:2,6,11,13,17,18,23
responded 13:6,9		140:2,4 154:11 156:16
responds 52:2	S	schooling 35:3
response 48:15	sacraments 141:18	scope 77:8,10
responsibilities 117:16,18,21	sad 136:20	screwed 9:10
responsibility 40:9 56:21	safe 19:16 48:11,19 159:12,14	search 149:23
rest 11:24	Saint 141:10	season 80:1,4,12,13,17 81:15,
restaurant 16:4 84:9	salary 65:22,23	18,23 82:10
restaurants 69:9,11 84:15	samples 43:21	section 13:12 23:23 27:16 65:18
rested 3:19	Sandra 3:6 5:7 6:6 20:12 26:13	sees 154:12
result 125:25 126:24 127:3	29:4 36:17 41:12 48:3,20 49:6,21	self- 100:25
resume 71:22	70:7,14 71:12,14 72:11 73:3,7,9	self-employed 94:3,10
resumed 71:16 72:5	74:19 75:2,5 76:25 77:3,19 92:5,	send 82:3 136:9 138:1
resumes 33:19 34:4 36:7,15	19 95:7 109:6 115:15 152:13	sends 146:5
return 21:25 57:1,17 59:8,15	156:3	Senior 39:6
61:14,16 113:20 159:19	Sandra's 47:21 48:9 52:7 70:19	sense 83:12 150:21,23
returned 46:25 52:16,25	76:17	sensitivity 40:15
returning 57:10,12	sat 146:23 160:20	sentence 28:5
returns 50:7 54:10 113:19	Saturday 26:3,4,10 57:6,8 59:13,	September 6:14 13:16 51:4,10,
review 104:20	14 100:19 111:17 112:12	25 52:10 56:7 60:5,8,23 63:19
	say- 150:6	66:2 71:23 80:4,10,16 81:12
	schedule 10:9,12 20:18 21:10	served 148:1
	29:8 30:16 31:10 32:13,18 35:13,	serves 71:23 79:11

sessions 28:13	situation 101:24	spending 84:18
set 10:12 95:9 111:21 139:14 147:14	size 147:2	spends 133:2
sets 20:17	skates 81:25	spent 19:21 20:1
settlement 96:20 97:11	skill 80:25 82:17	spoken 130:1
Seventeen 153:25	Skype 25:21,24 26:6 49:6,9 70:7 100:9,13,18,20	sport 82:1 140:12
severe 121:12	Sleep 41:1	Sporting 15:6
Shannon 3:11 62:22 90:1	slightly 150:25	sports 66:20,23 67:9,14 69:3 74:7 82:1 88:9 140:6,8,13,15,24
share 24:14 36:17	slow 62:3	spring 80:13 81:12 82:1,18 83:4
shared 28:18	snack 132:9	springtime 81:19
shares 24:8,13	snacks 91:4	stable 73:18
She'll 147:1	soccer 140:23	stand 4:20
she's 38:16,17 48:11 73:3 90:14 120:11 150:3	social 145:22	Standish 94:14,20
Shelley 3:7	solemnly 4:22 92:7	start 68:13,18 69:2 71:3
Shelly 92:16	solid 42:21 81:17	started 25:10 71:7 95:10 99:12, 17,20 100:4 108:9 135:6,7
shifted 150:10	solo 7:25	starting 135:2 157:2
shoes 108:5	something-- 151:12	starts 25:6
shortly 69:5	son 79:24 80:5 97:25 102:18 108:9 109:20 110:5 153:1	state 3:2 5:25 6:3 7:2,5 28:7 29:1 92:17 102:4,20 105:24 144:25
shouldn't 158:2	sooner 49:25 112:22	stated 30:20 43:25 70:22 79:6
show 77:22 113:24,25 150:2,4	sort 119:19	statement 86:2
showing 22:16	sound 7:23 8:13,23 13:24 38:2 147:22 159:17	statements 12:7
shows 22:17 67:3 114:21 115:1 119:22	spa 119:22	states 65:11 81:6 149:18
siblings 102:14	Spanish 134:19	stating 126:12 151:13
sick 105:19	speak 24:24	status 124:17
side 3:22,23,24 146:21	SPEAKER 97:6	stay 35:24 85:14 99:12 107:20 119:8 128:17 139:25
sign 134:19 137:16	speaking 125:2	stayed 47:9
signature 11:14	speaks 24:20	step 91:13
signed 5:17 93:10	special 41:16,18,22 44:5,24 127:18,20	stepping 107:20
significant 81:6	specifically 26:2 63:15 77:18 107:23 149:18	steroids 128:9
signs 75:25 76:4	specificity 105:24	stick 111:15
similar 75:23	speculating 114:13	still-- 151:6
single 112:7	speculative 114:2	stipulated 4:10
sister 38:10,15 45:12 116:3 119:4 124:24 152:16	speed 109:24 110:8	stitches 131:16
sister's 45:14 153:1	spend 16:2 17:13 81:4 85:2 90:25 91:5	stop 27:11 71:11 123:16 129:23
sit 79:14		stopped 72:1 129:21

store 113:6	surgery 124:23,25	teeth 110:10,17,21 111:5
straight 23:14 42:23 140:5	surrounding 96:1	telling 107:22
strictly 18:14 89:17	sustain 58:25	tells 107:3
strike 85:23,24 86:1,11 93:5 97:12 107:8	sustained 24:23 65:3 71:20 74:14 78:25 86:8 93:13 103:24 107:6 111:1,10 114:4,6 121:12 125:6	Ten 75:17 154:5
strong 44:18,21 77:20,24 78:4 89:1 144:17	sustaining 97:4	Tenaya 141:25 142:1
stubs 12:4	swear 4:22 11:23 92:7	terms 21:7 122:6,8 123:22 162:6
student 42:21	switched 9:23	territory 107:20
stuff 52:3 106:8	symptoms 40:5 75:20 76:1,3,5	testified 6:16 8:10 28:3,12,25 29:19 45:2,23 50:14 84:1 100:25 101:3 103:1,6,14 120:8 125:22 138:19
subheading 65:16	syndrome 40:5	testifies 122:14
submitted 43:2,8,11,21	system 136:14,16 137:2	testify 120:25 123:25 124:1 129:20
Subsection 14:10 16:10		testimony 4:23 9:15,19 25:1 45:4 60:22 85:23 92:8 97:12 107:13 120:16 121:8 122:11 126:20
subsequent 67:18	<hr/> T <hr/>	testosterone 128:9
subsequently 46:19 64:19	tab 46:9 47:16 48:22 50:19 51:2, 18 52:12,21 53:6,18,25 54:1,2,15, 22 55:3 66:8	tests 43:3,5,8
substantial 34:21	table 57:13,15	text 47:18,24 48:15,25 49:5,13, 17,25 51:9,14,17,19 52:5,6
substantially 67:19	tabs 56:17	texting 49:6,21
substantive 28:21	takes 142:7,14 143:13	Thanksgiving 35:5,8
suffer 131:13	taking 129:14 160:4	that-- 58:12 126:25
suffered 121:24 124:21 130:25 131:25	talented 44:3,24	that's 4:1 6:22 8:17,19 14:4 15:17 17:11 20:3 21:4 24:22 26:4 28:4 31:24 33:13,21 34:14 35:17 37:16 38:15 39:3,20 48:18,25 49:19,25 50:6,16,21 51:3,25 52:6 54:24 57:8,11 59:14 66:19,20 67:5 69:22 74:8 78:6 80:12,24 82:4 83:25 84:4,23 85:11 88:11 89:19 91:11 94:7 100:2 102:2 103:7 108:3 115:6 116:5 122:14, 23 140:25 151:7,9,14,22 160:22 161:5
suggest 24:17 151:16	talk 27:13 106:20 116:14 146:8	the-- 18:13 25:2 55:21 158:16
suggestion 25:3 151:23	talked 72:24 79:23 135:14 149:14 150:14	them-- 127:16
suggests 22:8 25:5	talked-- 45:18	then-- 103:10
suit 40:6 124:16,17	talking 8:20 78:7 79:22 81:21 86:3 115:24 122:2 130:1 136:19, 20 146:23 148:7	therapist 71:3 130:1,2,8 137:3
summer 21:22,23 32:18,22 33:2, 5,12 35:24 43:15 59:22 76:8 80:15 82:1,3,21 83:6,7,8,10 87:24 98:16,22,24 99:2,6,9,10,15 133:10	talks 144:7	therapists 130:9
Summerlin 155:1	Tandross 38:14	therapy 71:14 128:23 130:3,18
summertime 81:13	teacher 109:21,22 116:12 136:6, 8 137:18,19 139:10,15	
Sunday 35:8 57:1,7,8 59:13,14	teacher's 137:22 138:13	
Sundays 133:3	teachers 109:21	
support 15:14,21 75:8 93:5 105:17,20 106:15	teaching 82:16	
supporting 40:8	team 80:8 81:17 82:15,19 88:8 140:15	
supposed 111:21	teams 83:5 88:9 89:15,17 90:2,7, 15,16,17,18	
surgeries 123:9		

there`re 90:6	142:11 143:16 145:18 147:14	traits 78:18
there`s 7:21 25:13 37:21 50:15 88:20 89:16,18 119:22 154:25	148:7 150:13 153:24 158:12 160:5 161:18 162:2,3,6	trans 78:5
There`ve 73:8	timed 43:3 113:5	transcript 77:23 78:6
thereof 81:14	timeframe 79:9	transitional 130:17
thereon 60:4	times 18:6 29:16 30:21 41:4,6 73:8 91:8 102:4 105:4 112:11 118:11 129:5 131:10 142:24 148:6 153:3 155:5	transportation 16:10 69:15,18
they`re 9:16 43:9 49:24 80:2 132:9 136:19	timeshare 69:13 72:17,22 76:3,7 79:5,6 99:12 106:3 108:4 109:24 110:9,11,15,17 131:6 137:17 138:6 140:9 146:23 159:20	travel 29:4 31:6 55:14 56:4,15,19 61:8 69:24 75:10,11 80:9 84:15 99:11 101:25 102:17,21
They`ve 120:10	title 27:16	traveled 46:16 102:3 130:16
thing 9:17 37:16 61:14 106:4 113:17 130:20 146:8 151:16	to-- 22:11	traveling 98:3
things 94:8 96:14 102:5 106:6,7, 8,10,12,13,19 107:4 111:17 112:21 113:15 119:18 129:14 132:11 133:21 137:23 139:22 140:17 146:5,6,10,24 148:10	today 5:10 6:11 18:25 21:5	travelling 73:4,7
Thinking 70:5	Todd 3:15 22:15 58:19	travels 84:10
Thirteen 145:9	told 102:3 106:6,9 107:23 108:18 109:10,20 110:2,13,25 111:4 114:11 120:18,25 121:11,16 123:7 127:23 128:3,5 131:7,9,11 136:21 139:23 144:11,13 161:3	treadmill 131:12
Thirty 26:20	Tolman 28:16 72:16 157:24 158:6	treated 128:19
those-- 60:23	Tommy 82:24	trial 149:24 160:21
thought 88:2 121:12	tomorrow 48:12 152:2,7 157:1,7 159:10,25 160:10,23	true 12:19 127:1
thousand 84:19	ton 140:16	true-- 58:21
thread 109:9	tonight 49:7	truth 4:24,25 92:9 126:21,22
threats 156:4,7	tooth 108:21,25 109:2,7,8,12,14, 16,18,20,23,25 110:3,5,8,10,19, 20,23	Tuesday 34:12,18 37:5,17 57:7 59:13
three-and-a-half 162:2	top 54:11 55:8 78:2 136:21	Tuesdays 26:2
three-day 74:18	total 57:20	turn 22:23 47:16 49:12,14 50:3 51:8 52:21 53:6 54:15,22 63:20 65:14 66:7 67:21
through-- 47:14 53:21 116:16	tough 158:8	turning 11:8 13:4,11 15:11 16:7 18:17 23:20 45:22 46:9 48:22 50:19 51:2 134:23
Thursday 26:3,4,10 34:11 37:4, 17 57:7 59:14 100:19 111:16 112:11	tournament 29:2 81:23	Twenty-five 67:15 132:16
tie 160:16	tournaments 80:14 82:19 83:5	Twin 63:18 65:24 66:1,5 88:14
till 159:10	town 119:6	two-story 155:8
time 3:20,21 7:8,24 8:1 9:9,11 13:19 18:21 19:23 20:21 24:3,8, 12,13 36:17 48:20 49:10 55:13,25 56:15,23 64:16,22 66:3 68:25 69:4 71:7,15 80:23 81:4,24 85:2 88:4 99:16 100:21,23 102:3 111:13,14,20,24 112:2,7,10,13, 17,18,24,25 113:4,8,9,15,16 114:25 127:6,9 128:10 129:10 130:7,8,15,17 131:20 132:13,14 133:19,25 136:22 138:7,10,14,24 139:4,7,24 140:16,19,22 141:18	train 79:25	type 113:16 118:4 146:8
	training 82:10	typical 59:4 75:15 132:3,5,23
		typically 81:5 119:13
		<hr/> U <hr/>
		UCLA 123:7
		Uh-uh 96:23
		ultimately 160:7
		unable 128:14

uncle 152:18	visitation 16:11 20:17 21:10,11, 19,22 22:4,7 23:2 25:14 32:13 36:22 45:24 48:23 50:22 51:10 59:4 60:7 73:21,24 75:2 86:21 97:21 98:7,25 99:5 100:10 101:20 103:15 104:3,13 105:6,10,16 113:12,19 138:20 139:2 140:19, 21	we'll 66:6 92:2 111:11 121:8 128:4 156:25 162:11
uncles 119:5		we're 3:1,21,22 4:11,15 8:20 23:18 55:3 57:17,18 60:20,23 61:7 62:2 64:20 83:8 92:5 95:4 145:12,22 155:4 158:16
under-- 16:6		we've 4:9 10:1 59:5,16 116:15,16 145:12,21 148:5,8 158:12,16 162:8
understand 84:24 121:2 149:8, 13 150:8,12	visitations 25:22 75:12	wear 147:2
understanding 12:17 41:14 67:5,13 71:5 80:21 111:4 123:3	visited 38:24 39:1 47:11 53:19 54:16,23 55:25 56:19 59:21	Wednesday 35:7 57:7 59:14 159:19
Understood 89:2	visiting 33:11	week 21:16 32:25 59:22 133:15 136:24 137:16,17 138:5 153:3 155:5
unemployed 6:17 12:10 63:17	visits 17:4 23:25 25:7,11,18 32:25 69:14 70:8,11,14,17,20 99:18,21 100:3,7 142:9	weekday 132:3,5
unknown 147:20	Vistas 155:1	weekend 34:9,16,24 35:1,18 37:2 74:1,12,19,21,24 132:23 133:2
up-- 56:6	volume 10:18 63:21	weekly 25:25 136:9 152:21 153:3
updated 10:24	voluminous 151:20	weeks 32:22,24 33:8 82:3,23 136:17
utilize 88:12 123:23 124:3 137:2	volunteer 89:13,15 137:16 138:20,25 139:1	well-behaved 76:20
utilizing-- 123:22	volunteered 137:24	well-known 90:21
<hr/>		
V		
<hr/>		
vacation 38:21 87:2 99:16 130:5	volunteering 138:4,8	wellness 143:2
Vague 72:7		weren't 62:10
Vanguard 15:6 66:20,23 67:9,14 69:3	<hr/>	
variations 70:10,13	W	
varies 10:10 26:19,21,24	<hr/>	
vary 70:17,20 101:4	wait 23:16 53:23 121:25 135:17 159:10	what-- 124:14
Vegas 17:8,11 18:2 24:9,18 25:8 28:14 45:10,16 46:13,17,20,25 47:9 50:7 51:3 52:13,22,25 53:8,9 54:6,20 55:15 56:20 84:10,23 85:11,16 87:24 89:12,19 92:25 99:12,19 100:5,7 142:2 144:9	waive 158:22	what's 75:3 82:11 90:14 114:14 120:5 126:4,6,10 146:20 150:17
vending 94:6	walk 47:14 128:6 152:7	whatsoever 29:17
version 64:1,20	wanted 39:12,22 49:9 56:25 82:4 99:23 106:12 107:16 108:10 159:7	wheelchair 128:7
versus 3:2	wanting 95:11	When's 79:25
video 132:15 160:6	was-- 9:9 123:14	whichever 157:2
View 142:6	wasn't 87:13 102:5 128:17 130:18 137:19 150:2,9	who've 160:20
violating 96:13	wasn't-- 161:14	Wild 89:22
violence 147:12,19 148:15,18,23	watch 27:11 132:17	Wilson 3:11,12 23:18 24:20 55:6 62:19,20,22 84:2 87:22 90:1 94:22 95:1 123:14,17 147:13 150:23 151:4,12 152:3,6 157:2,4 159:18 160:1 161:5,23
Visit 17:11,15 23:2 24:18 32:21 33:15,24 34:9,25 35:5,14 36:4,12 37:1 38:1 46:23 56:2 59:22 60:19 87:8 142:12	watched 124:25	winter 33:16,25 36:4,16
	water 154:25	wise 9:17
	wave 75:8	
	waves 139:21	
	ways 75:1 146:18 147:4	

you-- 28:3 39:8
you'd 56:11 57:3 59:13,15
you'll 51:20 136:23
you're 6:16 12:10 14:24 15:5,8
17:16 28:13 39:8 40:4,12 41:24
42:2,5 49:6 51:22 54:1 56:14,16
57:6,10 58:19 60:24 61:1,3,7,8
63:6 79:16 81:20 82:8 84:18
85:12,24 86:3 90:25 92:8,13
108:13,15 125:18 144:12
you've 3:19 7:14 10:6 12:13
18:18,25 19:4,21 20:1 21:1,7
28:21,25 29:16 40:13 85:5 89:10,
14 105:24 151:2
your-- 124:12
youth 88:25

Z

Y

zone 100:23

1
2
3
4
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7
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9
10
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DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA LYNN NANCE,) Case No.: D-10-426817-D
Plaintiff,) Dept. No. F
vs.)
CHRISTOPHER MICHAEL FERRARO,)
Defendant.)
_____)

TRIAL TESTIMONY
Taken on June 29, 2016

Nevada Court Reporting

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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

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5 SANDRA LYNN NANCE,) Case No.: D-10-426817-D

6 Plaintiff,) Dept. No. F

7 vs.)

8 CHRISTOPHER MICHAEL FERRARO,)

9 Defendant.)

10 _____)

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13 TRIAL TESTIMONY

14 Taken on June 29, 2016

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<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: JASON NAIMI, ESQ.</p> <p>3 STANDISH NAIMI LAW GROUP</p> <p>4 1635 Village Center Circle</p> <p>5 Suite 180</p> <p>6 Las Vegas, Nevada 89134</p> <p>7</p> <p>8</p> <p>9 For the Defendants: SHANNON WILSON, ESQ.</p> <p>10 TODD MOODY, ESQ.</p> <p>11 HUTCHISON STEFFEN</p> <p>12 10080 Alta Drive</p> <p>13 Suite 200</p> <p>14 Las Vegas, Nevada 89145</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 call. Today is our last day of trial and if we --</p> <p>2 MR. NAIMI: Wait. If you said 3.1 --</p> <p>3 JUDGE GENTILE: Look, we're going to do</p> <p>4 13-and-a-half hours if I utilize every single minute</p> <p>5 that I was scheduled, but we cut out early twice so</p> <p>6 that's why it's -- the calculation is --</p> <p>7 MR. NAIMI: We're not going to be able</p> <p>8 to do 4.8 and --</p> <p>9 MS. COOLEY: Right.</p> <p>10 JUDGE GENTILE: You're not, but my</p> <p>11 point being, you should be able to get everything --</p> <p>12 if you can everybody done today, great. I don't know</p> <p>13 if you can, but --</p> <p>14 MS. COOLEY: And you're concerned that</p> <p>15 we're not going to be able to get everything done</p> <p>16 today.</p> <p>17 MR. NAIMI: Yeah. We may not be able.</p> <p>18 MS. COOLEY: It's --</p> <p>19 JUDGE GENTILE: Okay. We'll see.</p> <p>20 MS. COOLEY: Okay.</p> <p>21 JUDGE GENTILE: I don't know. That was</p> <p>22 my concern when we put the limit on it, but that was</p> <p>23 the point of putting a limit on it. So you can</p> <p>24 focus, keep everything really sharply focused. So</p> <p>25 what it is you're trying to get out of people, you</p>
<p>1 MS. MCCULLOCH: Okay. We're on record.</p> <p>2 JUDGE GENTILE: We're on the record in</p> <p>3 the Nance versus Ferraro matter case, D426817. Your</p> <p>4 appearances?</p> <p>5 MR. NAIMI: Good afternoon, Jason</p> <p>6 Naimi, bar number 9441, on behalf of Ms. Sandra Nance</p> <p>7 who's present with us this afternoon, and of course</p> <p>8 with me is Ms. Shelly Cooley.</p> <p>9 MS. COOLEY: Bar number 8992 on behalf</p> <p>10 of Sandra as well.</p> <p>11 JUDGE GENTILE: Okay.</p> <p>12 MS. WILSON: Good afternoon. Shannon</p> <p>13 Wilson, bar number 9933, on behalf of Christopher</p> <p>14 Ferraro, also with me.</p> <p>15 MR. MOODY: Todd Moody, bar number</p> <p>16 5430.</p> <p>17 JUDGE GENTILE: Okay. So this is day</p> <p>18 three, I guess the second half of full day two. I</p> <p>19 have the time schedule as I calculated it 3.1 hours-</p> <p>20 ish on your side --</p> <p>21 MR. NAIMI: Remaining?</p> <p>22 JUDGE GENTILE: -- remaining and 1.7 on</p> <p>23 yours remaining so.</p> <p>24 MS. COOLEY: And your Honor, we have</p> <p>25 some concerns knowing the witnesses that we have to</p>	<p>Page 3</p> <p>1 don't need to go into a lot of background, detail,</p> <p>2 and whatever. I don't need to hear about where</p> <p>3 someone went to grade school. Just put it on what's</p> <p>4 important and you should probably be able to --</p> <p>5 MR. NAIMI: If we utilize the time</p> <p>6 where -- the remaining time we're allotted, I'm</p> <p>7 assuming in lieu of what we had the conversation made</p> <p>8 yesterday about closing arguments, that's exclusive</p> <p>9 of the closing arguments so we don't have additional</p> <p>10 time for that. And if we're to utilize the remaining</p> <p>11 time we have and we needed, are you intending on</p> <p>12 giving us an additional day for that or you want to</p> <p>13 wait and see where we're --</p> <p>14 JUDGE GENTILE: A whole day, no.</p> <p>15 MR. NAIMI: No.</p> <p>16 MS. COOLEY: No, like a half day.</p> <p>17 JUDGE GENTILE: I guess it depends.</p> <p>18 You have cross examination of her --</p> <p>19 MS. COOLEY: Also for direct as well.</p> <p>20 Remember, she reserved.</p> <p>21 JUDGE GENTILE: Right. So whatever,</p> <p>22 it's going to be broader in scope obviously and then</p> <p>23 the two other witnesses, correct?</p> <p>24 MS. COOLEY: It's three actually, your</p> <p>25 Honor.</p>

<p>Page 6</p> <p>1 JUDGE GENTILE: That's right. I lied 2 because of appearance and the -- yeah. If I have to 3 find another time, I'll find another spot. 4 MS. WILSON: Well, may I speak to that 5 because we had planned to call other witnesses that 6 we didn't call because we saw what was happening with 7 our time constraints and so if -- 8 JUDGE GENTILE: Yeah, but you got some 9 bulk of your -- you got to put on your case and -- 10 MS. WILSON: But I'm saying that I 11 would have -- with unlimited time, I would have still 12 called -- 13 MR. NAIMI: We're not -- 14 JUDGE GENTILE: I'm not talking about 15 unlimited time. They still have 3.1 hours. 16 MS. COOLEY: We want our 3.1 hours. 17 MR. NAIMI: Yes. 18 MS. COOLEY: Yes. 19 JUDGE GENTILE: Yeah. They still have 20 3.1 hours. You were able to use 4 something. 21 MR. NAIMI: Okay. And you still have - 22 - 23 MS. COOLEY: 1.7. 24 MR. NAIMI: Exactly, right? 25 MS. WILSON: Yeah. Well, I'm doing it</p> <p>Page 7</p> <p>1 all in one piece. 2 MS. COOLEY: No. We're fine sticking 3 to the 4.8 hours that we have combined with us having 4 the 3.1 and then having the 1.7. 5 MR. NAIMI: Let's just see where at. 6 [0:03:34 inaudible] 7 JUDGE GENTILE: Okay. Let's get on it 8 then. All right. 9 MR. NAIMI: And we're not asking 10 [0:03:39 inaudible] 11 MS. WILSON: All right. 12 JUDGE GENTILE: All right. 13 MR. NAIMI: Okay. 14 JUDGE GENTILE: We'll put Sandra back 15 up on the stand. 16 MS. COOLEY: Sandra. And your Honor, 17 we need to redirect on a couple issues. Would you 18 like me to pass her to you and then I can cover it or 19 would you like me to ask a couple more questions and 20 then I'll pass her to you? 21 MS. WILSON: So you'll have some more 22 in your case in chief. 23 JUDGE GENTILE: Yeah. More case in 24 chief to put up, then do it now before -- yeah. You 25 don't want to finish your case and then --</p>	<p>Page 8</p> <p>1 MS. COOLEY: Okay. Do you solemnly 2 swear that the testimony you're about to give will be 3 the truth, the whole truth, and nothing but the truth 4 so help you god? 5 Sandra: I do. 6 DIRECT EXAMINATION 7 By: Shelly Cooley 8 Q: Okay, Sandra. Did you volunteer at 9 Evans school when he was in kindergarten? 10 A: I did. 11 Q: Can you please detail your 12 involvement in Evan's school? 13 A: Kindergarten year, I was one of the 14 room moms, which can -- do you need to know what I 15 did doing that, like volunteering? We planned all 16 the classroom parties, and we helped with fundraiser 17 things or whatever that the classmate needed for 18 that, and every Friday, I did Friday folders so I was 19 in the room every Friday. And then for other 20 specific events that came out, I chaperoned a field 21 trip as well. 22 Q: Okay. And does Evan participate in 23 extracurricular activities during your custodial 24 time? 25 A: Yes.</p> <p>Page 9</p> <p>1 Q: Let's walk through the week. What 2 activities does he participate in on Mondays? 3 A: Monday, after school, was 4 basketball at the time of this last -- started kind 5 of in the middle of the year. 6 Q: How about Tuesdays? 7 A: Tuesdays, the schedule change a 8 little bit. Baseball practice was on Tuesdays and 9 then it moved to Wednesdays and Fridays. Half of the 10 year was on Tuesdays, baseball practice. 11 Q: Okay. And how about Wednesdays? 12 A: Is his therapy appointment. 13 Q: With? 14 A: Judith Tolman 15 Q: And does he go to that every week? 16 A: Every week, yes. 17 Q: On your time? 18 A: Yes. 19 Q: Do you know if he goes during 20 Chris' time share? 21 A: He does not. 22 Q: Okay. How about Thursdays? 23 A: Is religious education classes. 24 Q: And where is his religious 25 education classes?</p>
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<p style="text-align: right;">Page 10</p> <p>1 A: At our church, St. Joseph Husband 2 of Mary. 3 Q: Okay. And Fridays? What 4 extracurricular activities are on Fridays? 5 A: Well, as I mentioned, the baseball 6 practices were moved to Fridays. Otherwise, if not, 7 that's like cousin day, friend day, or whatever. 8 Activities, movie nights or whatever we plan because 9 it's the weekend night. 10 Q: Okay. And with regard to this 11 upcoming season, what will Evans' participation in 12 extracurricular activities be? 13 A: Very similar. Baseball will be a 14 little bit more because he's moving to the Summerlin 15 League, which were the intentions from the beginning, 16 but he went to NYS first and I think they require 17 three days a week of baseball practices and then the 18 weekend games. 19 Q: Okay. Does Evan enjoy baseball? 20 A: Yes. He loves it, yes. 21 Q: All right. We'll pass the witness. 22 A: Okay. 23 CROSS EXAMINATION 24 By: Shannon Wilson 25 Q: Good afternoon, Ms. Nance. My name</p>	<p style="text-align: right;">Page 12</p> <p>1 A: There's four. Let me think about 2 this. They do winter. They do all four seasons I 3 guess it is. So it's broke up into seasons. 4 Q: So Evan participated starting in 5 about September? 6 A: Yes, the fall. 7 Q: And when did the next season start? 8 A: The next season started right after 9 that. 10 Q: What month? 11 A: I believe it ended in December. So 12 they had their winter program and then he didn't 13 attend the winter program. He went into the spring 14 program. 15 Q: When does the spring program start? 16 A: It started in March, April. 17 Q: Weren't you a few weeks late in 18 enrolling him in that program? 19 A: No. 20 Q: And that was still the Nevada Youth 21 Sports Program, correct? 22 A: Correct, yes. 23 Q: And it isn't it true that Chris was 24 able to get Evan into the little league program for 25 the spring, albeit late?</p>
<p style="text-align: right;">Page 11</p> <p>1 is Shannon Wilson. I represent Christopher Ferraro. 2 I think we've met during the deposition if you 3 recall. 4 A: Yes. 5 Q: With respect to those questions 6 that Ms. Cooley just asked you, who enrolled Evan in 7 basketball? 8 A: It was through the school. His dad 9 enrolled him after he contacted me. 10 Q: And with respect to baseball, when 11 did you first enroll Evan in baseball? 12 A: This last year. 13 Q: That'd the start of the fall 2015 14 season? 15 A: Correct. 16 Q: And Evan had not been involved in 17 any baseball prior to that, correct? 18 A: No. 19 Q: You mentioned the Nevada Youth 20 Sports. That's where he participated in baseball in 21 the last season, correct? 22 A: Correct, yes. 23 Q: And are there, if I understand 24 correctly, there're two seasons: There's a fall 25 season and then there's a spring season?</p>	<p style="text-align: right;">Page 13</p> <p>1 A: I'm sorry. I didn't hear the 2 question. 3 Q: Chris told you that he was able to 4 get Evan into the little league spring program, 5 correct? 6 A: Through Summerlin you're saying? 7 Q: Yes. 8 A: Halfway through the season, yes. 9 Their season, yes. 10 Q: And you refused to allow him to 11 move from the Nevada Youth Sports to Summerlin Little 12 League, correct? 13 A: Because the season already started, 14 yes. 15 Q: I didn't ask you why. I said did 16 you -- 17 A: Yes. 18 Q: You refused to do that, correct? 19 A: Yes. 20 Q: All right. And did Evan start the 21 Nevada Youth Sports Program for the spring season 22 exactly on time? 23 A: Yes. 24 Q: I'd like to chat about your son, 25 Desmond, for a few minutes. How old is Desmond?</p>

<p style="text-align: right;">Page 14</p> <p>1 A: He is 19. 2 Q: And isn't it true that you allowed 3 Desmond to transfer from traditional school to an 4 online homeschooling program? 5 A: Yes. 6 Q: And you allowed him to do that in 7 his junior year, correct? 8 A: Correct. 9 Q: So he started his junior year in 10 the online program? 11 A: I can't recall exact -- I think he 12 started junior year and then we moved him into that. 13 Q: So at some point in the junior 14 years when you transferred him to the online program? 15 A: Yes. 16 Q: And isn't it true that you allowed 17 him to take that at his own pace? 18 A: Correct. 19 Q: And isn't it true that Desmond did 20 not graduate with the cohorts that he was on track to 21 graduate with before he started the online program? 22 A: I'm sorry. Can you say that again 23 please? 24 Q: So at the point when Desmond 25 transferred to the online program, correct, --</p>	<p style="text-align: right;">Page 16</p> <p>1 A: I do. 2 Q: Can you read your answer there 3 please? 4 A: He's just been taking his time. 5 He's been through a lot and since everything that 6 happened with Chris and myself, he's been through a 7 lot, so he's taking his time and taking it at his own 8 pace I guess. 9 Q: Thank you. Have you ever enrolled 10 Desmond in therapy? 11 A: No. 12 Q: And you testified yesterday that 13 you have your own company, correct? 14 A: Yes. 15 Q: You said you prepare food and do 16 some catering of some kind you said? 17 A: Correct. 18 Q: Have you given Desmond an ownership 19 interest in your company? 20 A: I did, yes. 21 Q: When did you do that? 22 A: When I originally started the 23 company. 24 Q: What year was that? 25 A: 2014.</p>
<p style="text-align: right;">Page 15</p> <p>1 A: Yes. 2 Q: -- he was on track to graduate 3 when? 4 A: He was not on time. 5 Q: And isn't it true that you blamed 6 Desmond's failure to finish on time on the 7 difficulties between you and Mr. Ferraro? 8 A: No. 9 Q: Isn't it true that you allowed him 10 to take his time and take it at his own pace because 11 of everything that happened with you and Chris? 12 A: Those weren't the only reasons, no. 13 Q: Your Honor, we'd like to publish 14 deposition of Ms. Nance. 15 JUDGE GENTILE: Okay. 16 Q: May I approach the clerk your 17 Honor? 18 JUDGE GENTILE: You may. 19 Q: May I pass it to the witness 20 please? If you turn to page 14 of the deposition Ms. 21 Nance, -- 22 A: Page 14? 23 Q: Page 14, correct. Do you see at 24 line seven where I asked you why didn't he graduate 25 high school in the ordinary course?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q: How old was Desmond at the time? 2 A: Seventeen, approaching 18. 3 Q: What grade school was he in? 4 A: I'm sorry? 5 Q: What grade school was he in? 6 A: Grade school? 7 Q: What grade of school was he in? 8 A: Well, he was doing the online 9 courses. 10 Q: Sometime between 2013-2014, did 11 Desmond run away from home? 12 MS. COOLEY: Objection. Relevance. 13 Q: It's relevant to her care and 14 control of her children your Honor. 15 JUDGE GENTILE: Right. Overruled. 16 A: No. 17 Q: Was he out of your home for some 18 period between 2013-2014? 19 A: What do you mean by out of my home, 20 on a vacation or out of my home at all? 21 Q: At all. 22 A: Yes. 23 Q: Was he out of your home other than 24 for a vacation? 25 A: Yes.</p>

<p>Page 18</p> <p>1 Q: Isn't it true that you've called 2 the police against Desmond? 3 A: I have, yes. 4 Q: Isn't it true that you've asked 5 Chris for help with Desmond? 6 A: We've discussed it, yes. 7 Q: Yes or no. 8 A: Yes. 9 MR. NAIMI: Your Honor, I'm actually-- 10 allowed it the first time but I'm going to -- if you 11 can instruct Ms. Wilson to allow the witness to 12 answer the question -- 13 JUDGE GENTILE: The answer is yes or 14 no. 15 MR. NAIMI: -- she has her ability to 16 object if it's a nonresponsive answer. 17 JUDGE GENTILE: She's also has the 18 ability to stop her before she starts to talk. You 19 say yes or no. 20 MR. NAIMI: No. She doesn't have the 21 ability to cutoff the answer. She has the ability to 22 object. 23 Q: Yes, I do. When it's 24 nonresponsive, okay. You -- 25 MR. NAIMI: It's objection</p>	<p>Page 20</p> <p>1 examination questions are typically yes or no 2 answers. 3 A: No problem, okay. 4 Q: And isn't it true that Desmond 5 accompanied Evan on his February time share to New 6 York? 7 A: Yes. 8 Q: I'm sorry. Let me clarify that 9 question. Isn't it true that Desmond accompanied 10 Evan on his February 2014 timeshare to New York? 11 A: Yes, sorry. 12 Q: There was a period of 13 reconciliation just in terms of you and Mr. Ferraro 14 becoming friends again between the period of late 15 2013 through the summer of 2014, correct? 16 A: Correct. 17 Q: And isn't it true that over 18 Christmas of 2013-14, you, Kayla and Desmond all went 19 to New York? 20 A: On Christmas you said? I'm sorry. 21 Q: Over the Christmas break. 22 A: I'm having a hard time hearing. 23 It's a little low. 24 Q: I'll try to speak up. 25 A: On Christmas or over Christmas?</p>
<p>Page 19</p> <p>1 nonresponsive. 2 JUDGE GENTILE: Well, it's moved to 3 strike nonresponsive when it's her -- 4 MR. NAIMI: Correct. 5 JUDGE GENTILE: -- but I understand 6 your point like -- 7 MR. NAIMI: You don't cutoff -- 8 JUDGE GENTILE: -- you can't, but she 9 doesn't -- I'm also going to instruct your client -- 10 MR. NAIMI: That's fine. 11 JUDGE GENTILE: -- that you don't have 12 the opportunity to just start to talk because you 13 want to tell the story that you want to tell. The 14 answer should be a yes or no answer, -- 15 A: Okay. No problem. 16 JUDGE GENTILE: -- so that's why she 17 keeps stopping you that's -- 18 A: Okay. 19 JUDGE GENTILE: It's yes or no. 20 A: Okay. 21 JUDGE GENTILE: You might want to tell 22 more, but that's going to be your attorneys' jobs to 23 follow up, okay -- 24 A: Okay, no problem, yeah. 25 JUDGE GENTILE: -- so because cross</p>	<p>Page 21</p> <p>1 Q: During the Christmas break. 2 A: Correct, yes. 3 Q: 2013 to 2014, you, Desmond and 4 Kayla all went to New York -- 5 A: Only in 2013. 6 Q: So would you remember what dates 7 you were there? 8 A: I believe the exact dates were the 9 17th that I arrived, the 17th or 18th. They arrived 10 the day before me because I had training at my job at 11 that time. I came a day late and we left. Evan 12 stayed because it was Chris's time share and I left 13 with my children the day before Christmas or two days 14 before Christmas. 15 Q: If I understand correctly that 16 Chris travelled with Desmond, Kayla and Evan to New 17 York, and then you came the day later? 18 A: No. The children travelled 19 together. 20 Q: And then, isn't it true that you, 21 Desmond and Kayla all made another trip to New York 22 in the summer of 2014? 23 A: Yes. 24 Q: Isn't it true that prior to this 25 action commencing and since November of 2012, you can</p>

<p style="text-align: right;">Page 22</p> <p>1 multiple occasions allowed Chris's sister, Michelle, 2 to pick up Evan to take him overnight? 3 A: Yes. 4 Q: Do you allow Evan to play hockey on 5 your timeshare? 6 A: No. 7 Q: Before kindergarten, Chris offered 8 to pay for Evan to attend Challenger School, correct? 9 A: Correct. 10 Q: And you toured that school with 11 Chris before Evan entered kindergarten, is that 12 right? 13 A: Yes. 14 Q: Isn't it true that you did not want 15 Evan to go to Challenger School? 16 A: Yes. 17 Q: And in fact, you refused to allow 18 Chris to enroll him in school? 19 A: Yes. 20 Q: Did Chris repeat that offer prior 21 to Evan entering first grade? 22 A: Not that I'm aware of or I recall, 23 no. 24 Q: And isn't it true in your 25 deposition, the only reason you provided for your</p>	<p style="text-align: right;">Page 24</p> <p>1 A: Since Evan was born, two -- three. 2 I'm sorry, three. 3 Q: Does that include the time that you 4 lived in New York? 5 A: No. So that would be four and -- 6 Q: So your answer is four? 7 A: Mm-hm. 8 Q: How many foreclosures have you had? 9 MR. NAIMI: Objection. Relevancy. 10 A: That goes to providing a stable 11 home your Honor. 12 JUDGE GENTILE: Overruled. Go ahead. 13 Q: You can answer, how many 14 foreclosures have you had? 15 A: One. 16 Q: And what property was that on? 17 A: My property that I owned. 18 Q: What was the address? 19 A: I don't remember. 8925 I think was 20 the exact number, Torino Avenue, Las Vegas, Nevada 21 89148 I believe was the zip. 22 Q: You said that was Torino Avenue? 23 A: Torino, yes. 24 Q: Isn't it true that the -- what was 25 the address of the last home that you lived in before</p>
<p style="text-align: right;">Page 23</p> <p>1 refusal for Evan to go to Challenger School was that 2 you thought it was "too intense?" 3 A: Yes. 4 MS. COOLEY: Is what? 5 Q: It was too intense. I think you 6 spoke yesterday that you have a sister who lives here 7 in Las Vegas, correct? 8 A: Yes. 9 Q: And your sister has some children? 10 A: Yes. 11 Q: And they play with Evan? 12 A: Yes. 13 Q: Isn't it true that you've had 14 falling-outs with your sister? 15 A: Yes. 16 Q: And during the periods that you've 17 had falling-outs with your sister, the children were 18 not allowed to see each other; isn't that true? 19 A: No. 20 Q: It has been argued that you have a 21 stable home for Evan here in Las Vegas, is that fair 22 to say? 23 A: Yes. 24 Q: How many residences have you lived 25 in since Evan was born?</p>	<p style="text-align: right;">Page 25</p> <p>1 where you live now? 2 A: 1032 Baronet. 3 Q: Baronet Drive? 4 A: Yes, Baronet. 5 Q: Isn't it true that there was also a 6 foreclosure on the Baronet Drive property? 7 A: No. 8 Q: Would you look at defendant's 9 volume one. 10 A: Okay. 11 Q: Somewhere in front of you. 12 A: Here, defendant's volume? 13 Q: Yeah. Its defendant's volume one. 14 A: Okay. 15 Q: Would you turn to exhibit E please. 16 A: Yes. 17 Q: Take a moment to look that over. 18 Let me know when you're done. 19 A: Okay. I'm aware of what it is. 20 Yes, I'm done. 21 Q: Sorry. Did you say you are aware 22 of what that is? 23 A: What these papers are, yes. 24 Q: And what is it? 25 A: It's a proceeding to move to</p>

Page 26

1 foreclosure.
2 Q: Can you look at the first page of
3 that exhibit?
4 A: Yes.
5 Q: Its marked DEFT0255. What's the
6 title of that?
7 A: Notice of entry of judgment.
8 Q: And if you look at defendant 257.
9 A: Okay.
10 Q: Beginning at line 25, what does it
11 say there?
12 A: Twenty five, it is ordered a judge
13 to end decree that plaintiff shall receive a judgment
14 against property of Rebecca J. Nance and Sandra L.
15 Nance, commonly known as 1032 Baronet Drive, Las
16 Vegas, Nevada 89138.
17 Q: And that judgment was for the sum
18 total of \$602,772, correct?
19 A: Correct.
20 Q: And then did that property
21 subsequently proceed to a deed in lieu of
22 foreclosure?
23 A: Correct, yes.
24 Q: The property at Baronet Drive
25 [phone ringing] -- I apologize that's me. My sincere

Page 27

1 apologies to you Ms. Nance as well.
2 A: No problem. It's fine.
3 Q: The Baronet Drive property, how
4 many bedrooms did that property have?
5 A: Four.
6 Q: Did you and Evan share a bedroom
7 there?
8 A: We did, yes.
9 Q: How old is he when you moved in
10 that property?
11 A: Well, we moved in September, so he
12 was six going on seven.
13 Q: How long do you continue to reside
14 where you live now?
15 A: Indefinitely.
16 Q: Who's name is on the -- I assume
17 that you leased that property as a lease property or
18 a rented property?
19 A: Correct, yes.
20 Q: Who is on the lease of that
21 property?
22 A: My parents are.
23 Q: Isn't it true that at the time of
24 your deposition that you indicated that you have
25 intentions on purchasing your own home when you have

Page 28

1 the resources to do so?
2 A: Yes. I don't plan on living --
3 yes. Sorry.
4 Q: So it's true that you do not intend
5 to live with your parents forever, correct?
6 A: Forever, no.
7 Q: Have you ever had a protective
8 order against Mr. Ferraro?
9 A: Yes, I have.
10 Q: When?
11 A: December 2009.
12 Q: And what jurisdiction was that
13 issued on?
14 A: In Nassau County I believe, New
15 York.
16 Q: Did Mr. Ferraro also have a
17 restraining order against you at that time?
18 A: Not that I know of.
19 Q: And when did that restraining order
20 terminate?
21 A: When I left New York. I believe it
22 was March of 2010.
23 Q: Have you ever had a restraining
24 order since that time against your husband?
25 A: I applied for one.

Page 29

1 Q: That wasn't the question.
2 A: No.
3 Q: My question is have ever received a
4 restraining order against him since that time?
5 A: No.
6 Q: And when did you apply for a
7 restraining order against him?
8 A: When I came back to Nevada.
9 Q: And when was that?
10 A: It was around March I believe was
11 the month in 2010.
12 Q: So since 2010, you've not had or
13 applied for a restraining order against Mr. Ferraro?
14 A: Not since then, no.
15 Q: You complained to Margaret Pickard,
16 about the tooth fairy situation that you've heard
17 about yesterday, correct?
18 A: Correct, yes.
19 Q: And Margaret sent an email to Chris
20 regarding that situation, correct?
21 A: Yes.
22 Q: And Chris responded to Margaret
23 regarding that situation, correct?
24 A: Yes.
25 Q: And you were copied on that email,

Page 30

1 correct?
2 A: Yes.
3 Q: So isn't it true that Chris gives
4 Evan \$15 from the tooth fairy?
5 A: No.
6 Q: Isn't it true that Chris's mother
7 gives Evan \$100 from the tooth fairy?
8 A: No.
9 Q: Isn't it true that Evan must give
10 that \$100 to his grandmother to put in his college
11 fund?
12 A: I don't know that information.
13 Q: In the binder that's in front of
14 you, if you turn to exhibit one.
15 MS. COOLEY: Would that be A1?
16 Q: I'm sorry, A1. You're correct
17 Shelly. Thank you. And specifically to the page
18 numbered DEFT174, can you look at where it says
19 financial resources?
20 A: Yes.
21 Q: And Chris wrote there that the
22 tooth fairy left-- it says \$115, correct?
23 A: Correct.
24 Q: And he was told that the \$100 bill
25 was his for his college fund piggy bank, correct?

Page 31

1 A: Correct.
2 Q: And that his grandmother started
3 that for him, correct?
4 A: Correct.
5 Q: And \$15 was for him to spend as he
6 wanted?
7 A: Correct.
8 Q: And therefore, that actually
9 amounts to \$7.50 per tooth?
10 A: Correct, that's what's said.
11 Q: And you testified yesterday that
12 you, in fact, gave Evan \$20 per tooth, right?
13 A: No.
14 Q: How much do you give Evan per
15 tooth?
16 A: His first tooth is \$20.
17 Q: Does he get more for subsequent
18 tooth?
19 A: I said yesterday between up to \$5,
20 sometimes a candy bar, whatever kids get [0:34:11
21 inaudible].
22 Q: You're saying it could vary?
23 A: It could vary, yes but-- yeah.
24 Q: How many days did Evan miss from
25 school in your timeshares?

Page 32

1 A: A few. I'm not exactly sure on
2 that number.
3 Q: Is it more than three?
4 A: Possibly, but --
5 Q: Did you tell Chris when he was
6 missing school?
7 A: No.
8 Q: Isn't it true that you only told
9 Chris that Evan is going to the doctor after the
10 fact?
11 A: No.
12 MR. NAMI: Objection. Vague. Can we
13 get some clarification on timeline?
14 Q: So during the period since November
15 of 2012, isn't it true that you take Evan to the
16 doctor and then you notified Chris after the fact?
17 A: Not always, no.
18 Q: But frequently?
19 A: Not frequently, no.
20 Q: Your testimony that more often than
21 not, you notify Chris that Evan is going to the
22 doctor before?
23 A: Correct.
24 Q: Isn't it true that Chris's last
25 face time visit with Evan was while you're in Walmart

Page 33

1 with Evan?
2 A: It was Smith's. Yes, Smith's.
3 Q: And it isn't it true that the time
4 prior to that, Chris's face time with Evan was just
5 three minutes?
6 A: I don't know the time.
7 Q: Fair to say that it was short?
8 A: It was short, yes.
9 Q: What jobs have you held in the last
10 four years?
11 A: Four years, so we're going back to
12 --
13 Q: To 2012.
14 A: '12. Well, I've always been self-
15 employed since I've lived in Nevada, so I was still
16 doing modeling and that. I have been a dealer. I
17 was dealing blackjack and different casino games.
18 Q: Let's stop there. Did you attend
19 dealer's school?
20 A: No. I learned through a company.
21 Q: Was it on-the-job training?
22 A: Kind of, yes, yeah.
23 Q: As a dealer, when a player
24 presented you with a player card, did you have to ask
25 them for identification?

Page 34

1 A: Never.
2 Q: Where did you deal?
3 A: Actually, identification yes. I'm
4 sorry. If we thought that they were under, we ID'd
5 somebody. If they appeared under 30 years old, yes.
6 An ID like that, yes.
7 Q: Where did you deal?
8 A: I've dealt at seven different
9 properties.
10 Q: What properties?
11 A: Red Rock, Treasure Island, Santa
12 Fe, Texas Station, The Palms, Planet Hollywood, Hard
13 Rock, and the last one was at that year was Cosmo.
14 Q: So in fact, many of the casinos
15 that were here on Monday, you have actually been
16 employed by and dealt for?
17 A: Just the Stations, one of their
18 properties. I've never dealt at -- who was here? If
19 we can go down the list, I can let you know.
20 Q: We were --
21 A: I've never dealt at the Rampart. I
22 think that Suncoast and Gold Coast were here. I've
23 never dealt at a Boyd property. I've never dealt at
24 the Wynn. I think Station's was here. Texas is a
25 Station casino and that was only for a boxing event

Page 35

1 that they needed extra dealers that my company sent
2 me there.
3 Q: But it's fair to say that you've
4 dealt at a number of the large properties. All of
5 whom are subject to --
6 A: Correct.
7 Q: I haven't finished the question.
8 A: Oh, sorry.
9 Q: All of whom are subject to
10 regulations of the Nevada Gaming Control Board,
11 correct?
12 A: Correct.
13 Q: Your Honor, we'd like to ask the
14 court to take judicial notice of Nevada Gaming
15 Control Board regulation 5A.110, which states that a
16 person who is issued a card for interactive gaming
17 must affirm that they will not allow another person
18 to utilize their card. Ms. Nance, would you turn to
19 the volume two binder and turn to exhibit N.
20 A: N as in --
21 Q: N as in Nancy.
22 A: Nancy, okay.
23 Q: Without even looking into the
24 binders, we have an understanding that what's
25 contained in there includes lists from each of the

Page 36

1 casinos of all the times that your player card was
2 utilized?
3 A: Correct.
4 Q: Since 2012?
5 A: Yes.
6 Q: To December of 2015?
7 A: Yes. In that section, I've --
8 Q:
9 A: Yes.
10 Q: Can you tell me on any particular
11 date that you allowed another person to utilize your
12 card?
13 A: Can I give you a specific date, no.
14 Q: Your Honor, you recall the other
15 day that we had colloquy regarding Social Security
16 numbers in those casino records?
17 JUDGE GENTILE: Mm-hm.
18 Q: Our staff has gone through and
19 found a couple of instances where there were Social
20 Security numbers. We've redacted those. May I
21 approach the clerk so she can replace those pages in
22 her binder?
23 JUDGE GENTILE: Yes.
24 MS. WILSON: Thank you.
25 MR. NAIMI: Thank you very much.

Page 37

1 Q: Your Honor, we've prepared and Mr.
2 Naimi -- you're aware, you've prepared some of these
3 that we produced in the course of discovery summaries
4 of the casino records and as with the summary
5 utilized by Mr. Naimi yesterday, we would like to
6 review these summaries with Ms. Nance in court. May
7 I approach the witness?
8 A: Thank you.
9 Q: So Ms. Nance, looking at column 12
10 and for Mr. Naimi's concern regarding 2012, these
11 numbers were revised to provide just numbers for
12 instance from December of 2012 to the present
13 inconsistent with the order number that we have in
14 the case and Ms. Nance, do you recognize those
15 casinos in the far left hand column as the casinos
16 that you've put --
17 MR. NAIMI: May I interject for a
18 moment your Honor? Not that I have any objection to
19 this being an illustrative, that's fine. I do
20 believe that it misstates the testimony of the PMKs
21 that were on the record. I believe all of the PMKs
22 were consistent in what they testified to and that it
23 wasn't --
24 JUDGE GENTILE: In terms of dollars
25 out.

<p style="text-align: right;">Page 38</p> <p>1 MR. NAIMI: --- dollars and dollars out. 2 It was coin in, coin out -- 3 JUDGE GENTILE: Its value and it-- 4 MR. NAIMI: Correct. 5 JUDGE GENTILE: -- instead of 6 investment and/or receipt, I understand absolutely. 7 MR. NAIMI: You understand it. So this 8 is not exactly accurate and -- 9 JUDGE GENTILE: Right. In terms of the 10 identifier of dollars in dollars out, and I 11 understand though because I understand it means every 12 time you hit the button -- 13 MR. NAIMI: It's the... right. 14 JUDGE GENTILE: -- that's the dollar in 15 -- 16 MR. NAIMI: Correct. 17 JUDGE GENTILE: -- even if it might 18 have been a dollar out five minutes ago when she 19 received a payout on -- 20 MR. NAIMI: And I think the correct 21 term if I understood that correctly, coin because if 22 you're on a five-cent machine, it's different than if 23 you're on a dollar machine, or quarter machine, or 24 whatever, right. 25 JUDGE GENTILE: And if you noted at the</p>	<p style="text-align: right;">Page 40</p> <p>1 A: 2012, 3,366.18. 2 Q: And in 2013, total dollars out? 3 A: 196,627.10. 4 Q: And the total dollars out in 2014? 5 A: 176,238.53. 6 Q: And the dollars out in 2015? 7 A: 147,017.41. 8 Q: And your Honor, we actually would 9 go the additional step to ask that these summaries be 10 made an additional exhibit to exhibit N. It's 11 absolutely permitted by the rules of evidence. We 12 produced these summaries to opposing counsel prior to 13 the close of discovery. 14 MR. NAIMI: I have no objection. 15 JUDGE GENTILE: Yeah, under rule, I 16 know it, 50-- the rules out it under summary. 17 Q: Enter as 52 to 75. 18 JUDGE GENTILE: The summaries, yeah. 19 Q: And then we have -- 20 JUDGE GENTILE: One of these days, I'll 21 have them memorized. It hasn't happened yet. 22 Q: We have two other summaries that 23 we'd like to go through go quickly. 24 JUDGE GENTILE: Okay. 25 Q: Two other summaries that we'd like</p>
<p style="text-align: right;">Page 39</p> <p>1 bottom of some of them, it said this does 2 not reflect investment which means that she 3 walks in with a \$100 that -- 4 MR. NAIMI: Yeah. I just want to make 5 sure we're all on the same page. 6 JUDGE GENTILE: -- it doesn't reflect 7 the 100. It might reflect far more than that or if 8 she lost far more than that, but it's in and out. I 9 understand absolutely. 10 MR. NAIMI: Right, thanks, okay. 11 Q: As far as Mr. Naimi is concerned, 12 that's not the representation being made here and I 13 think sometimes they use dollars in, other times they 14 use coin in, coin out, and we're not representing 15 that these amounts of money are the amounts -- 16 JUDGE GENTILE: Her investment, right, 17 understood. 18 Q: -- actually put into any particular 19 game or machine. All right. So Ms. Nance, these are 20 the casinos for which you have player cards. 21 A: I guess I have one at Santa Fe 22 although I'm not sure or Fiesta, but I could 23 possibly, yes. 24 Q: Okay. So in 2012, the total 25 dollars or coin out was how much?</p>	<p style="text-align: right;">Page 41</p> <p>1 to go through. 2 JUDGE GENTILE: To what exhibit or 3 letter will it be? EW. Okay. So we're making that 4 summary -- 5 Q: So we'll make that N -- I would say 6 N7, does that make sense? It's part of the casino 7 records. 8 JUDGE GENTILE: Okay. We can do that 9 and seven, rather than making it the last letter. We 10 will add it to the casino records, N7. 11 MR. NAIMI: So for clarifications, the 12 summaries are now N7 is that what I heard? 13 JUDGE GENTILE: Yes. 14 MR. NAIMI: Okay. Thank you your 15 Honor. 16 Q: And I would approach the clerk with 17 the copies as well since we're making -- 18 JUDGE GENTILE: Yes. So this will all 19 go into N7? 20 Q: That's right. 21 JUDGE GENTILE: Okay. 22 Q: So Ms. Nance, the second single 23 sheet that I gave you, this is the win-loss for 24 December 2012 to 2014. So this does, in fact, 25 represent actual losses. What were the actual losses</p>

<p>Page 42</p> <p>1 in 2012?</p> <p>2 A: \$910.53.</p> <p>3 Q: And the actual losses in 2013?</p> <p>4 A: \$10,333.42.</p> <p>5 Q: And the actual losses in 2014?</p> <p>6 A: \$13,293.19.</p> <p>7 Q: And the actual losses in 2015?</p> <p>8 A: \$10,664.64.</p> <p>9 Q: Okay. You amended your financial</p> <p>10 disclosure recently, correct?</p> <p>11 A: Correct, yes.</p> <p>12 Q: And that amended financial</p> <p>13 disclosure included an amount of gaming income,</p> <p>14 correct?</p> <p>15 A: Yes.</p> <p>16 Q: And did that amount of gaming</p> <p>17 income include the amounts of money that you had put</p> <p>18 in up through the amendment of your disclosure for</p> <p>19 the current calendar year?</p> <p>20 A: I don't know if I understand that</p> <p>21 question. Can you -- did it include what time frame?</p> <p>22 Q: I'll ask in a different way.</p> <p>23 A: Yeah. I'm not understanding it,</p> <p>24 sorry.</p> <p>25 Q: It was a bad question. I agree.</p>	<p>Page 44</p> <p>1 side? Okay, there it is. My fault because I looked</p> <p>2 at it yesterday and I kept thinking, "I don't see</p> <p>3 that," but when I looked at the right page -- pardon?</p> <p>4 MR. NAIMI: I hate our financial</p> <p>5 disclosure forms.</p> <p>6 JUDGE GENTILE: I know. I always --</p> <p>7 yeah, okay. So that's over here on the other page,</p> <p>8 but what is it --</p> <p>9 Q: Jason, did you include her</p> <p>10 financial disclosure form as an exhibit when you</p> <p>11 produced?</p> <p>12 MR. NAIMI: I did not.</p> <p>13 MS. COOLEY: We don't need to. It's a</p> <p>14 pleading.</p> <p>15 MS. WILSON: And the exhibits were done</p> <p>16 already.</p> <p>17 MR. NAIMI: Yeah. Lets find a way to</p> <p>18 recall. we weren't responsible for the exhibit.</p> <p>19 MS. COOLEY: Yes.</p> <p>20 MR. NAIMI: That's why we have a bunch-</p> <p>21 -</p> <p>22 JUDGE GENTILE: Why did they change</p> <p>23 this to this form? I think some of the other ones</p> <p>24 were better. Sorry.</p> <p>25 MS. COOLEY: Don't open that.</p>
<p>Page 43</p> <p>1 That's fine.</p> <p>2 A: Sorry.</p> <p>3 Q: The amount of money that you put</p> <p>4 into the financial disclosure form, did that</p> <p>5 represent a single win?</p> <p>6 A: I don't know. I don't think so,</p> <p>7 no.</p> <p>8 Q: How did you arrive at that number?</p> <p>9 A: It was an average of what I won</p> <p>10 that month what I recall that I won that month. I</p> <p>11 don't log it on a paper, exact amount.</p> <p>12 Q: Fair enough. And did you also</p> <p>13 consider in that amount the amounts of money you had</p> <p>14 actually wagered to ear those winnings?</p> <p>15 A: No. I don't think so, no.</p> <p>16 JUDGE GENTILE: Can I ask a question?</p> <p>17 Q: Go ahead.</p> <p>18 JUDGE GENTILE: On the FDF, it shows</p> <p>19 family income: Modeling, bartender, cashier,</p> <p>20 bookings, garage sales, eBay sales, Westgate</p> <p>21 commission referral. But I don't see the catering</p> <p>22 business that I thought she said she had yesterday.</p> <p>23 MR. NAIMI: Next page your Honor.</p> <p>24 JUDGE GENTILE: Is that wrong? Right.</p> <p>25 Business income, is that over here in this other</p>	<p>Page 45</p> <p>1 JUDGE GENTILE: The other ones were</p> <p>2 better anyway.</p> <p>3 MS. COOLEY: Don't go there please.</p> <p>4 MR. NAIMI: If you say that on the</p> <p>5 third floor, you're going to insult someone that is</p> <p>6 very close to you your Honor in terms of proximity.</p> <p>7 Maybe not --</p> <p>8 MS. COOLEY: But you just complemented</p> <p>9 someone in this room, so thank you.</p> <p>10 JUDGE GENTILE: Good. Yeah. Other</p> <p>11 ones were -- and it doesn't even give you a spot to</p> <p>12 really lay out what the income is from the business</p> <p>13 other than that --</p> <p>14 MS. COOLEY: And we used to be able to</p> <p>15 put notes explaining and -- it's quite difficult now.</p> <p>16 JUDGE GENTILE: I know.</p> <p>17 MS. COOLEY: It's problematic.</p> <p>18 JUDGE GENTILE: I have to say this is</p> <p>19 one of our worst.</p> <p>20 Q: So does Ms. Nance have a copy of</p> <p>21 her financial disclosure form or you put one in front</p> <p>22 of her?</p> <p>23 MR. NAIMI: We only have the one copy.</p> <p>24 MS. COOLEY: Yeah. We didn't --</p> <p>25 MS. WILSON: Actually, I think I have</p>

<p style="text-align: right;">Page 46</p> <p>1 another one.</p> <p>2 MS. COOLEY: Okay.</p> <p>3 Q: Ms. Nance, do you recall stating in</p> <p>4 your financial disclosure form that your total gross</p> <p>5 income from the period January through June 2016 was</p> <p>6 \$14,881?</p> <p>7 A: From January 16, you said?</p> <p>8 Q: Well, what it says here is January</p> <p>9 to June 2016.</p> <p>10 A: I don't know the exact time. I</p> <p>11 would have to look at it in front of me, but if</p> <p>12 that's what it says and those are the math I guess.</p> <p>13 MS. COOLEY: What's the file stamp read</p> <p>14 on that?</p> <p>15 MR. NAIMI: Volume one.</p> <p>16 MS. COOLEY: Yeah.</p> <p>17 Q: 6/21/16</p> <p>18 MR. NAIMI: Do you mind telling us</p> <p>19 where your looking at.</p> <p>20 MS. COOLEY: Yeah. We can't find it.</p> <p>21 Q: On page three, business income.</p> <p>22 MR. NAIMI: Thanks.</p> <p>23 JUDGE GENTILE: The one and only spot</p> <p>24 that there is for any kind of income for a business.</p> <p>25 It doesn't even tell you to list the name of the</p>	<p style="text-align: right;">Page 48</p> <p>1 Q: And it's represented it from</p> <p>2 January to June of 2016, your gross income was</p> <p>3 \$14,481?</p> <p>4 A: Yes.</p> <p>5 Q: And that you have... so that would</p> <p>6 be an average of 2,400. It's what represented there,</p> <p>7 correct?</p> <p>8 A: Okay. Yes.</p> <p>9 Q: And do you recall during your</p> <p>10 deposition, we talked about Brittany Fitzpatrick?</p> <p>11 A: Yes.</p> <p>12 Q: She is still a business partner of</p> <p>13 yours?</p> <p>14 A: No, she's not.</p> <p>15 Q: She made a loan to you of \$50,000,</p> <p>16 correct?</p> <p>17 A: No.</p> <p>18 Q: Would you return to your deposition</p> <p>19 in page 64 particularly.</p> <p>20 A: That's just one -- Sorry</p> <p>21 Q: That was on the booklet.</p> <p>22 A: Oh, it's under here. Sorry.</p> <p>23 Q: There's going to be a lot of</p> <p>24 writing.</p> <p>25 A: What, I asked...</p>
<p style="text-align: right;">Page 47</p> <p>1 business or anything. I'm going to start</p> <p>2 complaining.</p> <p>3 MR. NAIMI: Sorry. We just didn't know</p> <p>4 where to go.</p> <p>5 JUDGE GENTILE: No. I'm having the</p> <p>6 same issue. Okay, so now, you have to tell me Mr.</p> <p>7 Naimi who am I offending because I'm clueless?</p> <p>8 MR. NAIMI: We'll go off the record.</p> <p>9 JUDGE GENTILE: Yeah. Go off the</p> <p>10 record.</p> <p>11 (RECESS)</p> <p>12 JUDGE GENTILE: All right. Now I</p> <p>13 understand.</p> <p>14 MS. WILSON: Alright.</p> <p>15</p> <p>16 DIRECT EXAMINATION</p> <p>17 MS. WILSON</p> <p>18</p> <p>19 Q: We're back on the record.</p> <p>20 A: Page 3.</p> <p>21 Q: Okay.</p> <p>22 A: Yes.</p> <p>23 Q: You see where it says, right in the</p> <p>24 middle of the page, a business income?</p> <p>25 A: Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q: Page 64.</p> <p>2 A: Yes.</p> <p>3 Q: Are you getting there? Let me ask</p> <p>4 you, so there was a business agreement between you</p> <p>5 and Ms. Fitzpatrick, correct?</p> <p>6 A: Correct. Yes.</p> <p>7 Q: And that business agreement</p> <p>8 concerned your business to Sandy Crowd, correct?</p> <p>9 A: Correct. Yes.</p> <p>10 Q: And Ms. Fitzpatrick had made a loan</p> <p>11 of \$50,000 to you at some point, correct?</p> <p>12 A: No.</p> <p>13 Q: Okay. Did she...she made an</p> <p>14 investment in another business that you had together.</p> <p>15 Is that correct?</p> <p>16 A: She was an investor, yes.</p> <p>17 Q: Okay. And you had an agreement</p> <p>18 with her that you would pay her back \$50,000 from</p> <p>19 proceeds of the Sandy Crowd. Isn't that correct?</p> <p>20 A: No.</p> <p>21 Q: Okay. Let's look at page 64, line</p> <p>22 25.</p> <p>23 A: Yes.</p> <p>24 Q: Let's go a little bit earlier.</p> <p>25 Let's start with page 63, line 25 where I questioned</p>

<p style="text-align: right;">Page 50</p> <p>1 you that we were looking at a document marked as</p> <p>2 Exhibit C to your deposition, which was your letter</p> <p>3 of intent for the Sandy Crowd. Recall that?</p> <p>4 A: Yes.</p> <p>5 Q: Then we talked about the terms of</p> <p>6 that letter of intent, right?</p> <p>7 A: Uh-hmm.</p> <p>8 Q: And can you read your answer on</p> <p>9 line nine?</p> <p>10 A: Line nine. We're on 65, right?</p> <p>11 Q: We're on 64. Sixty-four, line</p> <p>12 nine.</p> <p>13 A: I thought you said line 25. Sorry.</p> <p>14 Okay, line nine. The initial one you see, there's</p> <p>15 \$50,000 debt from prior obligation is the investment</p> <p>16 she made into the festival that I spoke of earlier.</p> <p>17 Q: Then read what you explained on</p> <p>18 line 14.</p> <p>19 A: And I took on the sole</p> <p>20 responsibility of making that repayment back to her.</p> <p>21 It initially was between myself and another business</p> <p>22 partner, Maria Sheregina.</p> <p>23 Q: And continue.</p> <p>24 A: Brittany wanted to invest in my</p> <p>25 company and that's how we decided to take care of the</p>	<p style="text-align: right;">Page 52</p> <p>1 A: Prior to the deposition?</p> <p>2 Absolutely.</p> <p>3 JUDGE GENTILE: Do they pass the</p> <p>4 witness or no?</p> <p>5 MR. NAIMI: I think they said, "Hold</p> <p>6 on."</p> <p>7 MS. COOLEY: Yeah.</p> <p>8 JUDGE GENTILE: They said hold for one</p> <p>9 minute? Okay.</p> <p>10 MS. COOLEY: I think that's what I</p> <p>11 heard. Otherwise, I would have jumped in.</p> <p>12 JUDGE GENTILE: Okay.</p> <p>13 MS. WILSON: We'll pass the witness.</p> <p>14 JUDGE GENTILE: All right.</p> <p>15</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY: SHELLEY COOLEY</p> <p>18</p> <p>19 Q: Sandra, can you please explain why</p> <p>20 Evan enrolled a few weeks late in spring baseball?</p> <p>21 A: With me?</p> <p>22 Q: Uh-hmm.</p> <p>23 A: He didn't. He wasn't late. He was</p> <p>24 on the cut off, but he wasn't late. He was there</p> <p>25 for his first game. He never was late.</p>
<p style="text-align: right;">Page 51</p> <p>1 debt.</p> <p>2 Q: How much of a percentage of your</p> <p>3 company did your letter intent say that you would</p> <p>4 give her?</p> <p>5 A: I believe it was 20%, I think. I</p> <p>6 don't have it in front of me because we changed.</p> <p>7 Q: Let's look at page 64, line 22.</p> <p>8 Does that jog your memory that it was 20%?</p> <p>9 A: She's 20% at that time. Yes.</p> <p>10 Q: And then at the time of your</p> <p>11 deposition, you also told me that you were not making</p> <p>12 any money from your company until you paid back Ms.</p> <p>13 Fitzpatrick, correct?</p> <p>14 A: That I wasn't making any money?</p> <p>15 Q: Right.</p> <p>16 A: No.</p> <p>17 Q: My apologies for the delay. When</p> <p>18 was the first time you paid yourself from your</p> <p>19 business?</p> <p>20 A: From my business altogether or my</p> <p>21 business since the deposition?</p> <p>22 Q: Let's start with from the time of</p> <p>23 your deposition. Had you paid yourself anything from</p> <p>24 your business?</p> <p>25 Q: Prior to your deposition?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q: In your deposition, you said that</p> <p>2 Desmond has been through a lot.</p> <p>3 A: Uh-hmm.</p> <p>4 Q: What has Desmond been through?</p> <p>5 A: Well, everything that...like I said</p> <p>6 in the deposition, was everything that was going on</p> <p>7 with surrounding Chris and my divorce, our</p> <p>8 relationship, that whole time.</p> <p>9 Q: Tell me about that.</p> <p>10 A: Tell you about it all?</p> <p>11 Q: Uh-huh.</p> <p>12 A: We'll be here until next year.</p> <p>13 MS. WILSON: Objection. Not...</p> <p>14 A: Where do you want...? I don't know</p> <p>15 where to...</p> <p>16 MS. WILSON: That would be fall within</p> <p>17 the order of limine.</p> <p>18 Q: Your Honor, she opened the door.</p> <p>19 MR. NAIMI: It was her direct.</p> <p>20 MS. COOLEY: Right. She asked</p> <p>21 specifically about the protection order that was</p> <p>22 prior to the November 2012.</p> <p>23 JUDGE GENTILE: But there's been</p> <p>24 nothing since the one in 2010. It's basically what</p> <p>25 the gist was there, as I understood it. I mean I</p>

<p style="text-align: right;">Page 54</p> <p>1 don't know with..</p> <p>2 MS. COOLEY: Correct. But on... we get</p> <p>3 to ask about that because she opened the door to that</p> <p>4 question.</p> <p>5 JUDGE GENTILE: I really don't want to</p> <p>6 hear about that.</p> <p>7 Q: Okay. We'll move on, Your Honor.</p> <p>8 JUDGE GENTILE: I mean it's so...</p> <p>9 again, it's nothing I want to consider.</p> <p>10 Q: All right. We will respect the</p> <p>11 court's time and we'll move forward.</p> <p>12 JUDGE GENTILE: I mean you want to get</p> <p>13 what's necessary out today so let's do that.</p> <p>14 Q: Okay.</p> <p>15 JUDGE GENTILE: Let's get...</p> <p>16 Q: All right. We'll move on, Your</p> <p>17 Honor.</p> <p>18 JUDGE GENTILE: Yeah. I think we've</p> <p>19 beaten that horse enough we know where we're going</p> <p>20 with that one.</p> <p>21 Q: Okay.</p> <p>22 JUDGE GENTILE: Okay. All right.</p> <p>23 Q: All right. I will withdraw that</p> <p>24 question. Are Desmond and Evan the same kid or two</p> <p>25 different children?</p>	<p style="text-align: right;">Page 56</p> <p>1 refusing to give him to my son and I believe Desmond</p> <p>2 was 16 at the time... maybe 16 years old... and we</p> <p>3 had to get Margaret involved who's going to be our</p> <p>4 mediator.</p> <p>5 Q: Why didn't you allow Evan to play</p> <p>6 hockey during your timeshare?</p> <p>7 A: Because as Chris and I have</p> <p>8 discussed in the past, as I feel, hockey is an</p> <p>9 extremely violent sport in Chris' own words. The</p> <p>10 severe head injuries that occur, for example, just on</p> <p>11 the time share, he came back...these are my reasons</p> <p>12 that I'm stating. He just came back and he told me,</p> <p>13 "Mommy..."</p> <p>14 Q: Who is he?</p> <p>15 A: I'm sorry, Evan. "We have to now</p> <p>16 wear neck guards." And I said...</p> <p>17 MR. MOODY: Objection. Hearsay.</p> <p>18 JUDGE GENTILE: Sustained.</p> <p>19 Q: Can you please tell me the reasons</p> <p>20 why you do not support Evan playing hockey in your</p> <p>21 own words.</p> <p>22 A: Because of situations, like I was</p> <p>23 about to say. Even at Evan's age for fun, it is still</p> <p>24 a violent sport that many children get hurt in. He</p> <p>25 is now ordered to wear neck guards because a six-year</p>
<p style="text-align: right;">Page 55</p> <p>1 A: Two different children.</p> <p>2 Q: So if Desmond does something, does</p> <p>3 that mean that Evan is going to do it?</p> <p>4 A: Absolutely not. They have totally</p> <p>5 different personalities. Totally.</p> <p>6 Q: And the inverse would be true that</p> <p>7 Evan is not Desmond.</p> <p>8 A: Right.</p> <p>9 Q: Why did you allow Aunt Michelle to</p> <p>10 pick up Evan?</p> <p>11 A: I've always been cooperative with</p> <p>12 Chris' side of the family and who picks and</p> <p>13 exchanges. As long as I am aware of who's picking</p> <p>14 him up... Evan, I'm sorry... who's picking up Evan,</p> <p>15 I've always been cooperative with him with that.</p> <p>16 Q: And what do you mean by</p> <p>17 cooperative?</p> <p>18 A: I've never had problems with his</p> <p>19 side of the family... exchanges and everything.</p> <p>20 We've had instances where Chris refused to drop Evan</p> <p>21 off to my side of the family because his father was</p> <p>22 at the door even though my parents were inside the</p> <p>23 home. I want to say the police were called or</p> <p>24 something involved with that or about to be called at</p> <p>25 that time because he drove up and down the block,</p>	<p style="text-align: right;">Page 57</p> <p>1 old child had his neck sliced from here by a skate</p> <p>2 when he was entering the ice at the same camp that</p> <p>3 Evan just came back that he attended with his father.</p> <p>4 So as a mother, I cannot sit there and watch my child</p> <p>5 have his head thrown into the ice. He's told me that</p> <p>6 he's fallen...</p> <p>7 MS. WILLSON: Objection hearsay.</p> <p>8 A: I'm...</p> <p>9 JUDGE GENTILE: Yup. Sustained. You</p> <p>10 can't talk about what he has told you.</p> <p>11 Q: What is your understanding of</p> <p>12 injuries Evan has sustained while playing hockey?</p> <p>13 A: He's told me that he has hit his</p> <p>14 head.</p> <p>15 MR. NAIMI: Objection.</p> <p>16 Q: Without telling me what...</p> <p>17 A: I'm sorry. That he has hit his</p> <p>18 head. I'm sorry.</p> <p>19 Q: ...Evan has said.</p> <p>20 Q: Yeah.</p> <p>21 A: I'm sorry.</p> <p>22 Q: What is your understanding of</p> <p>23 injuries he has sustained? What have you witnessed?</p> <p>24 A: That he has hit...what have I</p> <p>25 witnessed?</p>

<p style="text-align: right;">Page 58</p> <p>1 Q: What injuries have you seen Evans 2 come back with? 3 A: Bruises and things like that. His 4 teeth that I mentioned yesterday... 5 Q: What happened to his teeth? 6 A: He said he banged them on the goal 7 post and they were loose when they came back. They 8 weren't loose when the left. 9 MS. WILSON: Objection, strike the 10 hearsay portion of the answer. 11 A: She actually said that yesterday 12 too though, but... 13 MR. NAIMI: Actually it was not 14 objected too yesterday. 15 Q: I know. I know. 16 JUDGE GENTILE: Correct. 17 Q: I know. That's what I'm saying. 18 MS. WILSON: Correct. 19 JUDGE GENTILE: So yesterday it wasn't 20 objected too. I mean, it's objectionable so... 21 Q: No. 22 JUDGE GENTILE: ...sustain it today, 23 but it's already in. 24 Q: Right. 25 Q: With regard to the loose teeth...</p>	<p style="text-align: right;">Page 60</p> <p>1 A: I'm sorry. Okay. 2 Q: Perfect. What is your 3 understanding of what happened to Evan's teeth? 4 A: That Evan's father pulled them out. 5 Q: Has Chris expressed concerns to you 6 about the vibrant nature of hockey? 7 A: Yes. 8 Q: And what are those concerns? 9 A: We discussed, when Evan was first 10 born, Chris told me that he didn't want Evan... he 11 wanted him to play hockey for fun when he was young. 12 He did not want him to go into hockey as a career and 13 sustain the same injuries he did. Those were his 14 words to me. So when he started putting him on the 15 ice when he was little, I kind of not went along with 16 it, I never took him to anything, but I knew he was 17 doing it and I didn't fight him as we moved older. 18 And through the courts, I addressed my concerns 19 through the courts. And I was told as a court order, 20 I don't have to participate in things that I don't 21 agree nor does Chris on, our time share. Until 22 something happens really bad to Evan, then we can 23 address the fact of him not playing at all. So Chris 24 was allowed to play on his time share and I didn't 25 have to do it on mine.</p>
<p style="text-align: right;">Page 59</p> <p>1 A: Uh-hmm. 2 Q: ...did they fall out naturally? 3 A: They did not. 4 Q: How did Evan's loose teeth come 5 out? 6 A: He told me on... 7 MR. NAIMI: Objection. 8 Q: No. Chris told her something is not 9 objected. Not hearsay. 10 Q: Yeah. I made a mistake yesterday. 11 A: No. He said... I said he said. 12 Q: I said Chris has said. 13 A: That Chris was present. 14 Q: All right. 15 A: He was present. 16 Q: Everybody needs to speak up then 17 because I thought you said Chris so. 18 A: Sorry. I'm sorry. 19 Q: It's okay. 20 Q: Sandra, when you're speaking, 21 because we've got Evan and Chris... 22 A: I'm sorry. Yes. 23 Q: ...when you're talking about Chris, 24 can you say Chris? And when you're talking about 25 Evan, say Evan.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q: What has been Chris' response to 2 your concerns about Evan's involvement in hockey? 3 A: He doesn't have or he just 4 does...he doesn't ask anything of me. He just does 5 it. 6 Q: Has he, at least, discussed your 7 concerns with you? 8 A: No. 9 Q: Why didn't you want Evan to attend 10 Challenger school? 11 A: After we did the tour, I had some 12 questions for the lady that did the tour for us. She 13 said... 14 MS. WILSON: Objection. Hearsay. 15 JUDGE GENTILE: Sustained. 16 Q: Can you tell me your reasons for 17 not enrolling Evans to amateur school? Why didn't 18 you want him to attend? 19 A: He was still going to be traveling 20 even though he... 21 Q: Who's he? 22 A: I'm sorry. Evan was still going to 23 be travelling because Chris wanted to put a schedule 24 together through challenger of a travel schedule. 25 That was one of them. And I was told or I'm sorry...</p>

Page 62

1 the curriculum there is very excessive. Evan was in
2 therapy and having his problems at that time or
3 whatever was going on with him that we were trying to
4 address... his outbursts and all that... and it was,
5 in my opinion, it was just too... the curriculum was
6 too much for him at that time.

7 Q: So did you believe it to be in
8 Evan's best interest to attend challenger school?

9 A: No.

10 Q: Are you aware of how many real
11 properties Chris has owned?

12 A: Zero that I've known.

13 Q: The property at 1032 Baronet, that
14 property proceeded to a Deed in Lieu Foreclose,
15 correct?

16 A: Yeah. And I don't know the
17 legality. I didn't... that was my parents' property.
18 The only reason I was on there was because I moved in
19 the residence. In case something happen to them,
20 they wanted it to... I don't know any of the
21 legalities of that and that on that Deed on Lieu. We
22 didn't get kicked out of our... I don't know that.

23 Q: Do you understand that a Deed in
24 Lieu Foreclosure is not a foreclosure?

25 A: I don't think it's a foreclosure.

Page 63

1 I know we were under modification for a great time
2 throughout that process, so I don't know that whole
3 legality part of that.

4 Q: Why has Evan missed school on your
5 time share?

6 A: Only if he was sick. I know
7 that... I think one time, maybe two, we were going
8 out of town and because he didn't miss any other
9 days, I felt it was okay. There was nothing really
10 going on in school and it was a Friday. It was never
11 in the middle of the week... maybe Friday or
12 something... that we may have been taking an extra
13 day for an out-of-town event or something that I had.

14 Q: Over the course of a school year,
15 approximately how many days does Evan miss on your
16 time share?

17 A: In kindergarten, I don't think
18 there was one. And then this year, a few. I don't
19 know the exact number.

20 Q: What is the average duration of
21 Chris' Facetime sessions with Evan?

22 A: The average? Thirty plus minutes.

23 Q: Is it normal for a session to last
24 three minutes? With regard to the summaries of the
25 gambling of the different casinos, these wins and

Page 64

1 losses reflective of your gambling?

2 A: No.

3 Q: On your financial disclosure form,
4 do you reflect...you've report gambling income. Turn
5 to page 2 of that, please.

6 A: Yes.

7 Q: Can you please identify the amount
8 of gambling income you've had?

9 A: The line that says 575 and then 95
10 83.

11 Q: Uh-hmm.

12 A: Yeah.

13 Q: So 575 in how many months?

14 A: Six months.

15 Q: Is this your best estimate as to
16 what you've spent?

17 A: Correct. Yes.

18 Q: Or what you've earned?

19 A: Yes, what I've earned. Yes.

20 Q: What is the status of your catering
21 business?

22 A: Right now where we have an
23 insurance claim, I had a huge... I didn't have a huge
24 fire...a huge fire occurred at the storage facility
25 where its stored. And 38 vehicles, businesses, RVs

Page 65

1 and everything were in that. It's one of the biggest
2 fires that happened at a storage facility.

3 Unfortunately, my business was in it. Right now, I'm
4 in the process of rebuilding.

5 Q: Is it operational?

6 A: It is. I can rent equipment. It
7 costs... that's what happened in May, because this
8 happened like May - at the end of... through May or
9 whatever because I already had a catering, whatever,
10 contact with Clark County for the event I did. So I
11 rented all my equip, so it costs me a lot more. But
12 I guess I could make banners and I could still
13 prepare food, but all my equipment is gone...
14 everything, my investments... so I have to rebuild
15 everything.

16 Q: And you're in the process of
17 rebuilding that?

18 A: Yes.

19 Q: I'll pass the witness.

20

21 REDIRECT EXAMINATION

22 BY: MS. SHANNON WILSON

23

24 Q: Would you turn to your deposition,
25 page 62.

<p style="text-align: right;">Page 66</p> <p>1 A: Yes. 2 Q: Thank you. 3 A: Yes. 4 Q: Do you recall that during your 5 deposition, we went through the events in 2014 and 6 2015, correct? 7 A: Yes. 8 Q: And do you recall how many events 9 that you had done in 2014? 10 A: I don't know offhand. It was 11 probably... 12 Q: It was more than... 13 A: Probably... 14 Q: It was no more than three, was it? 15 A: Around that. That's three or four. 16 Yeah. 17 Q: And in 2015, it was no more than 18 two or three, if that's correct? 19 A: At the end of the year? Yes. 20 Q: And so I had asked you about what 21 payment you have received from a particular event. 22 A: Uh-hmm. 23 Q: If you look at page 62, line 19. 24 A: Okay. 25 Q: I asked you what payment did you</p>	<p style="text-align: right;">Page 68</p> <p>1 JUDGE GENTILE: We are back on the 2 record. 3:07 according to my clock. 3 MR. NAIMI: Your Honor, we would call 4 Mrs. Rebecca Nance to the stand. 5 JUDGE GENTILE: Okay. 6 JUDGE GENTILE: Is the therapist here? 7 MR. NAIMI: Three of them. 8 JUDGE GENTILE: Three, okay, alright. 9 Fair enough. 10 MR. NAIMI: I would do my best. 11 JUDGE GENTILE: Okay. 12 BAILIFF: Put your hands like this, 13 raise your right hand, face the court. 14 CLERK: Do you solemnly swear the 15 testimony you're about to give in this action will be 16 the truth, the whole truth and nothing but the truth 17 so help you God? 18 MRS. NANCE: I do. 19 DIRECT EXAMINATION: 20 By: Jason Naimi 21 Q: Good afternoon. My name is Jason 22 Naimi. As so you're aware, I represent Sandra Nance. 23 Could you please state your name for the record? 24 A: It's Rebecca Nance. 25 Q: And Ms. Nance, or Mrs. Nance,</p>
<p style="text-align: right;">Page 67</p> <p>1 receive from that event. And what was your answer? 2 A: It says, "What payment." "Nothing. 3 I don't pay myself right now." 4 5 MR. NAIMI: I actually want to confirm. 6 It sounds to me like we're outside the scope of the 7 redirect, so I don't know that we could go down this 8 line. 9 MS. WILSON: There was a question... 10 there was a questioning regarding her business. 11 MR. NAIMI: It was what happened and 12 her current. 13 MS. COOLEY: Yeah, the status of the... 14 MR. NAIMI: We didn't go back to... 15 MS. COOLEY: ...catering business. 16 MR. NAIMI: We didn't go back to 2015, 17 nor have we addressed the income of the business. 18 MS. WILSON: Right. That's fine. I'm 19 done. 20 MR. NAIMI: Thank you. 21 JUDGE GENTILE: All right. Thank you. 22 MR. MOODY: May I ask for a brief 23 recess, Your Honor? 24 JUDGE GENTILE: Please. 25 (RECESS)</p>	<p style="text-align: right;">Page 69</p> <p>1 excuse me, how if and all, are you related to Mrs. 2 Sandra Nance? 3 A: I'm her mother. 4 Q: Where do you reside? 5 A: At 11220 Hedge Mont Avenue in Las 6 Vegas. 7 Q: Whom, if anyone, do you reside 8 with? 9 A: I reside with Sandra and her three 10 children, Evan, Desmond, Kayla, and my husband, Dan. 11 Q: How long have you guys resided 12 together? 13 A: Since 2010. I think it's been 14 about six or seven years. 15 Q: In residing together, you've been 16 able to make some observations as to the 17 relationships within the household, outside the 18 household, would that be an accurate statement? 19 A: Yes. 20 Q: What kind of relationship would you 21 say Evan has with his mother? 22 A: He has a wonderful loving 23 relationship. He's a very good kid. 24 Q: Describe what you mean by a loving 25 wonderful relationship.</p>

<p style="text-align: right;">Page 70</p> <p>1 A: Well, at any time of the day, Evan 2 is running around and having a great time and he'll 3 stop in the middle of the day and go, ``Mommy, 4 mommy.``</p> <p>5 MR. MOODY: Objection, hearsay.</p> <p>6 Q: If you could perhaps describe it in 7 the terms of an observation as opposed to what Evan 8 said.</p> <p>9 A: Okay. He states that he loves her 10 and he loves people.</p> <p>11 Q: What about Evan's relationship with 12 you? Would you characterize that as a good 13 relationship?</p> <p>14 A: Very close.</p> <p>15 Q: Very close. Describe what you mean 16 by very close.</p> <p>17 A: We do things together all the time.</p> <p>18 Q: Describe the things you do.</p> <p>19 A: I have my grandchildren, not only 20 Evan, but I have all of my other grandchildren from 21 my other daughter and my husband's children. So the 22 cousins are raised together and we go swimming. We 23 go to the park. We go bowling, movies. We're very 24 close-knit family and we do a lot of things together 25 that children do.</p>	<p style="text-align: right;">Page 72</p> <p>1 relevant to the case, anyway. Evan has... let me ask 2 you this way. What kind of relationship does Evan 3 have with Kayla?</p> <p>4 A: Very close.</p> <p>5 Q: Describe what you mean by very 6 close.</p> <p>7 A: From the time they get up till the 8 time they go to bed, they play games. They go 9 everywhere together. Even though Kayla is going into 10 high school, she is not above his level to sit and 11 play board games or any other kind of games with him. 12 Take him and include him with her friends when they 13 go places.</p> <p>14 Q: What kinds of places do they like 15 to go to?</p> <p>16 A: They love to go over the park and 17 they love to go swimming. They bowl. They always go 18 to the movies with the family.</p> <p>19 Q: And then how about Evan with... you 20 mentioned cousins. Is there one particular cousin 21 perhaps that Evan is closer to than others?</p> <p>22 A: Yes.</p> <p>23 Q: And which cousin is that?</p> <p>24 A: His cousin Pears. It's his... he 25 always says it's his best friend.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q: Is this on a routine basis?</p> <p>2 A: We are together at least three or 3 four times a week, the entire family.</p> <p>4 Q: What about Evan's relationship with 5 his grandfather, your husband?</p> <p>6 A: He's extremely close with him.</p> <p>7 Q: The things that they like to do.</p> <p>8 A: They share the love of baseball 9 which Evan is infatuated with right now. From the 10 time he wakes up until he goes to bed, he's on 11 anything he can find out about the Chicago Cubs, what 12 they're doing.</p> <p>13 Q: Are the Chicago Cubs his favorite 14 team?</p> <p>15 A: Yes.</p> <p>16 Q: Does that have anything to do with 17 grandpa being from Chicago?</p> <p>18 A: I don't know because he recently 19 lost his hat when he was playing on his team here. 20 And the only hat he would wear in the picture was the 21 Chicago Cubs. And I said, ``Are you going to get in 22 trouble?`` and he said...</p> <p>23 MR. MOODY: Objection.</p> <p>24 A: ``It's my favorite team.``</p> <p>25 Q: Hey, we can move on. It's not</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. MOODY: Objection, Your Honor, I'd 2 ask the court to instruct the witness to refrain from 3 saying what other people have told.</p> <p>4 Q: Fine.</p> <p>5 JUDGE GENTILE: Okay. Alright. I mean 6 some of this is... some of them offer for the truth 7 that matters in my opinion. But just have to be 8 aware that when you say what someone else says it's 9 considered hearsay so you're going to get an 10 objection from counsel over here. So if you can talk 11 from your own observation as opposed to what someone 12 else says, that would be preferable. Okay.</p> <p>13 Otherwise, we're going to keep...</p> <p>14 Q: I could rephrase the question, Your 15 Honor.</p> <p>16 JUDGE GENTILE: Okay. Very good.</p> <p>17 Q: Do you believe Evan and Pearson are 18 close?</p> <p>19 A: Yes.</p> <p>20 Q: And what would you say that?</p> <p>21 A: They do everything together. They 22 do sleepovers together. They're together three times 23 a week. He gets extremely excited when he knows that 24 Pears comes over. He starts screaming when the 25 doorbell rings and he runs down the stairs going,</p>

<p style="text-align: right;">Page 74</p> <p>1 ``Pears, Pears, Pears.``</p> <p>2 MR. MOODY: Objection... move on, Your</p> <p>3 Honor.</p> <p>4 JUDGE GENTILE: Overruled. It's fine.</p> <p>5 Q: Have you had any observations of</p> <p>6 Evan with his father?</p> <p>7 A: Only when he Facetimes.</p> <p>8 Q: And how often do you see Evan, if</p> <p>9 ever, Facetime with his father?</p> <p>10 A: Well, recently, Evan has started</p> <p>11 going in his room and closing the door when he</p> <p>12 Facetimes. So I don't see him. I did recently see</p> <p>13 him at the airport.</p> <p>14 Q: Have you ever been able to observe</p> <p>15 Evan Facetime with his dad?</p> <p>16 A: Maybe once or twice.</p> <p>17 Q: Let me ask this, when Evan is in</p> <p>18 his room with the door shut Facetime with his father,</p> <p>19 approximately for how long is he in there?</p> <p>20 A: Anywhere from an hour to an hour</p> <p>21 and a half.</p> <p>22 Q: And do you believe he's on... or do</p> <p>23 you believe him to be Facetime with his father the</p> <p>24 majority of that time or portion of that time?</p> <p>25 A: Well, you can hear other people get</p>	<p style="text-align: right;">Page 76</p> <p>1 types of things you've witnessed Sandra do in... to</p> <p>2 try enhance the relationship with Mr. Ferrara?</p> <p>3 A: The week before school ended, they</p> <p>4 had a... it was about a couple of weeks before school</p> <p>5 ended, they had reading week and Sandra dressed Evan</p> <p>6 up everyday in different outfits from Dr. Seuss`</p> <p>7 books and she made sure that when she took the</p> <p>8 pictures in the morning that Evan sent his dad a</p> <p>9 picture everyday of how he was dressed and then</p> <p>10 sometimes let him say, ``Hi, dad. Look how I look</p> <p>11 this morning.``</p> <p>12 Q: Any other examples?</p> <p>13 A: Father's Day, she was working on</p> <p>14 projects with him because...</p> <p>15 Q: What projects?</p> <p>16 A: Well, she delves in art and likes</p> <p>17 to do that. So she had like sparkles and different</p> <p>18 things that he was trying to make him a card and she</p> <p>19 said, ``I know that you didn't get to do it in school</p> <p>20 and you did something for me.`` So she wanted to</p> <p>21 make sure he had something to take to his dad for</p> <p>22 Father's Day.</p> <p>23 Q: What kind of relationship does your</p> <p>24 daughter have with Kayla's dad?</p> <p>25 A: It's excellent.</p>
<p style="text-align: right;">Page 75</p> <p>1 on. I mean we didn't leave the house. We're not</p> <p>2 going to leave him alone. So I know that there are</p> <p>3 other people that do get on Facetime whenever he's</p> <p>4 on.</p> <p>5 Q: Who do you believe those other the</p> <p>6 people are Facetime with Evan?</p> <p>7 A: His brother, Peter, is on at every</p> <p>8 Facetime.</p> <p>9 Q: Anybody else?</p> <p>10 A: Sometimes his sister, Michelle.</p> <p>11 Q: What kind of relationship does your</p> <p>12 daughter have with Chris?</p> <p>13 A: It's strained.</p> <p>14 Q: What do you mean by strange?</p> <p>15 A: No. Strained.</p> <p>16 Q: Strained. Describe what you mean</p> <p>17 by strained.</p> <p>18 A: Sandra does everything that she can</p> <p>19 to try and make a relationship there and we never...</p> <p>20 she's told us that we are not allowed ever no matter</p> <p>21 happens to talk about Chris' family negatively in our</p> <p>22 home. We've never done that.</p> <p>23 Q: Can you give some examples of the</p> <p>24 types of things, if anything, that will actually</p> <p>25 testify that she does things? Can you describe the</p>	<p style="text-align: right;">Page 77</p> <p>1 Q: What do you mean by excellent?</p> <p>2 A: When he comes over to pick up</p> <p>3 Kayla, he'll stay for extended period of time. He's</p> <p>4 come in our home and...</p> <p>5 Q: How often does he come?</p> <p>6 A: Every weekend. He comes every</p> <p>7 weekend to the house.</p> <p>8 Q: And for what periods of time? Like</p> <p>9 for how long is he hanging out?</p> <p>10 A: Oh, by our house?</p> <p>11 Q: Yeah.</p> <p>12 A: He came in our house when we move</p> <p>13 for two hours and they look through the home. He</p> <p>14 congratulated us and said that it's a great job.</p> <p>15 Q: Let me rephrase the question. I</p> <p>16 don't think you understood what I was asking. When</p> <p>17 he's over on a weekly basis...</p> <p>18 A: Yes.</p> <p>19 Q: How much time is he spending there?</p> <p>20 A: At our home?</p> <p>21 Q: Yes.</p> <p>22 A: Sometimes an hour or more.</p> <p>23 Q: Does he have any kind of</p> <p>24 relationship with Evan?</p> <p>25 A: Oh, absolutely. He thinks he's a</p>

Page 78

1 great kid. He's like, "Hi Sam. What's going on?"

2 And he goes, "Hey, Evan, what's up?"

3 Q: Who cooks at your house?

4 A: Sandra cooks the meals always for

5 her children, unless she's...

6 Q: Who's making breakfast for the

7 children on a regular basis?

8 A: Only Sandra.

9 Q: By regular basis, what do you think

10 it means?

11 A: Everyday.

12 Q: What about dinners?

13 A: Almost everyday, unless she has a

14 project to do with Kayla or Evan and I'll say I'll

15 start dinner and she always comes down and finishes.

16 Q: Are the children eating breakfast

17 and dinner at home routinely?

18 A: Yes.

19 Q: What kind of meals do they eat?

20 A: Lasagna, salad, fried chicken,

21 Chinese food.

22 Q: Do you know Evan's favorite meal?

23 A: Yes.

24 Q: What is it?

25 A: Fried chicken with mashed potatoes

Page 79

1 and then he likes the mac and cheese on the side.

2 Q: Every kid's favorite.

3 A: Yeah.

4 Q: I've got two daughters in love with

5 mac and cheese. Who makes lunch for the kids to take

6 to school?

7 A: Sandra.

8 Q: And how often does that happen?

9 A: Everyday.

10 Q: Are you gambling?

11 A: A little bit.

12 Q: How often would you say you gamble?

13 A: We go... my husband and I go on

14 senior days and that's three times a week.

15 Q: Do you have a player's card?

16 A: I have one but I really don't use

17 it.

18 Q: Do you use a player's card when

19 you're gambling?

20 A: Yes.

21 Q: Whose player's card if anyone do

22 you use?

23 A: We use Sandra's.

24 Q: Why do you do that?

25 A: Because... especially at the summer

Page 80

1 time, it's used for pool comps and for buffets.

2 Q: What do you mean by pool comps?

3 A: During the summer months, it's

4 family time out at the Rampart. It has waterfalls

5 and they have all the kids from the schools meet up

6 there. And if you are a local, you can either get a

7 discount or you can get comps based on your play at

8 the casino.

9 Q: You mean free time?

10 A: Free time into the pool.

11 Q: You can enter the pool free, is

12 that what you're trying to say?

13 A: Mm-hmm.

14 Q: And so, do you try to utilize those

15 comps so that Evan can play at the pool?

16 A: Yes. We bring Evan and his

17 cousins. It's a group thing. We all go.

18 Q: How often?

19 A: At least three times a week.

20 Q: During the summer months?

21 A: Yes.

22 Q: Have you ever had the opportunity

23 to observe Evan's behavior when he returned visiting

24 with Mr. Ferrera?

25 A: Yes.

Page 81

1 Q: And what's... what kind of reaction

2 do you see? What kind of behavior does he exhibit?

3 A: He's extremely happy to be home and

4 be with his mother, with his brother, his sister, his

5 grandparents. He runs in the house if we don't go to

6 the airport to pick him up or wherever he's picked

7 up. And the first thing he does to everyone is give

8 everyone a hug and a kiss and say, "I miss you guys.

9 I love you guys." He does it every time.

10 Q: Sorry, I apologize. I didn't mean

11 to talk over. Have you ever had the opportunity to

12 observe Sandra prepare Evan for his visits with his

13 father?

14 A: Yes.

15 Q: And what kinds of things is she

16 doing to send him off?

17 A: Sometimes he has a little bag for

18 the plane and just gets himself ready and she just

19 tells him have a good time, be careful, I love you.

20 Q: Actually, no further questions,

21 Your Honor.

22 DIRECT EXAMINATION:

23 By: Todd Moody

24 Q: Just a couple, Your Honor, Mrs.

25 Nance, my name is Todd Moody and I'm co-counsel for

Page 82	Page 84
<p>1 Christopher Ferrera. If we ware to subpoena your 2 player's card records as we did your daughter's, can 3 you give me an idea of what it would look like 4 comparison between how often you use your card versus 5 hers? 6 MR. NAIMI: I'm going to object for 7 relevancy. 8 JUDGE GENTILE: Well, you've already 9 made it relevant by saying that she... 10 MR. NAIMI: Actually, no, Your Honor. 11 I asked her whether she was using... 12 JUDGE GENTILE: Hers or Sandra's. 13 MR. NAIMI: Yes. This case is a 14 relocation case about my client's... I guess. I 15 don't know where the player's card comes in. But 16 certainly, her player's card does not come in to this 17 custody manual. 18 JUDGE GENTILE: Well, it's about her 19 play. That's the point and you've made it an issue 20 throughout all the testimony so I'm going to say it's 21 relevant. Go ahead. 22 Q: Thank you, Your Honor. You can 23 answer. 24 A: Okay. I basically have hardly any 25 play at all. I don't even get free play anymore. So</p>	<p>1 question. 2 A: He didn't tell me whether that was 3 his favorite team or not. Alls I know is that's the 4 only team I know that he mentioned to me. 5 Q: Okay. All right. That's all the 6 questions I have. Thank you. 7 MR. NAIMI: I have nothing further. 8 JUDGE GENTILE: I have one. Which 9 Kayla's time share with her dad? You said he comes 10 every weekend? 11 MRS. NANCE: Yes. 12 Q: And how long does he take Kayla? 13 A: Saturday and Sunday. 14 Q: What time? 15 A: After work unless his... 16 Q: And so, he picks up on Saturday or 17 picks up on Friday? 18 A: Saturday. 19 JUDGE GENTILE: Okay. 20 MRS. NANCE: And sometimes he's... like 21 recently he's been keeping her Sunday night till 22 Monday. 23 Q: So what time does he pick her up on 24 Saturday? 25 A: Sometimes between five and seven.</p>
Page 83	Page 85
<p>1 there's no play on my card hardly at all. 2 Q: When is the last time you used your 3 card? 4 A: I can't remember. I'm sorry. Like 5 maybe three weeks ago. 6 Q: Do you use any card other than your 7 daughter's? 8 A: No. 9 Q: You said that Evan's favorite 10 baseball team is the Chicago Cubs? 11 A: Yes. 12 Q: He wears his cap. 13 A: Pardon? 14 Q: He wears his cap everywhere. 15 A: Yes. 16 Q: Does he have a favorite hockey 17 team? 18 A: He really never brings that up at 19 the house, his favorite hockey team. No. 20 Q: Do you know who his favorite hockey 21 team is? 22 A: He does... he was rooting for the 23 Penguins, I think it was, recently that they were in 24 the Stanley Cup so he was watching it at the house. 25 Q: I'm not sure that answers my</p>	<p>1 Q: PM? 2 A: Yes. He has to work on Saturdays. 3 That's why. 4 Q: And then if he returns Sunday, when 5 does he return, evening? 6 A: About 9:30. 7 Q: Or he returns her to school Monday 8 morning? 9 A: Or Monday, yes. Or my husband has 10 offered to sometimes he'll go pick her up. 11 JUDGE GENTILE: Okay. Alright. Fair 12 enough. 13 MR. NAIMI: Nothing further, Your 14 Honor. 15 JUDGE GENTILE: Thank you. 16 MR. NAIMI: Your Honor, may I go check 17 to see if Ms. Tolman is there? 18 JUDGE GENTILE: Mm-hmm. 19 [Background conversation 0:17:24- 20 0:18:12] 21 BAILIFF: Raise your right hand, face 22 the court. 23 CLERK: Do you solemnly swear the 24 testimony you're about to give in this action shall 25 be the truth, the whole truth and nothing but the</p>

<p style="text-align: right;">Page 86</p> <p>1 truth so help you God?</p> <p>2 MS. TOLMAN: Yes.</p> <p>3 CLERK: Okay. Thank you.</p> <p>4 MR. NAIMI: May I approach, Your Honor?</p> <p>5 JUDGE GENTILE: Yes.</p> <p>6 MS. TOLMAN: Thank you.</p> <p>7 MR. NAIMI: Thank you, Your Honor.</p> <p>8 JUDGE GENTILE: Mm-hmm.</p> <p>9 MS. COOLEY: Hello, Ms. Tolman. I'm</p> <p>10 Shelly Cooley, this is Jason Naimi. We represent</p> <p>11 Sandra Nance regarding this matter and I'm going to</p> <p>12 be asking you some questions today.</p> <p>13 MS. TOLMAN: Okay.</p> <p>14 DIRECT EXAMINATION</p> <p>15 By: SHELLY COOLEY</p> <p>16 Q: Can you please state your full name</p> <p>17 for the record?</p> <p>18 A: My name is Judith Tolman.</p> <p>19 Q: Can you spell Tolman?</p> <p>20 A: T-O-L-M-A-N.</p> <p>21 Q: And what is your business address?</p> <p>22 A: 3111 South Valley View Boulevard,</p> <p>23 Suite G 101, I think. I don't know. I don't write</p> <p>24 it that much.</p> <p>25 Q: And can you tell us a little about</p>	<p style="text-align: right;">Page 88</p> <p>1 A: I am a private contractor. I have</p> <p>2 been working on my own for two years since I have</p> <p>3 been fully licensed, so I do some private practice</p> <p>4 and then I contract with Never Give Up.</p> <p>5 Q: Okay. How long have you been</p> <p>6 working as a therapist?</p> <p>7 A: I have been working five years.</p> <p>8 Q: Can you provide a brief summary of</p> <p>9 your practice?</p> <p>10 A: I have a balanced practice in terms</p> <p>11 of working with children, adolescence and adults. I</p> <p>12 work with individuals, couples and do families. I do</p> <p>13 cognitive behavioral therapy. I work on cognitive</p> <p>14 and behavioral methods to correct how people think</p> <p>15 and behave.</p> <p>16 Q: What do you mean by cognitive</p> <p>17 behavioral therapy?</p> <p>18 A: Cognitive behavioral therapy is a</p> <p>19 theory where what you think your thoughts lead to how</p> <p>20 you feel and that in turn leads to how you act.</p> <p>21 Q: Okay. Do you have any concerns</p> <p>22 about testifying today?</p> <p>23 A: No.</p> <p>24 Q: Before testifying today, have you</p> <p>25 had a chance to review Evan's health profile?</p>
<p style="text-align: right;">Page 87</p> <p>1 your educational background?</p> <p>2 A: Yes. I have a bachelor's degree in</p> <p>3 social work, a master's degree in social work and</p> <p>4 then I have served a two-year 3000-hour face-to-face</p> <p>5 clinical internship. And following that, I took a</p> <p>6 state board licensing exam to do clinical work.</p> <p>7 Q: And when did you receive your</p> <p>8 license?</p> <p>9 A: Which one? The clinical license?</p> <p>10 Q: Mm-hmm.</p> <p>11 A: Two years ago.</p> <p>12 Q: And what other licenses do you</p> <p>13 have?</p> <p>14 A: I have my BSL, which is a</p> <p>15 bachelor's license of social work, a master's license</p> <p>16 of social work.</p> <p>17 Q: And when did you receive your BSL?</p> <p>18 A: The BSL was in 2009.</p> <p>19 Q: And your MLSW?</p> <p>20 A: That was in 2010.</p> <p>21 Q: And where are you employed?</p> <p>22 A: I'm employed at Never Give Up</p> <p>23 Behavioral Health Services.</p> <p>24 Q: How long have you been in private</p> <p>25 practice?</p>	<p style="text-align: right;">Page 89</p> <p>1 A: Yes, I have.</p> <p>2 Q: And how are you involved with this</p> <p>3 family?</p> <p>4 A: This family was assigned to me when</p> <p>5 I worked at another agency while I was an intern.</p> <p>6 Q: When was that?</p> <p>7 A: February 2013 was my first time</p> <p>8 with Evan.</p> <p>9 Q: Who is your patient?</p> <p>10 A: I'm sorry?</p> <p>11 Q: Who is your patient?</p> <p>12 A: Evan.</p> <p>13 Q: You are his therapist?</p> <p>14 A: Yes, I am.</p> <p>15 Q: Do Evan's parents participate in</p> <p>16 counseling?</p> <p>17 A: His mother will occasionally be</p> <p>18 involved in family therapy and his father on occasion</p> <p>19 will call me on the phone.</p> <p>20 Q: How often have you had contact with</p> <p>21 Evan's mother?</p> <p>22 A: Well, I see her when she brings him</p> <p>23 in so there's that contact. But other than that, I</p> <p>24 don't see her outside of the office.</p> <p>25 Q: Okay. How about Evan's father?</p>

Page 90

1 A: I have seen Chris maybe twice at
2 the most, once or twice.
3 Q: Have you recommended that the
4 parents participate in counseling?
5 A: Absolutely. I highly recommended
6 it for both parents to be involved.
7 Q: Did Evan's parents heed that
8 recommendation?
9 A: Evan's mother has come in regularly
10 with him and at times when it was necessary was
11 involved in family therapy. Evan's father has not
12 been involved in family therapy.
13 Q: How often do you treat Evan?
14 A: I see him weekly when he's with his
15 mother and I don't see him when he's with his father.
16 Q: Do you recommend that he have
17 weekly sessions?
18 A: Absolutely. We would have much
19 better progress with him if I could see him weekly.
20 But it's intermittent depending on which parent he's
21 with.
22 Q: So your recommendation would be
23 that Evan should continue treatment even when he's in
24 his father's care?
25 A: Absolutely. It would benefit his

Page 91

1 father and Evan.
2 Q: Why would it benefit his father?
3 A: Because Evan struggles with meeting
4 the expectations of each parent. They have different
5 expectations. If they were more on the same page on
6 parenting and what was expected, it would be easier
7 on Evan.
8 Q: What do you mean by meeting
9 different expectations of each parent? Can you
10 explain that?
11 A: There are differences in how he's
12 expected to behave, how he is reprimanded. Yeah,
13 those kinds of things, what is okay and what you know
14 is not any other, and just expectations, behavioral
15 expectations are different.
16 Q: Can you tell me from your
17 observations and impressions of therapy with Evan
18 what are the behavioral expectations in Sandra's
19 home?
20 A: In Sandra's home, I would say that
21 she embraces traditional family values. She expects
22 him to behave, expects him to be polite, expects him
23 to get along with his brother and sister as much as
24 possible, with siblings and just a really traditional
25 family.

Page 92

1 Q: What do you mean by traditional
2 family values?
3 A: Traditional family values would be
4 those in our society really expects. You won't be
5 out running the streets when you're seven years old,
6 some of this kind of stuff. She teaches him to
7 behave and has expectations about how he treats other
8 people, how he interacts with his siblings, how he
9 interacts with his grandparents, how he behaves in
10 school. Some traditional family values, meaning you
11 behave yourself. If you misbehave, you are
12 corrected.
13 Q: Okay. How about in Chris' home,
14 what are the expectations in Chris' home based upon
15 the therapy that you've learned?
16 A: I wish that I could see Chris and
17 Evan together. That would tell me so much. It would
18 teach me so much about him and the parenting style
19 and what is expected in that home, but I've had Evan
20 talk about not being respected in the home, being
21 punished in ways that aren't always kind.
22 Q: What do you mean by not being
23 respected in the home?
24 A: Being called... just being...
25 MS. WILSON: Objection, foundation. It

Page 93

1 sounds like we're about to get a hearsay as well.
2 JUDGE GENTILE: Well, but this is all
3 done and overruled. Go ahead. You're saying
4 foundation, let's lay a foundation for what she's
5 talking about and then we'll go from there. So lay
6 the foundation. I'm going to sustain the objection,
7 lay the foundation.
8 MS. COOLEY: I thought I had...
9 MR. NAIMI: How do you know?
10 JUDGE GENTILE: Where is this coming
11 from?
12 Q: How would you know how Evan is
13 treated in Chris' home?
14 A: What Evan reports to me.
15 MS. WILSON: There it is. That's the
16 hearsay. What Evan reports to her?
17 MR. NAIMI: That's not hearsay.
18 MS. WILSON: What's Evan reports to
19 her?
20 MR. NAIMI: That's not hearsay.
21 JUDGE GENTILE: What's your exception?
22 MR. NAIMI: It's absolutely an
23 exception. It's medical... it's for medical
24 treatment.
25 MS. WILSON: Hold on. I'm ready. It's

<p>Page 94</p> <p>1 not medical treatment. Nevada only recognizes the 2 medical treatment exception with respect to 3 psychologist and psychiatrist, and Ms. Tolman is a 4 social worker in the case of Helix versus State is 5 directly on point. The court cannot allow hearsay 6 testimony of Evan to come through Ms. Tolman. 7 MR. NAIMI: And a response to that is 8 she never once said I am saying what Evan said. 9 She's saying what... 10 JUDGE GENTILE: She is. She's 11 reporting... okay. So, Helix versus State, is that 12 what you said it was? 13 MS. WILSON: Yeah. We'll get the 14 citation for you too. 15 JUDGE GENTILE: Please do. All right, 16 let's take a break for a second. Can we go off the 17 record for one second? 18 (RECESS) 19 MR. NAIMI: Also then existing mental, 20 emotional or physical condition. So that's an 21 exception to the hearsay rule. In addition to that, 22 there is an exclusion from the hearsay rule of a 23 child to testify. Now he is not testifying in court 24 but he is essentially testifying to his counselor. 25 So, that could be an exclusive from the hearsay rule</p>	<p>Page 96</p> <p>1 JUDGE GENTILE: No, wait a minute. Hold 2 on a minute COUNSEL. Negative. I'm going to make sure 3 the negative treatment is- 4 MS. COOLEY: No problem. 5 JUDGE GENTILE: Have you checked all 6 the negative treatment Ms. Wilson? 7 MS. WILSON: It doesn't apply to that 8 and I can go through the negative treatment file with 9 you if you like. 10 JUDGE: I'm looking at it here it 11 doesn't appear that it has but I will check that as 12 well. I will print it for everyone though. Okay, 13 proceed. I'm sorry Mr. Naimi. 14 MR. NAIMI: No worries. 15 JUDGE: Okay. 16 17 DIRECT EXAMINATION 18 By: Shelly Cooley 19 Q: Based on your observations of Evan 20 during treatment what is your understanding of how 21 Evan is treated at Chris' home? 22 MS. WILSON: Objection I don't know how 23 she could- 24 Q: Her observations during treatment. 25 The court has the discretion to give her testimony as</p>
<p>Page 95</p> <p>1 protection as well. Certainly though it is an 2 exception to the rule when he is stating his then 3 existing mental impression or condition. 4 MS. WILSON: And I would argue that it 5 is not an existing mental condition. I mean it's 6 something that's being said some period of time that 7 we don't even know of after whatever has transpired. 8 It's not offered for that. 9 JUDGE GENTILE: Right. 10 MR. NAIMI: If the therapist asks after 11 a session, "How do you feel?" 12 JUDGE GENTILE: That's not what this is 13 relating to. This is relating to at some other time 14 and some other time and place how is it that he is 15 being reprimanded that he feels it's not respectful 16 it's something that's not then existing but- 17 MR. NAIMI: He can ask it in a different 18 way. 19 JUDGE GENTILE: Okay, please do. I'm 20 going to sustain the objection the language is really 21 clear in this case file here. I don't know if you 22 have the case, but I will print it and make sure 23 everyone has it. 24 MS. COOLEY: Thank you. May I we 25 proceed?</p>	<p>Page 97</p> <p>1 much or little credibility in a way that she chooses 2 to do so though. 3 JUDGE GENTILE: But I mean that if she 4 is going to tell me that she thinks he is 5 disrespected because he somehow told her that mean 6 it's the same thing. She can't... Other than 7 MR. NAIMI: She doesn't say he told her. 8 I mean it could be an observation of emotion or his 9 conduct, his behavior. 10 JUDGE GENTILE: Right, but if it is 11 basically from him to her then it would become 12 hearsay, so anyway just be careful. Go ahead and... 13 Q: Can she answer the question? Okay. 14 A: Repeat the question please? 15 Q: Based on your observation of Evan 16 during treatment what is your understanding of how 17 Evan is treated at Chris' home? 18 A: Sometimes I will recommend something 19 to him and he is hesitant to follow through because 20 he doesn't want to get into trouble. 21 Q: Can you give me an example. 22 A: An example of that would be, he for 23 example, I might say, "If you don't like this 24 particular thing can you tell your dad," and he might 25 say, "No, I don't think I can do that."</p>

Page 98

1 MS. WILSON: Objection hearsay.
2 JUDGE GENTILE: That's an exception.
3 Okay, so is there an exception too.
4 MR. NAIMI: That is an existing mental
5 condition or oppression. No, I don't think I can do
6 that.
7 JUDGE: [Crosstalk]
8 A: He is hesitant to follow through.
9 Q: Thank you. Did you hear what she
10 said Your Honor?
11 JUDGE GENTILE: Okay.
12 Q: Can you describe Evan. Why do you
13 think Evan is hesitating?
14 A: Because there are negative
15 consequences.
16 Q: What is your understanding of those
17 consequences?
18 MS. WILSON: Objection. Same objection.
19 MR. NAIMI: Her understanding of the
20 consequences?
21 MS. WILSON: How does she understand the
22 consequences?
23 Q: She only would understand them by
24 the child's words.
25 MR. NAIMI: It's a then you've already

Page 99

1 ruled... You already overruled that objection so
2 that's-
3 JUDGE GENTILE: I overruled only on
4 that one comment that determines oppression but his
5 presence of oppression at that moment when they are
6 having the exchange. Okay?
7 MR. NAIMI: Okay.
8 JUDGE GENTILE: But in terms of this
9 overall-
10 MR. NAIMI: I follow you. I follow.
11 JUDGE GENTILE: It's her recording to
12 us what he tells her. Yeah, okay.
13 MS. WILSON: At the risk of making this
14 speaking objection all of this line of questioning is
15 designed to somehow get out what happens in Chris'
16 house through Evan, through his counselor. If we want
17 to know what happens at Chris' house through Evan
18 then we should be calling evidence and not be
19 utilizing the counselor to do that. Now, the
20 counselor can testify all day long to what her
21 evaluation of Evan was and talk about evaluation but
22 this line of questioning is designed for a particular
23 purpose.
24 MR. NAIMI: We have heard the speaking
25 objection.

Page 100

1 JUDGE GENTILE: I mean I get what is
2 happening but I'm sustaining the objection, overrule
3 the one, sustaining the next one so we'll move on,
4 next question.
5 Q: Why did you begin treating Evan?
6 A: It was my understanding that it was
7 mandated that he come into treatment by the court as
8 part of the parenting plan.
9 Q: What behavior was Evan exhibiting
10 that caused him to begin treatment with you?
11 A: He has some traits of anxiety for
12 example chewing on a blanket. Obviously it was a few
13 years ago, a blanket or the neck of his shirt, maybe
14 its sleeve that kind of thing. He would kind of shut
15 down sometimes because of anxiety. He just kind of
16 close down, look down not participates in a normal 2-
17 way conversation.
18 Q: Why would he shut down?
19 MS. WILSON: Objection calls for
20 speculation.
21 MR. NAIMI: She's a therapist pleading
22 or are you are asking...
23 JUDGE GENTILE: I mean is it an
24 overruled what her opinion is, I mean I'm just
25 listening to her now so go ahead.

Page 101

1 A: Okay, could you repeat the question
2 please.
3 Q: Why would Evan shut down?
4 A: He doesn't want to disappoint his
5 parents or hurt them, and so I think particularly in
6 a situation with his parents that would cause him
7 high anxiety.
8 Q: What if anything is Evan's
9 diagnosis?
10 A: He has been diagnosed with
11 generalized anxiety disorder that I just put in
12 remission because his characteristics are improving.
13 Oppositional defiant disorder, and ADHD, attention
14 deficit hyperactivity disorder combined presentation.
15 Q: Can ADHD be cured?
16 A: ADHD is organic or something that
17 those characteristics are those that you were born
18 with. It cannot be cured. It can improve with age
19 although there are times whe adults aren't even
20 diagnosed rather their children. But frequently as
21 school personnel are trained they are picking it up
22 at earlier ages.
23 Q: What about generalized anxiety
24 disorder, can it be cured?
25 A: Generalized anxiety disorder

<p style="text-align: right;">Page 102</p> <p>1 presents in situations that causes the symptoms.</p> <p>2 Q: What does that mean?</p> <p>3 A: That means a particular situation</p> <p>4 will come up and because of that situation you know</p> <p>5 there might be a nervousness, stammering, maybe</p> <p>6 irritability. You might see muscle tension you know</p> <p>7 some of this kind of stuff.</p> <p>8 Q: What about oppositional defiant</p> <p>9 disorder can that are cured?</p> <p>10 A: Yes, oppositional defiant disorder</p> <p>11 is something that is a reaction to the environment.</p> <p>12 It is caused by personality characteristics in</p> <p>13 addition to situations that the child is at.</p> <p>14 Q: What type of situations might you</p> <p>15 see oppositional defiant disorder?</p> <p>16 A: I've seen it in the office a lot.</p> <p>17 When a child doesn't want to do something or they</p> <p>18 give a big push back. That might be in the form of an</p> <p>19 argument. that maybe in the form of yelling, throwing</p> <p>20 themselves on the floor, sometimes its targeted</p> <p>21 towards adults or authority figures like parents. It</p> <p>22 might be that the child will annoy others. Be really</p> <p>23 irritable with others. Have expectations about his</p> <p>24 way or no way. Sometimes they lose their temper.</p> <p>25 Q: What if any response do Evan's</p>	<p style="text-align: right;">Page 104</p> <p>1 A: Okay, with oppositional defiant</p> <p>2 disorder he was annoyed, sometimes he would get</p> <p>3 angry, argues, talks back, doesn't do what he is</p> <p>4 asked to. Might blame others for his problems.</p> <p>5 Q: How about the ADHD? What symptoms</p> <p>6 did they observe?</p> <p>7 A: The ADHD that would be</p> <p>8 specifically not paying attention to details, makes</p> <p>9 careless mistakes, is sloppy you know like doing</p> <p>10 homework sloppy in handwriting. Doesn't follow</p> <p>11 through on what he is asked to do. He might not</p> <p>12 finish chores, not finish homework, and not listen</p> <p>13 when he is being spoken to. Has trouble sustaining</p> <p>14 attention to a task or an activity sort of you know,</p> <p>15 just kind of keeps going from one thing to the next,</p> <p>16 to the next. Makes messes, doesn't clean them up</p> <p>17 because that's follow through, an ADHD kid doesn't</p> <p>18 know how to do that too well. Has difficulty getting</p> <p>19 organized. He is a little less on that. He is really</p> <p>20 pretty good about being organized but if he is</p> <p>21 distracted then all of that will fade, but he is</p> <p>22 improving with that quite a bit. It is hard for him</p> <p>23 to concentrate on something that takes sustained</p> <p>24 effort. Now the exceptions to that would be things</p> <p>25 like electronic games, something that the child is</p>
<p style="text-align: right;">Page 103</p> <p>1 parents have to this diagnosis?</p> <p>2 A: Evan's father doesn't think that he</p> <p>3 qualifies for a mental health diagnosis at all. So he</p> <p>4 is not... I mean he doesn't speak with me about how</p> <p>5 to intervene with some of these characteristics.</p> <p>6 Sandra I speak with on occasion on how to... On what</p> <p>7 I feel she can do to improve the situation or</p> <p>8 something that she might think she is not sure how to</p> <p>9 handle then we will speak by phone or she will come</p> <p>10 by into the office. Sometimes we will have a family</p> <p>11 session.</p> <p>12 Q: What if any symptoms do Chris</p> <p>13 report that Evan experiences?</p> <p>14 A: When I did Evan's assessment a year</p> <p>15 ago it was a new assessment. Chris and Sandra agreed</p> <p>16 for the majority of the symptoms that represented</p> <p>17 oppositional defiant disorder and attention deficit</p> <p>18 hyperactivity disorder combined type. Sandra and</p> <p>19 Chris differed on the symptoms of anxiety.</p> <p>20 Q: What symptoms did they agree that</p> <p>21 Evan presented with?</p> <p>22 A: With oppositional defiant disorder</p> <p>23 or?</p> <p>24 Q: With both. Go through one at a time</p> <p>25 please.</p>	<p style="text-align: right;">Page 105</p> <p>1 very, very interested in like maybe a movie. Anything</p> <p>2 like then a child with this diagnosis will have</p> <p>3 WHAT'S called a hyper focus that means, "Hello,</p> <p>4 nobody's home except the activity or whatever is on."</p> <p>5 Q: Sandra and Chris have recorded that</p> <p>6 Evan experiences that?</p> <p>7 A: Yeah.</p> <p>8 Q: Are there other symptoms that they</p> <p>9 agree that he experiences?</p> <p>10 A: Sometimes he is forgetful doing</p> <p>11 things that he is supposed to do. I would say in</p> <p>12 general those are the characteristics, yeah.</p> <p>13 Q: What if any characteristics do</p> <p>14 Evan's parent's exhibit that cause you concern?</p> <p>15 A: I would say with Chris not desiring</p> <p>16 to participate in, or seeing the need for therapy</p> <p>17 that concerns me not recognizing as a parent that</p> <p>18 some of these characteristics are going to cause a</p> <p>19 lot more problems when he is 14 than now that he is</p> <p>20 7. I would say with Sandra I think sometimes she</p> <p>21 might over react. She is overly concerned about</p> <p>22 something that's just kind of normal, and so that</p> <p>23 would be something that sometimes we have to kind of</p> <p>24 work through that this is normal and this is</p> <p>25 something that is easily corrected. Or this is what</p>

<p style="text-align: right;">Page 106</p> <p>1 an average kid might do.</p> <p>2 Q: You indicated that there are</p> <p>3 characteristics that if they are not corrected are</p> <p>4 going to be issues when he is 14 years old. Tell me</p> <p>5 more about that please.</p> <p>6 A: You take the same characteristics</p> <p>7 with a 7 year old and you know they are unpleasant</p> <p>8 but manageable. A 14 year old is not so manageable</p> <p>9 anymore and they are you know, as they approach pre-</p> <p>10 puberty puberty there more apt to get into trouble</p> <p>11 with the law sometimes oppositional defiant disorder</p> <p>12 will kick up a notch in severity. He will go on to</p> <p>13 conduct disorder. Which is more-?</p> <p>14 Q: What is conduct disorder?</p> <p>15 A: Which is more severe? I see</p> <p>16 absolutely none of these symptoms in Evans nor do I</p> <p>17 anticipate that I will.</p> <p>18 Q: Why is that?</p> <p>19 A: Well, for example, the symptoms</p> <p>20 that you would see in conduct disorder are</p> <p>21 deliberately having intent to hurt someone. It might</p> <p>22 be setting fires. It might be stealing or violating</p> <p>23 another person and Evan shows signs of empathy. He</p> <p>24 sometimes has to be reminded about what some else</p> <p>25 might feel like under some circumstances but that</p>	<p style="text-align: right;">Page 108</p> <p>1 here she was thinking? What were they feeling? How</p> <p>2 would you know that they felt that way?" So learning</p> <p>3 these steps are really important for a child that has</p> <p>4 these disorders.</p> <p>5 Q: What if anything causes Evan to</p> <p>6 experience symptoms of generalized anxiety disorder?</p> <p>7 MS. WILSON: Objection calls for</p> <p>8 speculation.</p> <p>9 Q: She has observed him in therapy she</p> <p>10 can testify as to what she sees.</p> <p>11 MS. WILSON: It was what causes him.</p> <p>12 JUDGE GENTILE: What causes? Pardon me.</p> <p>13 MS. WILSON: Could you repeat the</p> <p>14 question, Shelly?</p> <p>15 Q: I said what if anything causes Evan</p> <p>16 to experience symptoms of generalized anxiety</p> <p>17 disorder?</p> <p>18 JUDGE GENTILE: If she is able to</p> <p>19 attest to that.</p> <p>20 Q: Are you?</p> <p>21 A: Evan wants to please both parents.</p> <p>22 He wants to please them both and he doesn't want to</p> <p>23 hurt either one of them so if he is in a situation</p> <p>24 where he feels like he might hurt a parent or</p> <p>25 disappoint a parent then this winds up causing his</p>
<p style="text-align: right;">Page 107</p> <p>1 being said he shows none of those kind of</p> <p>2 characteristics. He cares.</p> <p>3 Q: Have there been any incidences</p> <p>4 where Evan has done something and been quite upset</p> <p>5 about it and you were able to help him process and</p> <p>6 work through?</p> <p>7 A: Yes.</p> <p>8 Q: Can you give us an example?</p> <p>9 A: For example he did what he called a</p> <p>10 dirty move in hockey and another child got hurt and</p> <p>11 at first he thought it was a great thing because he</p> <p>12 did this, but then when he processed what it was like</p> <p>13 from the other child's point of view he was sorry</p> <p>14 that that had happened.</p> <p>15 Q: Are there concerns that children</p> <p>16 with ADHD do not experience empathy?</p> <p>17 A: Some children with ADHD do not have</p> <p>18 as much empathy. Empathy is something that is learned</p> <p>19 socially. It's not something that is just a feeling.</p> <p>20 It's something that they learn how to do by</p> <p>21 observation, and so an ADHD kid needs more attention</p> <p>22 this way as well as an opposition defiant child. You</p> <p>23 need to constantly rewind and back up the experience</p> <p>24 that they are having and help them understand step by</p> <p>25 step, "Well, what do you think? What do you think</p>	<p style="text-align: right;">Page 109</p> <p>1 anxiety to go up.</p> <p>2 Q: Are there any specific situations</p> <p>3 that you have become aware of in treatment that cause</p> <p>4 anxiety for Evan?</p> <p>5 A: Yes, this last spring particularly</p> <p>6 he was at lunch and his mother had provided him a</p> <p>7 lunch and then his father provided him a lunch on the</p> <p>8 same day. So that caused him to not be sure what to</p> <p>9 do. To solve the issue he ate both lunches.</p> <p>10 Q: Do you have any impressions or</p> <p>11 observations of how Evan reacts to both parents being</p> <p>12 at his school functions together?</p> <p>13 MS. WILSON: Objection that would</p> <p>14 definitely be a hearsay answer.</p> <p>15 MR. NAIMI: Do you have any</p> <p>16 observations?</p> <p>17 JUDGE GENTILE: Of how the child reacts</p> <p>18 when they are... Could you repeat that-?</p> <p>19 MS. WILSON: When they are at school</p> <p>20 together.</p> <p>21 JUDGE GENTILE: No, because then she</p> <p>22 would have to have seen that otherwise it would have</p> <p>23 to be. Repeat the question.</p> <p>24 Q: I shall rephrase the question.</p> <p>25 JUDGE GENTILE: Okay, please.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q: Based on your observations of Evan 2 in therapy do you have an impression of how Evan 3 reacts when both parents attend school functions? 4 MS. WILSON: Same objection. 5 JUDGE GENTILE: Your objection is? 6 MS. WILSON: Is that it would have to 7 call for a hearsay answer that she doesn't have a 8 basis of knowledge to answer that. She would have to 9 be at school to observe that in Evan. 10 JUDGE GENTILE: Otherwise it would not 11 be right, because this is not a presence... Okay. 12 MR. NAIMI: It would be if she is 13 asking how like how he copes with it or what does he 14 do and at the time he is saying, "Thesis how I do. 15 This is what I do." 16 MS. WILSON: And that is hearsay. 17 JUDGE GENTILE: That is your say. 18 MR. NAIMI: No. 19 JUDGE GENTILE: Yes, I am going to 20 sustain that because otherwise I mean we have this 21 whole theoretical discussion about how the hearsay 22 rule versus... but I mean if it's a presence sense 23 impression right then and right there WHAT'S going on 24 right there and right there then that's one thing. Or 25 excited utterance but when I overruled his objection</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. NAIMI: When he is asked what does 2 he say? 3 MS. WILSON: If it is general I have not 4 objections but the question was for specific 5 situations. 6 JUDGE GENTILE: Okay, rephrase your 7 question please. 8 Q: I can't even think of what it is. In 9 your treatment of Evan have you helped him process 10 situations that caused symptoms of anxiety for him? 11 A: Yes. 12 Q: How do you help him process those 13 situations? 14 A: I teach him skills on how to reduce 15 anxiety and how to interact in a way that's less 16 stressful for him. 17 Q: What might be an example of those 18 skills? 19 A: For example if his anxiety is 20 really high and he is starting to shut down I've 21 taught him to take deep breaths to slow his thinking 22 down because his thinking is going like this you 23 know. He is processing all kinds of information and 24 trying to figure out what to do, so to slow his 25 thinking down to take deep breaths so that he is</p>
<p style="text-align: right;">Page 111</p> <p>1 earlier when the other witness said, whatever the 2 child's name was decidedly running down the stairs 3 excitedly that's excited utterance but when it's... 4 You know, there is time lapse then I think it's just, 5 its hearsay. 6 Q: Okay. 7 JUDGE GENTILE: So, sustained. 8 Q: Okay. In your treatment of Evan 9 have you had to help him process his anxiety with 10 specific situations he encounters? 11 A: Yes. 12 MS. WILSON: Objection. Again its 13 interestingly close to hearsay your honor. 14 MS. COOLEY: She is talking about her 15 treatment your honor. Whether she has helped him 16 process anxiety. 17 MS. WILSON: She is asking about 18 specific situations that she is assists him to 19 process. 20 MR. NAIMI: She asked if she had to 21 treat him in processing anxiety. 22 JUDGE GENTILE: So in a general basis 23 not specifically what he is telling her. 24 MS. COOLEY: Right. 25 JUDGE GENTILE: Okay.</p>	<p style="text-align: right;">Page 113</p> <p>1 calmer and to imagine a good outcome. 2 Q: With regard to generalized anxiety 3 disorder you testified too one skill that you help 4 Evan with is there any other treatment that you are 5 providing with regard to generalized anxiety 6 disorder? 7 A: In addition to calming skills we 8 use children's literature that illustrates children 9 who have had difficult moments and how they handled 10 it and what they did. He responds well to children's 11 literature. He likes it and we will go part way 12 through it and he will stop and say, "Okay, what 13 would you do if it was you?" and we practice 14 improving his skills under those circumstances. 15 Q: How about with oppositional defiant 16 disorder, how are you providing treatment for that 17 condition? 18 A: With oppositional defiant disorder 19 I help him identify the feelings and the problems 20 that there are and the people that are involved at 21 the time that has had a problem. 22 Q: Can you give me an example of how 23 he might use those skills? 24 A: For one thing I try to get him to 25 understand that his thinking is going to lead to the</p>

<p>Page 114</p> <p>1 feelings that he has and so to not over think WHAT'S 2 happening and to pay close attention to his feelings 3 and make sure that his actions match what he is 4 thinking, what he is feeling, because sometimes there 5 will be a big disconnect and that's where they act 6 out. Maybe they are feeling one thing and acting out 7 over here on a scale that is inappropriate. So to try 8 to calm things down emotionally first.</p> <p>9 Q: How does Evan respond to these 10 skills?</p> <p>11 A: We are working on it. We are 12 working on it because you know its one thing teaching 13 this in the office and it's quite another to remember 14 to do your stuff without being coached. If he is 15 being coached as he is going along in the movement 16 that helps a lot that's why I would love to have both 17 parents involved.</p> <p>18 Q: Have you suggested to Sandra and 19 Chris that they coach Evan through these situations?</p> <p>20 A: Chris and I haven't had much or an 21 opportunity to speak about these situations and so 22 certainly I haven't had the opportunity to recommend 23 that he coaches him through situations. In terms of 24 Sandra, yes we have spoken about how to handle these 25 situations and I will show her once in a while a</p>	<p>Page 115</p> <p>1 worksheet that I might have him do or a drawing that 2 he might do and she is to help him process some of 3 this and so reinforces it outside the office and also 4 helps her to be able to coach him in the moment.</p> <p>5 Q: Sandra seems receptive to your 6 suggestions on how to help Evan.</p> <p>7 A: She is very receptive, yes.</p> <p>8 Q: How about with the ADHD?</p> <p>9 A: With the ADHD? Good thing Evan is 10 such a smart little guy. A lot of ADHD kids really 11 struggle academically. Evan is extremely fortunate 12 that he is so bright that he has not been hampered 13 yet by the symptoms that he has in the classroom. He 14 does display the symptoms in the classroom and I talk 15 to him about those symptoms. His report from the 16 school I read, you know, the symptoms that he 17 exhibits and I've talked to him about those, and I've 18 got great children's literature about children that 19 find it hard to sit still and children who find it 20 hard to stop talking and children who get into 21 trouble because of all of it. He loves that kind of 22 literature.</p> <p>23 Q: Are those symptoms that he is 24 exhibiting in the classroom?</p> <p>25 A: Yes, staying in his chair, talking</p>	<p>Page 116</p> <p>1 to his neighbor, yeah.</p> <p>2 Q: Have you made suggestions to both 3 parents as to how they can address symptoms of ADHD 4 in the home?</p> <p>5 A: Symptoms of ADHD in the home are 6 addressed by Sandra. ADHD as well as the oppositional 7 defiant disorder are addressed through behavioral 8 changes and a currency system. It doesn't mean using 9 money but reward system of some kind. Whether it's 10 privileges or a special treat or activity or 11 something like that when he is doing what he needs to 12 do so because he can see and hear the consequences of 13 his actions meaning if he does something wrong, oops 14 he losses a pomp out of his jar. I don't know quite 15 he said they have that. What she is using but that's 16 my example. He might lose pomp or maybe he doesn't 17 get the right color of pomp pones and so the reward 18 isn't going to be as great. So because he can see his 19 behavior resulting in a consequence and it moves him 20 away from a reward that he wants then he is more in 21 control and he seems so respond well to that.</p> <p>22 Q: What are the treatment roles with 23 regard to Evan's diagnosis?</p> <p>24 A: The treatment goals are focusing 25 less right now I've just updated his assessment as an</p>	<p>Page 117</p> <p>1 annual review.</p> <p>2 Q: Did you provide that assessment to 3 both parent?</p> <p>4 A: I do, yes and I interviewed both 5 parents for the assessment. I haven't done any 6 assessment on Evan without talking with both parents.</p> <p>7 Q: What are the results of your 8 assessment?</p> <p>9 A: The results of the assessment are; 10 you talking about a treatment plan.</p> <p>11 Q: Let's go through your treatment 12 plan.</p> <p>13 A: Okay, so the treatment plans is 14 that to address his hyperactivity and the high energy 15 level that he has, excessive talking. Some of this 16 kind of stuff. The goal is to decrease his 17 impulsiveness, hyperactivity, his distractibility and 18 the objective is to delay gratification and be able 19 to achieve his goals. You know and so to help him 20 slow down and be able to accomplish what he needs to 21 and he is going to be happier in the long run. I have 22 different interventions that I use to be able to 23 teach him how to do that.</p> <p>24 Q: You have interventions that you use 25 with him in therapy?</p>
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Page 118

1 A: Yeah, I teach him about how to get
2 along, how to wait your turn when speaking, because
3 they like to interrupt a lot. To get him to learn to
4 take turns, to listen to another person. We'll play
5 games, or have activities where he has to let me have
6 my turn too. He responds to correction pretty well.
7 This is to help delay that instant gratification that
8 ADHD kids have and so we do activities we play games,
9 we tell stories. I'll start a story, he'll take up
10 the next part. I will take up the next part, you know
11 we will make up stories, we will make up activities,
12 well, and all kinds of things that we do that help
13 him.

14 Q: Have you also suggested
15 interventions and strategies to Sandra and to Chris
16 to use at home?

17 A: I have mentioned them to Sandra
18 and I make her aware of what we are doing in therapy
19 and then she does some follow through in the home. I
20 haven't had the opportunity to speak about some of
21 these strategies with Chris.

22 Q: Have you attempted to speak to
23 Chris about these strategies?

24 A: Not specifically because he doesn't
25 think that the behaviors are to the extent that they

Page 119

1 really need correction. Chris thinks that his
2 behavior is just being an average kid.

3 MS. WILSON: What was the last thing
4 that you just said?

5 A: He thinks of the behaviors that are
6 exhibited as being the average child.

7 Q: Has Chris told you why he thinks
8 that the behaviors Evan exhibits are of the average
9 kid?

10 A: No, I think that would be a hard
11 question to answer because how do you measure what is
12 average, what is not but as therapists we are trained
13 to do that but ADHD is something that runs in
14 families so this maybe very normal for Chris in his
15 family. I don't know that. I haven't had the
16 opportunity to interview then and understand what
17 happens in their home but it could be that there is
18 some ADHD issue that runs in there and that is just
19 plain average. That's normal.

20 Q: What if any observations have you
21 made with regard to Evan's relationship with his
22 parents?

23 A: Observations in relation to his
24 parents, I have the opportunity; I am privileged to
25 be able to see Evan interact with his mother because

Page 120

1 she comes to the office. I have never seen Evan with
2 his father so I can't comment on that.

3 Q: What if any during the course of
4 your treatment with Evan what if any concerns do you
5 have regarding Sandra's parenting?

6 A: Sandra's parenting?

7 Q: MMH

8 A: In terms of Sandra's parenting I
9 would say consistency and follow through she will get
10 distracted and does her own course of action and
11 actually and gets back to... We've let that go and
12 pick it up again and so in that way... One thing
13 about coming into therapy regularly is she's reminded
14 about our goals and what we are trying to accomplish
15 and gets renewed energy for following through.

16 Q: Are you able to comment on what if
17 any concerns you have about Chris' parenting?

18 MS. WILSON: Objection, foundation.

19 Q: I will rephrase your honor. During
20 the course of your treatment with even have you been
21 able to make any observations regarding your concerns
22 about Chris' parenting; do you have any impressions
23 or observations?

24 MS. WILSON: Ask for the foundations of
25 those impressions not observations.

Page 121

1 JUDGE GENTILE: If she answers yes then
2 we will get an answer to the first question.

3 A: Yes.

4 JUDGE GENTILE: Then.

5 Q: What are your impressions in your
6 observations?

7 JUDGE GENTILE: She is asking for
8 foundations I'm sustaining-

9 Q: Sorry I misunderstood. I apologize
10 your honor. During your treatment of Evan you have
11 provided counseling to assist with his relationship
12 with his parents.

13 A: Yes.

14 Q: And what support have you provided
15 to Evan with regard to his father's parenting style?

16 MS. WILSON: Objection that is a
17 completely different question and it's not
18 foundational.

19 JUDGE GENTILE: Okay so maybe she- Her
20 objection was foundational I am sustaining and it was
21 because she asked if she had made any observations
22 about Chris' parenting and then she said yes, and
23 then the question becomes what she is basing that on
24 at that point. Wants the foundation for that?

25 Q: What is your basis for your

<p style="text-align: right;">Page 122</p> <p>1 observations of Chris' parenting?</p> <p>2 A: I will make recommendations to Evan</p> <p>3 on some things to say in particular situations and he</p> <p>4 is afraid to follow through with my recommendation.</p> <p>5 Q: In Sandra's home or in Chris' home.</p> <p>6 A: In Chris'.</p> <p>7 Q: During the course of the treatment</p> <p>8 are there any other concerns with regard to Chris'</p> <p>9 parenting that have come to light with regard to</p> <p>10 discipline?</p> <p>11 A: With regard to discipline, I have</p> <p>12 seen I think extremes in discipline.</p> <p>13 MS. WILSON: Objection foundation.</p> <p>14 JUDGE GENTILE: Okay, sustained. What</p> <p>15 are you basing it on? Sorry I'm just going to jump in</p> <p>16 and ask a question that will do that. Go ahead.</p> <p>17 A: I am basing that on what Evan tells</p> <p>18 me about consequences.</p> <p>19 JUDGE GENTILE: Did you object to</p> <p>20 hearsay?</p> <p>21 MS. WILSON: Yeah because she is saying,</p> <p>22 my objection is going to be hearsay because her</p> <p>23 basis of her knowledge is what Evan tells her.</p> <p>24 JUDGE GENTILE: Right we haven't</p> <p>25 answered what those things are yet but she is not</p>	<p style="text-align: right;">Page 124</p> <p>1 A: Chris has told me that he thinks</p> <p>2 the time that Evans spends in Las Vegas is not what</p> <p>3 he would like to have it be. I got this directly from</p> <p>4 Chris when he was speaking with me. He said that he</p> <p>5 wanted to give his son the best experience possible</p> <p>6 and in Las Vegas what Evan has is dark loneliness and</p> <p>7 no happiness. My concern is that the time that Evan</p> <p>8 spends with his mother is devalued.</p> <p>9 Q: Devalued by whom?</p> <p>10 A: By his father.</p> <p>11 Q: What if anything has Sandra told</p> <p>12 you that caused you concern?</p> <p>13 A: I think Sandra anxiety level is</p> <p>14 high and because of that she sometimes overreacts and</p> <p>15 is very stressed. That is hard on a family.</p> <p>16 Q: Has she indicated to you why she is</p> <p>17 stressed?</p> <p>18 A: Yes, she's concerned that Evan will</p> <p>19 be spending less time with her and she values the</p> <p>20 time that she has with him and the life that she</p> <p>21 provides.</p> <p>22 Q: Ms. Tolman Is there anything that</p> <p>23 we haven't addressed today that you would like to</p> <p>24 bring to the court's attention with regard to Evan?</p> <p>25 A: I would love for both parents to be</p>
<p style="text-align: right;">Page 123</p> <p>1 going to ask what he tells her so we don't know what</p> <p>2 that is. So you can continue but don't go into the</p> <p>3 hearsay.</p> <p>4 Q: I wasn't going to. With regard to</p> <p>5 discipline, have you helped Evan, have you provided</p> <p>6 Evan support with regard to the discipline that</p> <p>7 occurs at Chris' home?</p> <p>8 A: I have given him suggestions.</p> <p>9 Q: What suggestions have you given him?</p> <p>10 A: I advised him on how to say some</p> <p>11 things that he wants to say.</p> <p>12 Q: Can you give me an example of what</p> <p>13 you have, what specifically you have told him to say?</p> <p>14 A: How much can I say? There is a</p> <p>15 particular interaction that Evan no longer wants to</p> <p>16 have happen. So I have coached him and its taken</p> <p>17 quite a while to finally be able to address that.</p> <p>18 Q: Has he successfully, during the</p> <p>19 course of your treatment with Evan do you have</p> <p>20 knowledge as to whether or not he has successfully</p> <p>21 addressed that with his father?</p> <p>22 A: Yes, he has.</p> <p>23 Q: Courts indulgence for just a</p> <p>24 moment. What if anything has Chris told you has</p> <p>25 caused you concern?</p>	<p style="text-align: right;">Page 125</p> <p>1 involved with therapy to be able to co-parent more</p> <p>2 effectively so that Evan isn't pulled between his</p> <p>3 parents. I would like both parents to be respectful</p> <p>4 of the other parent because of the things that are</p> <p>5 said. Sometimes transitions are very difficult for</p> <p>6 him and I would like to see that improve. Transitions</p> <p>7 meaning from one home to the other. I have some</p> <p>8 concern about some videos that were watched that were</p> <p>9 upsetting to Evan.</p> <p>10 Q: In who's care were those video's</p> <p>11 watched?</p> <p>12 A: In his father's.</p> <p>13 Q: Do you know the content of those</p> <p>14 videos?</p> <p>15 A: Yes I do.</p> <p>16 MS. WILSON: Strike the last response.</p> <p>17 We say based on hearsay.</p> <p>18 Q: I withdraw the question your honor.</p> <p>19 JUDGE GENTILE: The response before</p> <p>20 that?</p> <p>21 MS. WILSON: Yeah.</p> <p>22 JUDGE GENTILE: What he... He had</p> <p>23 watched something I don't know if it was-</p> <p>24 Q: Right, she did not object to it and</p> <p>25 then she answered the two questions later.</p>

Page 126

1 JUDGE GENTILE: Its really I mean the
2 way to that is... There is not much more to that so
3 we will leave it at that.
4 A: Can I give his reaction to the
5 video just a one word reaction?
6 JUDGE GENTILE: No, there is no
7 question pending. Are you finished or are you
8 continuing?
9 Q: We are going to pass the witness.
10
11 CROSS EXAMINATION
12 BY: Shannon Wilson
13 MS. WILSON: My name is Shannon Wilson I
14 represent Mrs. Ferraro in this matter with me is Todd
15 Moddy who also represents Ferraro. You testified
16 earlier about your education and you're licensing and
17 I understand that you are... Do I understand
18 correctly that you were originally licensed in 2009?
19 A: My bachelor's degree I was licensed
20 yes.
21 Q: Were you practicing therapy at that
22 time?
23 A: No.
24 Q: You were not. When did you become a
25 practicing therapist?

Page 127

1 A: Practicing therapist would have been
2 when I started my internship and that was in...
3 Please this is hard, math. I am a therapist. Let's
4 see that would have been...
5 Q: Did you start that after you
6 finished your master's degree?
7 A: Yes.
8 Q: Which year did you finish your
9 master's degree?
10 A: I finished my master's degree in
11 2010 I did not start my internship immediately.
12 Q: Do you remember when you started
13 your internship?
14 A: It's been over 4 years ago, 4 and a
15 half years ago.
16 Q: So, sometime between 2012? Did you
17 start seeing Evan as an intern?
18 A: Yes.
19 Q: Let's talk more about just
20 treatment modalities. Do most people in your
21 profession use the DSN5 manual?
22 A: Yes.
23 Q: Is that what you utilize?
24 A: When I first started seeing Evan we
25 were using the DSN4.

Page 128

1 Q: There has been an update.
2 A: Now we use DSN5.
3 Q: In your field is it required or
4 advice that someone in your position reviews patient
5 medical records before diagnosis is issued?
6 A: Sometimes we refer a client for a
7 psychiatric or a neuropsychic exam. If that's
8 required.
9 Q: Has Evan ever been referred for
10 such an exam?
11 A: No.
12 Q: What are the components of a
13 psychological evaluation.
14 A: I'm sorry?
15 Q: The components of a psychological
16 evaluation is that what you do with Evan?
17 A: Yeah.
18 Q: What were the components?
19 A: When we do the assessment it
20 depends on the instrument we use and depending on the
21 agency your with and which instrument that they
22 prefer.
23 Q: Let's talk specifically about Evan.
24 A: It is a psychological and social
25 inventory.

Page 129

1 Q: Is that what you did with Evan?
2 A: Yes.
3 Q: Is that all you did with Evan?
4 A: Yes, well no there are other
5 instruments to measure how he is doing.
6 Q: Did you utilize those other
7 instruments?
8 A: Yes.
9 Q: Are there any instruments that are
10 utilized for the diagnosis of children with...
11 A: I am not sure I understand that
12 question.
13 Q: Well, you said that there are
14 multiple instruments for diagnosis, correct? And you
15 said that you used the psychosocial inventory, that
16 there were other instruments utilized as well. Have
17 you exhausted all the instruments that you could
18 utilize for the diagnosis?
19 A: It would be impossible to exhaust
20 them all.
21 Q: Fair answer. Do you seek third party
22 interviews in your diagnosis of children like Evan?
23 A: If there has been a psychological
24 or psychiatric assessment done that will be solicited
25 and be part of the record.

Page 130

1 Q: Who have you talked to about Evan
2 other than his mom and Mr. Ferraro?
3 A: I haven't talked with anyone else.
4 Q: Do you recall when you first
5 diagnosed Evans with ADHD?
6 A: It was an ongoing diagnosis I
7 wasn't the first person to diagnose it. It was
8 diagnosed when he was 3 I believe. But I wasn't his
9 therapist at the time.
10 Q: How old was Evan when you started
11 working with him, can you recall?
12 A: When I started working with him?
13 That was in February of 2013.
14 Q: 2016, he is 7 now so that was 4
15 years ago.
16 A: Little over 3 years ago, 3 and a
17 half.
18 Q: Sorry. Its 2016 Evan is 7 and you
19 said that you started working with him I think in
20 2012?
21 A: No, 2013 February.
22 Q: Alright he was 4, so he was not much
23 older than when he was originally diagnosed.
24 A: A year or so. I probably have the
25 data here of his original diagnosis.

Page 131

1 Q: Was he also at the same time
2 diagnosed with the ODD?
3 A: Yes.
4 Q: How often do you see Evan? I think
5 we have... Let me just too through that quickly
6 rather than me asking about meetings so we can get
7 through this faster. You said that you see Evan each
8 week that he is with his mother.
9 A: Yes.
10 Q: You have been seeing Evan each week
11 that he has been with this mother since 2013?
12 A: Yes.
13 Q: Was there ever a break in that
14 treatment?
15 A: There was.
16 Q: When was that?
17 A: You know I don't exactly recall
18 because I didn't track that but there was a time that
19 he wasn't coming when I believe they were travelling
20 and different things were going on and so there was a
21 period of time that I didn't see him.
22 Q: Other than that break in treatment
23 it has been weekly when Evan is with Sandra?
24 A: Yes.
25 Q: Approximately 3 Fridays a month.

Page 132

1 A: Wednesdays quite sure.
2 Q: Sorry thought it was Fridays. So,
3 Wednesdays, 3 Wednesdays a month consistently since
4 2014.
5 A: It would have been a majority of
6 2013, 14, 15.
7 Q: How long were your sessions with
8 Evan?
9 A: 1 hour.
10 Q: You're the person that determines
11 his treatment schedule?
12 A: Yes.
13 Q: Has his schedule ever changed?
14 A: Except for days of the week no
15 there has been no change.
16 Q: Can you say approximately how many
17 sessions that Ms. Nance has missed or cancelled?
18 A: Missed or cancelled?
19 Q: Right.
20 A: Wow, it's rare. If he is sick, if
21 there is a conflict like some kind of school event or
22 something he will miss, which I highly recommend. I
23 think he seemed to feel those things. Generally
24 speaking if Evan misses a session Sandra will ask if
25 there is another time she can bring him.

Page 133

1 Q: To do a makeup session.
2 A: Yes.
3 Q: Are there any alternative
4 diagnosis.
5 A: Are there any alternatives? No.
6 Q: Did you consider any alternative
7 diagnosis for Evan?
8 A: No.
9 Q: Can you quickly describe the multi
10 DSI system for us.
11 A: The multi access?
12 Q: Yeah.
13 A: They don't use that in the DSM5.
14 Q: What diagnostic criteria did you
15 use with Evan?
16 A: The criteria that meets the
17 standard in the DSM5 when that became available and
18 the DSM4 when I was using that.
19 Q: Are there substantial differences
20 in the diagnosis between 4 and 5?
21 A: No.
22 Q: What are the indicators of ADHD in
23 DSM5?
24 A: For ADHD in attention and that
25 would be not paying close attention to detail or

<p style="text-align: right;">Page 134</p> <p>1 making careless mistakes. Difficult in sustaining 2 attention in tasks or playing activities. Not seeming 3 to listen when spoken to directly, not following on 4 instructions or duties. Difficulty organizing tasks 5 and in-depth activities, difficulty keeping materials 6 and belongings in order, kind of messy. 7 Q: Isn't it true that they are 8 actually two main criteria of ADHD. There's the 9 inattention component and you were just providing us 10 with examples of it. 11 A: Yeah. There are two major components 12 of ADHD. 13 Q: The second one is... I'm going to 14 try and move a little quickly. So I'm going to ask 15 you yes or no questions that you can agree with. 16 A: Yes. 17 Q: The two main components as we were 18 just saying was one is inattention, you were 19 providing us with examples. 20 A: Yes. 21 Q: The second criterion is 22 hyperactivity and impulsivity, correct? 23 A: Yes. 24 Q: Then there are multiple examples of 25 what that looks like.</p>	<p style="text-align: right;">Page 136</p> <p>1 have a written summary of how he did and the 2 behaviors that he needed to work on. 3 Q: Can you find those for us please. 4 A: Yes, let me find it. Let's see. 5 Okay, I remember now. 6 Q: Have you found it? 7 A: I'm working on it. It's kind of 8 written down somewhere. Specifically what the school 9 had reported. 10 Q: Yes. 11 A: That's what I'm looking for. 12 JUDGE GENTILE: About timing you have 13 got 20 minutes left. I mean in terms of like all the 14 time. 15 Q: Yes. 16 JUDGE GENTILE: Okay, I just want to 17 make sure you know. 18 MR. NAIMI: Are you asking her to look 19 at her records? 20 Q: I want to see what she received 21 from the school upon which she is basing the 22 diagnosis. 23 MR. NAIMI: I just don't want the 24 therapeutic letters to be released I mean that's. 25 JUDGE GENTILE: She is looking at that.</p>
<p style="text-align: right;">Page 135</p> <p>1 A: Yes. 2 Q: And in order to find that an 3 individual suffers from ADHD you need to find 6 or 4 more criterion of each for there to be a diagnosis of 5 ADHD, correct? 6 A: Yes. 7 Q: Then also you are to find that the 8 several of each of those are present in two or more 9 sets, correct? 10 A: Yes, correct. 11 Q: Is it also fair to say that amongst 12 those examples of all of those entire criterion 13 probably everyone in this room could find to a lesser 14 or greater degree that we have multiples of these 15 attributes? 16 A: We should do. Yes. 17 Q: In what 2 settings did you identify 18 Evan as having the requisite number of each of these 19 criterions in order to achieve your diagnosis? 20 A: By reports from the school and in 21 the office, and report by the mother in the home. 22 Q: Okay, what did you look to in the 23 report from the school because you said you did not 24 talk to anyone other than- 25 A: I didn't talk to anyone but I did</p>	<p style="text-align: right;">Page 137</p> <p>1 She wants to have a look at the report from the 2 school. 3 Q: While we are on that those 4 therapeutic records was actually within you're- 5 MR. NAIMI: One case at a time. 6 JUDGE GENTILE: I want to make sure that 7 there is no question that that exhibit is not 8 stipulated and should in fact be withdrawn. I think 9 it's ready. 10 Q: I believe it was. 11 MR. NAIMI: I think we withdrew it. 12 JUDGE GENTILE: It has not been 13 admitted, right and we will return anything to you 14 that we don't admit. 15 Q: Given that you have not been able to 16 find that record. 17 A: I have not been able to find that 18 record but it was written by the teacher on the needs 19 for improvement area. 20 Q: Isn't it effectual that in the 21 improvement area the teacher only wrote issues with 22 respect to distractibility? 23 A: Excessive talking, distractibility, 24 I'm trying to get this from memory. I've been through 25 a lot of stuff. Active, not staying in the seat.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q: Evan is a first grader.</p> <p>2 A: Yes.</p> <p>3 Q: It's safe to say that a number of</p> <p>4 first graders have those behaviors.</p> <p>5 A: It is.</p> <p>6 Q: And also that those first graders</p> <p>7 behaviors do not have a diagnosis or would not be</p> <p>8 diagnosed with ADHD.</p> <p>9 A: That true.</p> <p>10 Q: Are you aware that Evan has never</p> <p>11 been sent to the school counselor?</p> <p>12 A: It hasn't been reported to me. It</p> <p>13 has been handled in the classroom.</p> <p>14 Q: How did you know that anything has</p> <p>15 been handled in the classroom??</p> <p>16 A: Because they have ways of keeping</p> <p>17 these little guys in check and that's how I find out.</p> <p>18 Q: The school has in fact been able to</p> <p>19 manage Evan's behavior.</p> <p>20 A: Yes.</p> <p>21 Q: What are -- the recommended</p> <p>22 treatments for ADHD by the national institute of</p> <p>23 health and by the American academy of pediatrics,</p> <p>24 would you agree that those recommendations for</p> <p>25 children of Evan's age are twofold one is potentially</p>	<p style="text-align: right;">Page 140</p> <p>1 have cropped up that are out of the norm for the</p> <p>2 disorder that has been presented and so we might do a</p> <p>3 neuropsychic exam.</p> <p>4 Q: At what point would you request</p> <p>5 that for Evan if you were still finding that he</p> <p>6 needed different sessions with you?</p> <p>7 A: The field is...</p> <p>8 Q: I asked a pretty specific question.</p> <p>9 At what point do you determine that Evan should be</p> <p>10 referred to a second opinion instead of continuing</p> <p>11 with these sessions?</p> <p>12 A: Okay, at the point where the</p> <p>13 traditional treatment methods are not successful.</p> <p>14 Q: AT what point do you determine that</p> <p>15 traditional treatment methods are not successful? I</p> <p>16 mean Evan has now been in treatment weight you on a</p> <p>17 nearly weekly basis for over 3 years.</p> <p>18 A: Yes.</p> <p>19 Q: At what point is his treatment not</p> <p>20 being successful if he continues to have to go back</p> <p>21 to you on a weekly basis?</p> <p>22 MR. NAIMI: I am going to actually</p> <p>23 object to that. Those assuming facts that are not in</p> <p>24 essence. No one has ever discussed whether or not his</p> <p>25 treatment is successful or unsuccessful and so</p>
<p style="text-align: right;">Page 139</p> <p>1 medication and the other is cognitive behavioral</p> <p>2 therapy that you mentioned earlier?</p> <p>3 A: Yes.</p> <p>4 Q: Have you recommended medication for</p> <p>5 Evan?</p> <p>6 A: Medication, no.</p> <p>7 Q: Isn't it true that the standard of</p> <p>8 care for therapy is typically 10 to 20 sessions?</p> <p>9 A: No.</p> <p>10 Q: What is the standard of care in</p> <p>11 terms of sessions for a child of Evan's age?</p> <p>12 A: It is constantly evaluated usually</p> <p>13 every 90 days it's re-evaluated depending on the</p> <p>14 present symptoms and any changes whether it is</p> <p>15 improvement or regression.</p> <p>16 Q: Evan has in fact been with you for</p> <p>17 far more than 10 to 20 sessions and at what point if</p> <p>18 a treatment doesn't seem to be working do you change</p> <p>19 the treatment plan?</p> <p>20 A: The treatment plan can be changed</p> <p>21 at any time.</p> <p>22 Q: Is there ever a point at which you</p> <p>23 asked for a second opinion?</p> <p>24 A: It is extremely unusual. Usually if</p> <p>25 that happens we are talking about new behaviors that</p>	<p style="text-align: right;">Page 141</p> <p>1 perhaps she can lay some foundation as to why she</p> <p>2 believes its unsuccessful requiring that okay. It's</p> <p>3 outside the scope and lack of foundation.</p> <p>4 JUDGE GENTILE: Respond.</p> <p>5 Q: I withdraw the question.</p> <p>6 JUDGE GENTILE: Okay because I see</p> <p>7 where you are going. Maybe do rephrase it.</p> <p>8 Q: How long is a child required to</p> <p>9 maintain weekly sessions for this kind of diagnosis</p> <p>10 in a typical scenario?</p> <p>11 A: There is no hard and fast</p> <p>12 requirement.</p> <p>13 Q: Are you familiar with the BECK</p> <p>14 institute?</p> <p>15 A: Yes, I am.</p> <p>16 Q: The Beck Institute is the leading</p> <p>17 international source for training, therapy and</p> <p>18 cognitive behavioral therapy and they certify</p> <p>19 professionals in CBT.</p> <p>20 A: Yes.</p> <p>21 Q: Do you have a CBT certification</p> <p>22 from here?</p> <p>23 A: I don't have a CBT certification</p> <p>24 however I specialized in-</p> <p>25 Q: Thank you. You answered the</p>

Page 142

1 question. Does the fact that ADD behaviors are not
2 observed in school other than what you read in this
3 one report card so the principal testified that Evan
4 is not exhibiting the behaviors that-

5 MS. COOLEY: Objection, that
6 misstatements the principal's testimony your honor.

7 JUDGE GENTILE: I don't think it does.

8 MS. COOLEY: He did not testify that he
9 did not see it he is in the classroom only for a few
10 minutes.

11 Q: I withdraw the question.

12 MR. NAIMI: Never testified to it what
13 so ever.

14 Q: I withdraw the question.

15 JUDGE GENTILE: He just describes his
16 observation of him and how he perceived him I guess.

17 Q: If the principal had not identified
18 any of the behaviors that you are describing in Evan
19 would that give you cause to second guess diagnosis?

20 A: No.

21 Q: Would a lay person who coaches
22 hundreds of children a year have the ability to
23 create for themselves some average means of
24 measurements for children's behaviors.

25 MR. NAIMI: Objection calls for

Page 143

1 speculation.

2 Q: You testified earlier, right, that
3 you can determine whets average child behavior
4 because you have been trainee in it, correct? Is it
5 possible that a person who-

6 MR. NAIMI: Objection calls for
7 speculation.

8 Q: She can testify to-- Do you believe
9 that a person who coaches hundreds of children a year
10 can for them self-develop an average measurement of
11 children's behavior:

12 MR. NAIMI: Still objection.

13 JUDGE GENTILE: It's in her opinion.

14 Q: In her opinion.

15 A: That would...

16 Q: They are yes or no questions.

17 A: It's possible.

18 Q: Are you aware weather any member of
19 the Ferrari family has ever attended therapy?

20 A: I am not.

21 Q: I believe that it was in fact that
22 your testimony at one point that you do not
23 understand what happens in the Ferraro home? Correct.

24 A: That I what?

25 Q: You do not understand what happens

Page 144

1 in the Ferraro home?

2 A: Not by direct observation or
3 reports from Mr. Ferraro, no.

4 Q: How frequently do you reach out to
5 Mr. Ferraro?

6 A: On occasion.

7 Q: When was the last time that you
8 spoke to Mr. Ferraro versus Mr. Ferraro reaching out
9 to you?

10 A: I reach out to him to do this
11 annual review that was June 8th.

12 Q: Part of that was the last time you
13 reached out to him.

14 A: I sent him some literature.

15 Q: Was that literature regarding
16 delayed enrolment for children in kindergarten?

17 A: Yeah.

18 Q: Prior to that, when did you reach
19 out to him. Would it have been for the last year's
20 annual?

21 A: Probably the annual, yes.

22 Q: Are you aware that Chris uses the
23 reward system with Evan?

24 A: He has not reported that to me.

25 Q: Are you aware that Chris' method of

Page 145

1 discipline is to discuss Evan's behaviors with him
2 and give him choices?

3 A: That has not been reported to me.

4 Q: Do you believe that it is
5 impossible that a parent could teach their child the
6 same things that you are teaching Evan?

7 A: It is possible.

8 Q: Isn't it pretty common among
9 children that they don't want to let down their
10 parents?

11 MR. NAIMI: Objection calls for
12 speculation.

13 Q: In your experience as a counselor
14 have you observed that it is most children's desire
15 to not want to let down their parents?

16 A: I think many children do not want
17 to let their parents down.

18 Q: Would it surprise you to learn that
19 the symptoms that you've described in Evan are not
20 observed during Chris' time share in a degree that is
21 beyond that of the hundreds of children that Chris
22 coaches every year?

23 A: I don't know how he measures that
24 so I can't judge it.

25 Q: Can you say that there not

Page 146

1 traditional family values in Evan's home with Chris
2 in New York?
3 A: Untraditional?
4 Q: You said that Sandra subscribes to
5 traditional family values.
6 A: Yes.
7 Q: You testified that you don't really
8 know from personal observation what goes on in Chris'
9 home therefore can you really say that traditional
10 values do not exist in Ferraro's home? Yes or no.
11 A: No.
12 JUDGE GENTILE: Alright thank you for
13 your time Ms. Tolman.
14 REDIRECT EXAMINATION
15 BY: Shelly Cooley
16 Q: What area did you specialize in in
17 your program?
18 A: It was called direct practice
19 working with individuals, couples and families and I
20 specialized in the treatment of children.
21 Q: Any specific issues with children?
22 A: No.
23 Q: Why do you believe Evan has been
24 treating with you for so long?
25 A: Part of the reason is because

Page 147

1 children need consistency to have treatment work and
2 if that isn't followed through like in both homes
3 then there's going to be inconsistent results.
4 Q: Based on your observations are there
5 consistent homes?
6 A: Are there consistent.
7 Q: Are the expectations consistent
8 between Sandra and Chris' homes?
9 A: No.
10 Q: Why do you believe that?
11 A: Because I am informed of the
12 difficulty of-
13 MS. WILSON: Objection heresy.
14 JUDGE GENTILE: Sustained, keep it from,
15 keep it outside of ... I know it's kind of tough
16 because it's basically based on what you are told I
17 understand. Can you rephrase your question?
18 Q: Okay, do you have an understanding
19 of what occurs in Ferraro's home?
20 A: Not from Ferraro, no.
21 MR. NAIMI: Do you have an understanding
22 though?
23 A: I have an impression.
24 MR. NAIMI: How do you have that
25 impression?

Page 148

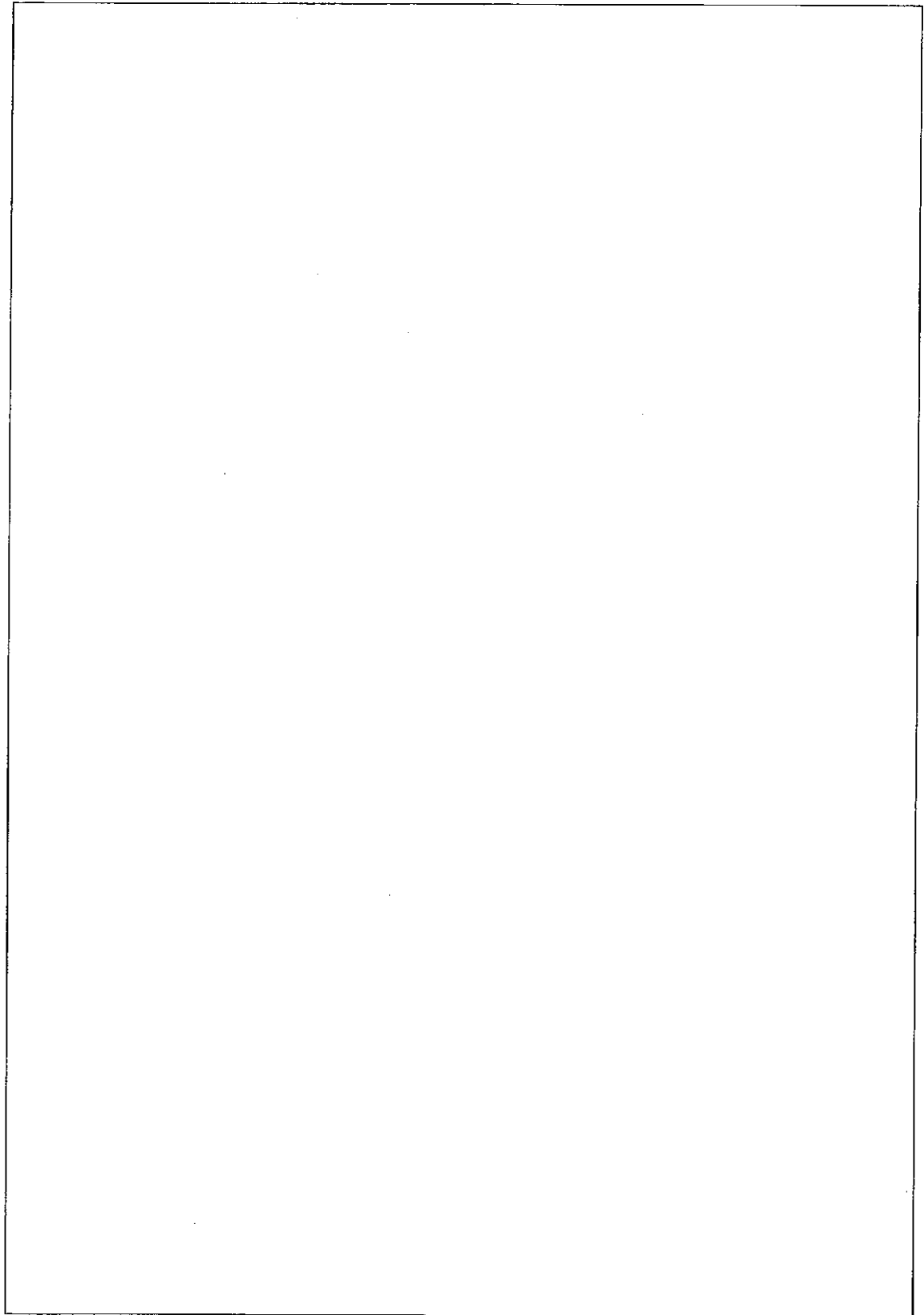
1 A: That impression comes from some of
2 the symptoms that I treat that Evan has.
3 MR. NAIMI: Do you believe it to be a
4 positive impression or a negative impression at
5 Ferraro's house?
6 A: I think there are both.
7 MR. NAIMI: What negative impressions
8 do you get?
9 A: The impression that I have is that
10 discipline is punitive.
11 MR. NAIMI: Can you give me an example
12 of a punitive discipline?
13 A: Of being slapped in the face, hair
14 pulled.
15 MR. NAIMI: Anything else?
16 MS. WILSON: Objection, foundation.
17 JUDGE GENTILE: She is saying this is
18 what she believes is happening in his home or just in
19 general what is punitive.
20 MR. NAIMI: No, I am asking her if she
21 is testifying to his house.
22 JUDGE GENTILE: I am going to sustain
23 your objection.
24 MS. WILSON: We can move to strike
25 testimony.

Page 149

1 MS. WILSON: It is stricken
2 MR. NAIMI: We have no further questions
3 your honor.
4
5 CROSS EXAMINATION
6 By: Shannon Wilson
7 Q: I just have one follow up. Have you
8 ever had a discussion with Ferraro about the means of
9 discipline in his home?
10 A: I have not.
11 JUDGE GENTILE: Okay, are you finished?
12 MR. NAIMI: We are done.
13 JUDGE GENTILE: Okay, so you may step
14 down thank you so much. Are you still calling your
15 last witness?
16 MR. NAIMI: No.
17 JUDGE GENTILE: Is it accumulative? Is
18 it the same as what mom would say?
19 MR. NAIMI: I think it would be at this
20 point.
21 JUDGE GENTILE: Okay. Alright. So then
22 we are finished.
23 MR. NAIMI: How would you... I know you
24 said you're having some thoughts.
25 JUDGE GENTILE: Yeah. I think that

<p style="text-align: right;">Page 150</p> <p>1 probably in this case briefs would be really nice.</p> <p>2 MR. NAIMI: Now I do understand that Ms.</p> <p>3 Wilsons going to be out of town for some time so I'd</p> <p>4 like to give her the courtesy to have enough time.</p> <p>5 JUDGE GENTILE: Yeah she is getting</p> <p>6 married and probably you have a honeymoon. You are</p> <p>7 going to be gone for a while.</p> <p>8 MS. WILSON: I get back in Las Vegas</p> <p>9 until the 12th.</p> <p>10 JUDGE GENTILE: Okay so you need some</p> <p>11 time to do it. I mean look, if you-</p> <p>12 MR. NAIMI: How long would you need</p> <p>13 when you get back?</p> <p>14 JUDGE GENTILE: To the end of the month?</p> <p>15 Put Mr. Moody to work right away.</p> <p>16 MR. MOODY: There is always an</p> <p>17 institutional knowledge in this whole scene.</p> <p>18 [Crosstalk]</p> <p>19 JUDGE GENTILE: I'm only kidding that</p> <p>20 she is going to defer to you and she'll start</p> <p>21 drafting law suites. Okay, so that's not happening.</p> <p>22 Wishful thinking.</p> <p>23 MR. NAIMI: What date is-?</p> <p>24 JUDGE GENTILE: She is not going to be</p> <p>25 back until the 12th.</p>	<p style="text-align: right;">Page 152</p> <p>1 you have got trials is that it.</p> <p>2 MR. NAIMI: I have got trials end of</p> <p>3 July towards the end. Unfortunately I hadn't known</p> <p>4 this would go like this because it's relocation.</p> <p>5 JUDGE GENTILE: Yeah, there I'll go.</p> <p>6 Okay.</p> <p>7 MS. WILSON: Is that your point of view</p> <p>8 on that other relocation case that you have?</p> <p>9 JUDGE GENTILE: Probably sometime in</p> <p>10 there. I don't know exactly there yet. But things are</p> <p>11 coming off so-</p> <p>12 MR. NAIMI: How about August 15th 10</p> <p>13 days for objections.</p> <p>14 MS. WILSON: So we exchange on the 5th.</p> <p>15 JUDGE GENTILE: We exchange on the 5th,</p> <p>16 submit it to me and then if there are objections any</p> <p>17 objections as to close, any other representations</p> <p>18 made in the closing briefs I will be able to be</p> <p>19 objectionable standing in here.</p> <p>20 MR. NAIMI: Correct, outside this scope</p> <p>21 or not we are testifying-</p> <p>22 JUDGE GENTILE: Right, that evidence</p> <p>23 wasn't actually admitted then that would be due by...</p> <p>24 Any other typical objections you would make in your</p> <p>25 closing you can make-</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. NAIMI: How about the 5th of August?</p> <p>2 JUDGE GENTILE: Fine. August 5 will that</p> <p>3 work.</p> <p>4 MS. WILSON: What date did you say?</p> <p>5 MR. NAIMI: The 12th of August, you want</p> <p>6 the 5th of August or the 12th of August.</p> <p>7 MS. WILSON: No, no, no that's too...</p> <p>8 let's do this sooner than later though.</p> <p>9 MALE SPEAKER: The 5th of August?</p> <p>10 MR. NAIMI: I need to close the</p> <p>11 business. Are you expecting the parties to share the</p> <p>12 closing briefs I believe that would be appropriate?</p> <p>13 In addition can we have an extra 10 days or 2 weeks</p> <p>14 for objections to the filed readings? Of course they</p> <p>15 would have to be in the realm of closing objections.</p> <p>16 MS. WILSON: Dangerously close to the</p> <p>17 school year.</p> <p>18 JUDGE GENTILE: Right exactly so let's</p> <p>19 how we will do hits. So, august 5th, is that a</p> <p>20 Friday, close of business so then that means-</p> <p>21</p> <p>22 MS. WILSON: May be can you hold on till</p> <p>23 the end of July?</p> <p>24 MR. NAIMI: I can't I've got trials.</p> <p>25 JUDGE GENTILE: So you are gone and then</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. NAIMI: That will be August 15th.</p> <p>2 JUDGE GENTILE: Yeah, I'm looking at the</p> <p>3 date here so yes. August 15th.</p> <p>4 MR. NAIMI: Are both days close of</p> <p>5 business?</p> <p>6 JUDGE GENTILE: Sure.</p> <p>7 MR. NAIMI: And all the parties to share</p> <p>8 their objections as well.</p> <p>9 JUDGE GENTILE: Yes.</p> <p>10 MR. NAIMI: Okay.</p> <p>11 JUDGE GENTILE: Yes, absolutely. Okay.</p> <p>12 MS. WILSON: I didn't hear that magic</p> <p>13 word we rest.</p> <p>14 MR. NAIMI: We rest.</p> <p>15 JUDGE GENTILE: They didn't. They didn't</p> <p>16 say. He said he was calling the last witness so. I</p> <p>17 rested for him. Okay that would be good. Then after</p> <p>18 I get all the paperwork in we will make a decision if</p> <p>19 you want to include in your list of suggestions as</p> <p>20 you are making your closing argument if you want to</p> <p>21 include some proposed like findings, I mean some</p> <p>22 people do it but some people don't some will just</p> <p>23 draft it as brief proposed findings. Yes, on both</p> <p>24 sides.</p> <p>25</p>

<p>1 CERTIFICATE OF RECORDER</p> <p>2 STATE OF NEVADA)</p> <p>3 COUNTY OF CLARK)</p> <p>4 NAME OF CASE: SANDRA LYNN NANCE vs CHRISTOPHER MICHAEL FERRARO</p> <p>5 I, Peter Bellman, a duly commissioned</p> <p>6 Notary Public, Clark County, State of Nevada, do hereby</p> <p>7 certify: That I transcribed or supervised transcription</p> <p>8 of deposition of the witness, TRIAL TESTIMONY .</p> <p>9 from Recorded Audio-and-Visual Record and said deposition</p> <p>10 is a complete, true and accurate transcription,</p> <p>11</p> <p>12 I further certify that I am not a relative or</p> <p>13 employee of an attorney or counsel of any of the</p> <p>14 parties, nor a relative or employee of an attorney or</p> <p>15 counsel involved in said action, nor a person</p> <p>16 financially interested in the action.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my</p> <p>18 hand in my office in the County of Clark, State of</p> <p>19 Nevada, this 06/29/2016.</p> <p>20</p> <p>21 _____</p> <p>22 Peter J. Bellman Notary (12-9031-1)</p> <p>23</p> <p>24</p> <p>25</p>	



	147,017.41 40:7	3,366.18 40:1
\$	15 132:6	3.1 3:19 4:2 6:15,16,20 7:4
\$10,333.42 42:4	15th 152:12 153:1,3	30 34:5
\$10,664.64 42:8	16 46:7 56:2	3000-hour 87:4
\$100 30:7,10,24 39:3	176,238.53 40:5	3111 86:22
\$115 30:22	17th 21:9	38 64:25
\$13,293.19 42:6	18 17:2	3:07 68:2
\$14,481 48:3	18th 21:9	
\$14,881 46:6	19 14:1 66:23	4
\$15 30:4 31:5	196,627.10 40:3	4 6:20 127:14 130:14,22 133:20
\$20 31:12,16	2	4.8 4:8 7:3
\$5 31:19		5
\$50,000 48:15 49:11,18 50:15	2 64:5 135:17 151:13	5 133:20 151:2
\$602,772 26:18	2,400 48:6	50-- 40:16
\$7.50 31:9	2- 100:16	52 40:17
\$910.53 42:2	20 136:13 139:8,17	5430 3:16
0	20% 51:5,8,9	575 64:9,13
0:03:34 7:6	2009 28:11 87:18 126:18	5A.110 35:15
0:03:39 7:10	2010 28:22 29:11,12 53:24 69:13 87:20 127:11	5th 151:1,6,9,19 152:14,15
0:17:24- 85:19	2012 21:25 32:15 33:13 36:4 37:10,12 39:24 40:1 41:24 42:1 53:22 127:16 130:20	6
0:18:12 85:20	2013 20:15 21:3,5 40:2 42:3 89:7 130:13,21 131:11 132:6	6 135:3
0:34:11 31:20	2013-14 20:18	6/21/16 46:17
1	2013-2014 17:10,18	62 65:25 66:23
1 132:9	2014 16:25 20:10,15 21:3,22 40:4 41:24 42:5 66:5,9 132:4	63 49:25
1.7 3:22 6:23 7:4	2015 11:13 36:6 40:6 42:7 66:6, 17 67:16	64 48:19 49:1,21 50:11 51:7
10 139:8,17 151:13 152:12	2016 46:5,9 48:2 130:14,18	65 50:10
100 39:7	22 51:7	7
101 86:23	25 26:10 49:22,25 50:13	7 105:20 106:7 130:14,18
1032 25:2 26:15 62:13	257 26:8	75 40:17
11220 69:5	3	8
12 33:14 37:9		
12th 150:9,25 151:5,6		
13-and-a-half 4:4		
14 15:20,22,23 50:18 105:19 106:4,8 132:6	3 47:20 130:8,16 131:25 132:3 140:17	83 64:10
		89138 26:16

89148 24:21	addition 94:21 102:13 113:7 151:13	amateur 61:17
8925 24:19	additional 5:9,12 40:9,10	amended 42:9,12
8992 3:9	address 24:18,25 60:23 62:4 86:21 116:3 117:14 123:17	amendment 42:18
8th 144:11	addressed 60:18 67:17 116:6,7 123:21 124:23	American 138:23
<hr/>		
9		
<hr/>		
90 139:13	ADHD 101:13,15,16 104:5,7,17 107:16,17,21 115:8,9,10 116:3,5, 6 118:8 119:13,18 130:5 133:22, 24 134:8,12 135:3,5 138:8,22	amount 42:13,16 43:3,11,13 64:7
9441 3:6	admit 137:14	amounts 31:9 39:15 42:17 43:13
95 64:9	admitted 137:13 152:23	and/or 38:6
9933 3:13	adolescence 88:11	angry 104:3
9:30 85:6	adults 88:11 101:19 102:21	annoy 102:22
<hr/>		
A		
<hr/>		
A1 30:15,16	advice 128:4	annoyed 104:2
ability 18:15,18,21 142:22	advised 123:10	annual 117:1 144:11,20,21
absolutely 38:6 39:9 40:11 52:2 55:4 77:25 90:5,18,25 93:22 106:16 153:11	affirm 35:17	answers 20:2 83:25 121:1
academically 115:11	afraid 122:4	anticipate 106:17
academy 138:23	afternoon 3:5,7,12 10:25 68:21	anxiety 100:11,15 101:7,11,23, 25 103:19 108:6,16 109:1,4 111:9,16,21 112:10,15,19 113:2,5 124:13
access 133:11	age 56:23 101:18 138:25 139:11	anymore 82:25 106:9
accompanied 20:5,9	agency 89:5 128:21	apologies 27:1 51:17
accomplish 117:20 120:14	ages 101:22	apologize 26:25 81:10 121:9
accumulative 149:17	agree 42:25 60:21 103:20 105:9 134:15 138:24	appearance 6:2
accurate 38:8 69:18	agreed 103:15	appearances 3:4
achieve 117:19 135:19	agreement 49:4,7,17	appeared 34:5
act 88:20 114:5	ahead 24:12 43:17 82:21 93:3 97:12 100:25 122:16	applied 28:25 29:13
acting 114:6	airport 74:13 81:6	apply 29:6 96:7
action 21:25 68:15 85:24 120:10	albeit 12:25	appointment 9:12
actions 114:3 116:13	alloted 5:6	approach 15:16 36:21 37:7 41:16 86:4 106:9
Active 137:25	allowed 14:2,6,16 15:9 18:10 22:1 23:18 36:11 60:24 75:20	approaching 17:2
activities 8:23 9:2 10:4,8,12 118:5,8,11 134:2,5	Alis 84:3	approximately 63:15 74:19 131:25 132:16
activity 104:14 105:4 116:10	alright 47:14 68:8 73:5 85:11 130:22 146:12 149:21	April 12:16
actual 41:25 42:3,5,7	alternative 133:3,6	apt 106:10
actually-- 18:9	alternatives 133:5	area 137:19,21 146:16
add 41:10 142:1	altogether 51:20	aren't 92:21 101:19
		argue 95:4
		argued 23:20
		argues 104:3

argument 102:19 153:20	107:23 120:11 140:20 150:8,13, 25	behaviors 118:25 119:5,8 136:2 138:4,7 139:25 142:1,4,18,24 145:1
arguments 5:8,9		
arrive 43:8	back...these 56:11	
arrived 21:9	background 5:1 85:19 87:1	believes 141:2 148:18
art 76:16	bad 42:25 60:22	belongings 134:6
asks 95:10	bag 81:17	benefit 90:25 91:2
assessment 103:14,15 116:25 117:2,5,6,8,9 128:19 129:24	BAILIFF 68:12 85:21	berceuse 122:22
assigned 89:4	balanced 88:10	big 102:18 114:5
assist 121:11	banged 58:6	biggest 65:1
assists 111:18	bank 30:25	bill 30:24
assume 27:16	banners 65:12	binder 30:13 35:19 36:22
assuming 5:7 140:23	bar 3:6,9,13,15 31:20	binders 35:24
ate 109:9	Baronet 25:2,3,4,6 26:15,24 27:3 62:13	bit 9:8 10:14 49:24 79:11 104:22
attempted 118:22	bartender 43:19	blackjack 33:17
attend 12:13 22:8 33:18 61:9,18 62:8 110:3	baseball 9:8,10 10:5,13,17,19 11:10,11,17,20 52:20 71:8 83:10	blame 104:4
attended 57:3 143:19	based 80:7 92:14 96:19 97:15 110:1 125:17 147:4,16	blamed 15:5
attention 101:13 103:17 104:8, 14 107:21 114:2 124:24 133:24, 25 134:2	basically 53:24 82:24 97:11 147:16	blanket 100:12,13
attest 108:19	basing 121:23 122:15,17 136:21	block 55:25
attorneys 19:22	basis 71:1 77:17 78:7,9 110:8 111:22 121:25 122:23 140:17,21	board 35:10,15 72:11 87:6
attributes 135:15	basketball 9:4 11:7	bookings 43:20
august 151:1,2,5,6,9,19 152:12 153:1,3	beaten 54:19	booklet 48:21
Aunt 55:9	Beck 141:13,16	books 76:7
authority 102:21	bed 71:10 72:8	born 23:25 24:1 60:10 101:17
Avenue 24:20,22 69:5	bedroom 27:6	bottom 39:1
average 43:9 48:6 63:20,22 106:1 119:2,6,8,12,19 142:23 143:3,10	bedrooms 27:4	Boulevard 86:22
aware 22:22 25:19,21 37:2 55:13 62:10 68:22 73:8 109:3 118:18 138:10 143:18 144:22,25	begin 100:5,10	bowl 72:17
	beginning 10:15 26:10	bowling 70:23
	behalf 3:6,9,13	boxing 34:25
	behave 88:15 91:12,22 92:7,11	Boyd 34:23
	behaves 92:9	break 20:21 21:1 94:16 131:13, 22
	behavior 80:23 81:2 97:9 100:9 116:19 119:2 138:19 143:3,11	breakfast 78:6,16
	behavioral 87:23 88:13,14,17,18 91:14,18 116:7 139:1 141:18	breaths 112:21,25
		briefs 150:1 151:12 152:18
<hr/> B <hr/>		bright 115:12
bachelor's 87:2,15 126:19		bring 80:16 124:24 132:25
back 7:14 29:8 33:11 47:19 49:18 50:20 51:12 56:12 57:3 58:2,7 67:14,16 68:1 102:18 104:3		brings 83:18 89:22
		Brittany 48:10 50:24

broader 5:22	cards 39:20	chicken 78:20,25
broke 12:3	care 17:13 50:25 90:24 125:10 139:8,10	chief 7:22,24
brother 75:7 81:4 91:23	career 60:12	child 57:1,4 94:23 102:13,17,22 104:25 105:2 107:10,22 108:3 109:17 119:6 139:11 141:8 143:3 145:5
Bruises 58:3	careful 81:19 97:12	child's 98:24 107:13 111:2
BSL 87:14,17,18	careless 104:9 134:1	children 17:14 21:13,18 23:9,17 54:25 55:1 56:24 69:10 70:21,25 78:5,7,16 88:11 101:20 107:15,17 113:8 115:18,19,20 129:10,22 138:25 142:22 143:9 144:16 145:9,16,21 146:20,21 147:1
buffets 80:1	cares 107:2	children's 113:8,10 115:18 142:24 143:11 145:14
bulk 6:9	case 3:3 6:9 7:22,23,25 37:14 62:19 72:1 82:13,14 94:4 95:21, 22 137:5 150:1 152:8	Chinese 78:21
bunch- 44:20	cashier 43:19	choices 145:2
business 43:22,25 45:12 46:21, 24 47:1,24 48:12 49:4,7,8,14 50:21 51:19,20,21,24 64:21 65:3 67:10,15,17 86:21 151:11,20 153:5	casino 33:17 34:25 36:16 37:4 41:6,10 80:8	chooses 97:1
businesses 64:25	casinos 34:14 36:1 37:15 39:20 63:25	chores 104:12
but- 95:16	catering 16:16 43:21 64:20 65:9 67:15	Chris 9:20 12:23 13:3 15:11 16:6 18:5 21:16 22:7,11,18,20 29:19, 22 30:3,21 32:5,9,16,21 53:7 55:12,20 56:7,9 59:8,12,13,17,21, 23,24 60:5,10,21,23 61:1,23 62:11 63:21 75:12,21 90:1 92:13, 14,16 93:13 96:21 97:17 99:15,17 103:12,15,19 105:5,15 114:19,20 118:15,21,23 119:1,7,14 120:17, 22 121:22 122:1,5,6,8 123:7,24 124:1,4 144:22,25 145:20,21 146:1,8 147:8
but-- 31:23	caused 100:10 102:12 109:8 112:10 123:25 124:12	Chris's 21:12 22:1 30:6 32:24 33:4
button 38:12	causing 108:25	Christmas 20:18,20,21,25 21:1, 13,14
<hr/>		
C		
<hr/>		
calculated 3:19	CBT 141:19,21,23	Christopher 3:13 11:1 82:1
calculation 4:6	certification 141:21,23	church 10:1
calendar 42:19	certify 141:18	circumstances 106:25 113:14
call 4:1 6:5,6 68:3 89:19 110:7	chair 115:25	citation 94:14
called 6:12 18:1 55:23,24 92:24 105:3 107:9 146:18	challenger 22:8,15 23:1 61:10, 24 62:8	claim 64:23
calling 99:18 149:14 153:16	chance 88:25	clarification 32:13
calls 100:19 108:7 142:25 143:6 145:11	change 9:7 44:22 132:15 139:18	clarifications 41:11
calm 114:8	changed 51:6 132:13 139:20	clarify 20:8
calmer 113:1	chaperoned 8:20	Clark 65:10
calming 113:7	characteristics 101:12,17 102:12 103:5 105:12,13,18 106:3, 6 107:2	
camp 57:2	characterize 70:12	
can't 14:11 19:8 46:20 57:10 83:4 97:6 112:8 120:2 145:24 151:24	chat 13:24	
cancelled 132:17,18	check 85:16 96:11 138:17	
candy 31:20	checked 96:5	
cap 83:12,14	cheese 79:1,5	
card 33:24 35:16,18 36:1,12 76:18 79:15,18,21 82:2,4,15,16 83:1,3,6 142:3	chewing 100:12	
	Chicago 71:11,13,17,21 83:10	

classes 9:23,25	commission 43:21	contained 35:25
classmate 8:17	common 145:8	content 125:13
classroom 8:16 115:13,14,24 138:13,15 142:9	commonly 26:15	continue 27:13 50:23 90:23 123:2
clean 104:16	company 16:13,19,23 33:20 35:1 50:25 51:3,12	continues 140:20
clear 95:21	comparison 82:4	continuing 126:8 140:10
clerk 15:16 36:21 41:16 68:14 85:23 86:3	complained 29:15	contract 88:4
client 19:9 128:6	complaining 47:2	contractor 88:1
client's 82:14	complemented 45:8	control 17:14 35:10,15 116:21
clinical 87:5,6,9	completely 121:17	conversation 5:7 85:19 100:17
clock 68:2	component 134:9	cooks 78:3,4
close 40:13 45:6 70:14,15,16 71:6 72:4,6 73:18 100:16 111:13 114:2 133:25 151:10,16,20 152:17 153:4	components 128:12,15,18 134:11,17	Cooley 3:8,9,24 4:9,14,18,20 5:16,19,24 6:16,18,23 7:2,16 8:1, 7 11:6 17:12 23:4 30:15 44:13,19, 25 45:3,8,14,17,24 46:2,13,16,20 52:7,10,17 53:20 54:2 67:13,15 86:9,10,15 93:8 95:24 96:4,18 111:14,24 142:5,8 146:15
close-knit 70:24	concern 4:22 37:10 105:14 123:25 124:7,12 125:8	cooperative 55:11,15,17
closer 72:21	concerned 4:14 39:11 49:8 105:21 124:18	copies 110:13
closing 5:8,9 74:11 151:12,15 152:18,25 153:20	concerns 3:25 60:5,8,18 61:2,7 88:21 105:17 107:15 120:4,17,21 122:8	copied 29:25
clueless 47:7	condition 94:20 95:3,5 98:5 113:17	copies 41:17
co-counsel 81:25	conduct 97:9 106:13,14,20	copy 45:20,23
co-parent 125:1	confirm 67:5	correct 5:23 11:15,17,21,22 12:21,22 13:5,12,18 14:7,8,18,25 15:23 16:13,17 19:4 20:15,16 21:2 22:8,9 23:7 26:18,19,23 27:19 28:5 29:17,18,20,23 30:1, 16,22,23,25 31:1,3,4,7,10 32:23 35:6,11,12 36:3 38:4,16,20 42:10, 11,14 48:7,16 49:5,6,8,9,11,15,19 51:13 54:2 58:16,18 62:15 64:17 66:6,18 88:14 129:14 134:22 135:5,9,10 143:4,23 152:20
coach 114:19 115:4	conflict 132:21	corrected 92:12 105:25 106:3
coached 114:14,15 123:16	congratulated 77:14	correction 118:6 119:1
coaches 114:23 142:21 143:9 145:22	consequence 116:19	correctly 11:24 21:15 38:21 126:18
Coast 34:22	consequences 98:15,17,20,22 116:12 122:18	Cosmo 34:13
cognitive 88:13,16,18 139:1 141:18	considered 73:9	costs 65:7,11
cohorts 14:20	consistency 120:9 147:1	could- 96:23
coin 38:2,21 39:14,25	consistent 37:22 147:5,6,7	counsel 40:12 73:10 96:2
college 30:10,25	consistently 132:3	counseling 89:16 90:4 121:11
colloquy 36:15	constantly 107:23 139:12	
color 116:17	constraints 6:7	
column 37:9,15	contact 65:10 89:20,23	
combined 7:3 101:14 103:18	contacted 11:9	
commencing 21:25		
comment 99:4 120:2,16		

counselor 94:24 99:16,19,20 138:11 145:13	84:9 97:24	DEFT0255 26:5
County 28:14 65:10	Dan 69:10	DEFT174 30:18
couple 7:17,19 36:19 76:4 81:24	Dangerously 151:16	degree 87:2,3 126:19 127:6,9,10 135:14 145:20
couples 88:12 146:19	dark 124:6	delay 51:17 117:18 118:7
courses 17:9	data 130:25	delayed 144:16
court 35:14 37:6 60:19 68:13 73:2 85:22 94:5,23 96:25 100:7	date 36:11,13 150:23 151:4 153:3	deliberately 106:21
court's 54:11 124:24	dates 21:6,8	delves 76:16
courtesy 150:4	daughter 70:21 75:12 76:24	depending 90:20 128:20 139:13
courts 60:18,19 123:23	daughter's 82:2 83:7	depends 5:17 128:20
cousin 10:7 72:20,23,24	daughters 79:4	deposition 11:2 15:14,20 22:25 27:24 48:10,18 50:2 51:11,21,23, 25 52:1 53:1,6 65:24 66:5
cousins 70:22 72:20 80:17	day 3:17,18 4:1 5:12,14,16 10:7 21:10,11,13,17 36:15 63:13 70:1, 3 76:13,22 99:20 109:8	describe 69:24 70:6,15,18 72:5 75:16,25 98:12 133:9
cover 7:18	days 10:17 21:13 31:24 40:20 63:9,15 79:14 132:14 139:13 151:13 152:13 153:4	describes 142:15
create 142:23	deal 34:2,7	describing 142:18
credibility 97:1	dealer 33:16,23	designed 99:15,22
criteria 133:14,16 134:8	dealer's 33:19	desire 145:14
criterion 134:21 135:4,12	dealers 35:1	desiring 105:15
criteria's 135:19	dealing 33:17	Desmond 13:25 14:3,19,24 16:10,18 17:1,11 18:2,5 20:4,9,18 21:3,16,21 53:2,4 54:24 55:2,7 56:1 69:10
cropped 140:1	dealt 34:8,16,18,21,23 35:4	Desmond's 15:6
cross 5:18 10:23 19:25 126:11 149:5	debt 50:15 51:1	detail 5:1 8:11 133:25
Crosstalk 98:7 150:18	December 12:11 28:11 36:6 37:12 41:24	details 104:8
Crowd 49:8,19 50:3	decided 50:25	determine 140:9,14 143:3
Cubs 71:11,13,21 83:10	decidedly 111:2	determines 99:4 132:10
Cup 83:24	decision 153:18	devalued 124:8,9
cured 101:15,18,24 102:9	decrease 117:16	diagnose 130:7
currency 116:8	decree 26:13	diagnosed 101:10,20 130:5,8,23 131:2 138:8
current 42:19 67:12	deed 26:21 62:14,21,23	diagnosis 101:9 103:1,3 105:2 116:23 128:5 129:10,14,18,22 130:6,25 133:4,7,20 135:4,19 136:22 138:7 141:9 142:19
curriculum 62:1,5	deep 112:21,25	diagnostic 133:14
custodial 8:23	defendant 26:8	didn't 6:6 12:12 13:1,15 15:24 45:24 47:3 52:23 56:5 60:10,17, 24 61:9,17 62:17,22 63:8 64:23 67:14,16 75:1 76:19 81:10 84:2
custody 82:17	defendant's 25:8,12,13	
cut 4:5 52:24	defer 150:20	
cutoff 18:21 19:7	defiant 101:13 102:8,10,15 103:17,22 104:1 106:11 107:22 113:15,18 116:7	
<hr/>		
D		
<hr/>		
D426817 3:3	deficit 101:14 103:17	
dad 11:8 74:15 76:8,10,21,24		

131:18,21 135:25 153:12,15	doesn't 18:20 19:9 39:6 45:11 46:25 61:3,4 96:7,11 97:7,20 101:4 102:17 103:2,4 104:3,10, 16,17 108:22 110:7 116:8,16 118:24 139:18	early 4:5
differed 103:19	dollar 38:14,18,23	earned 64:18,19
differences 91:11 133:19	dollars 37:24 38:1,10 39:13,25 40:2,4,6	easier 91:6
difficult 45:15 113:9 125:5 134:1	don't 4:12,21 5:1,2,9 7:25 19:7, 11 24:19 28:2 30:12 33:6 42:20 43:6,11,15,21 44:2,13,25 45:3 46:10 51:6 53:14 54:1,5 60:20 62:16,20,22,25 63:2,17,18 66:10 67:3,7 71:18 74:12 77:16 79:16 81:5 82:15,25 86:23 89:24 90:15 95:7,21 96:22 97:23,25 98:5 116:14 119:15 123:1,2 125:23 131:17 133:13 136:23 137:14 141:23 142:7 145:9,23 146:7 152:10 153:22	easily 105:25
difficulties 15:7	door 53:18 54:3 55:22 74:11,18	eat 78:19
difficulty 104:18 134:4,5 147:12	doorbell 73:25	eating 78:16
dinner 78:15,17	draft 153:23	ebay 43:20
dinners 78:12	drafting 150:21	education 9:23,25 126:16
direct 5:19 8:6 47:16 52:16 53:19 68:19 81:22 86:14 96:17 144:2 146:18	drawing 115:1	educational 87:1
directly 94:5 124:3 134:3	dressed 76:5,9	effectively 125:2
dirty 107:10	Drive 25:3,6 26:15,24 27:3	effectual 137:20
disappoint 101:4 108:25	drop 55:20	effort 104:24
discipline 122:10,11,12 123:5,6 145:1 148:10,12 149:9	drove 55:25	electronic 104:25
disclosure 42:10,13,18 43:4 44:5,10 45:21 46:4 64:3	DSI 133:10	email 29:19,25
disconnect 114:5	DSM4 133:18	embraces 91:21
discount 80:7	DSM5 133:13,17,23	emotion 97:8
discovery 37:3 40:13	DSN4 127:25	emotional 94:20
discretion 96:25	DSN5 127:21 128:2	emotionally 114:8
discuss 145:1	due 152:23	empathy 106:23 107:16,18
discussed 18:6 56:8 60:9 61:6 140:24	duration 63:20	employed 33:15 34:16 87:21,22
discussion 110:21 149:8	duties 134:4	encounters 111:10
disorder 101:11,13,14,24,25 102:9,10,15 103:17,18,22 104:2 106:11,13,14,20 108:6,17 113:3, 6,16,18 116:7 140:2	<hr/> E <hr/>	end 26:13 65:8 66:19 150:14 151:23 152:2,3
disorders 108:4	ear 43:14	ended 12:11 76:3,5
display 115:14	earlier 49:24 50:16 101:22 111:1 126:16 139:2 143:2	energy 117:14 120:15
disrespected 97:5		enhance 76:2
distracted 104:21 120:10		enjoy 10:19
distractibility 117:17 137:22,23		enroll 11:11 22:18
divorce 53:7		enrolled 11:6,9 16:9 52:20
doctor 32:9,16,22		enrolling 12:18 61:17
document 50:1		enrolment 144:16
does...he 61:4		enter 40:17 80:11
		entered 22:11
		entering 22:21 57:2
		entire 71:3 135:12
		entry 26:7
		environment 102:11

equip 65:11	exact 14:11 21:8 24:20 43:11 46:10 63:19	explained 50:17
equipment 65:6,13	exam 87:6 128:7,10 140:3	explaining 45:15
essence 140:24	examination 5:18 8:6 10:23 20:1 47:16 52:16 65:21 68:19 81:22 86:14 96:17 146:14 149:5	expressed 60:5
essentially 94:24	EXAMINATIONM 126:11	extended 77:3
estimate 64:15	examples 75:23 76:12 134:10, 19,24 135:12	extent 118:25
evaluated 139:12	excellent 76:25 77:1	extra 35:1 63:12 151:13
evaluation 99:21 128:13,16	exception 93:21,23 94:2,21 95:2 98:2,3	extracurricular 8:23 10:4,12
Evan 8:22 10:19 11:6,11,16 12:4, 24 13:4,20 20:5,10 21:11,16 22:2, 4,8,11,15,21 23:1,11,21,25 24:1 27:6 30:4,7,9 31:12,14,24 32:9, 15,21,25 33:1,4 52:20 54:24 55:3, 7,10,14,20 56:5,15,20 57:3,12,19 59:21,25 60:9,10,22 61:9,22 62:1 63:4,15,21 69:10,21 70:1,7,20 71:9 72:1,2,19,21 73:17 74:6,8, 10,15,17 75:6 76:5,8 77:24 78:2, 14 80:15,16 81:12 89:8,12 90:13, 23 91:1,3,7,17 92:17,19 93:12,14, 16,18 94:6,8 96:19,21 97:15,17 98:12,13 99:16,17,21 100:5,9 101:3 103:13,21 105:6 106:23 107:4 108:5,15,21 109:4,11 110:1,2,9 111:8 112:9 113:4 114:9,19 115:6,9,11 117:6 119:8, 25 120:1,4 121:10,15 122:2,17,23 123:5,6,15,19 124:6,7,18,24 125:2,9 127:17,24 128:9,16,23 129:1,3,22 130:1,10,18 131:4,7, 10,23 132:8,24 133:7,15 135:18 138:1,10 139:5,16 140:5,9,16 142:3,18 144:23 145:6,19 146:23 148:2	exceptions 104:24	extremes 122:12
Evan's 8:12 56:23 59:4 60:3,4 61:2 62:8 70:11 71:4 78:22 80:23 83:9 88:25 89:15,21,25 90:7,9,11 101:8 102:25 103:2,14 105:14 116:23 119:21 138:19,25 139:11 145:1 146:1	excessive 62:1 117:15 137:23	F
Evans 8:9 10:11 58:1 61:17 106:16 124:2 130:5	exchange 99:6 152:14,15	face 32:25 33:4 68:13 85:21 148:13
evening 85:5	exchanges 55:13,19	face-to-face 87:4
event 34:25 63:13 65:10 66:21 67:1 132:21	excited 73:23 110:25 111:3	Facetime 63:21 74:9,15,18 75:3, 8
events 8:20 66:5,8	excitedly 111:3	Facetimes 74:7,12
everyday 76:6,9 78:11,13 79:9	exclusion 94:22	Facetiming 74:23 75:6
evidence 40:11 99:18 152:22	exclusive 5:8 94:25	facility 64:24 65:2
EW 41:3	excuse 69:1	fact 22:17 31:12 32:10,16 34:14 41:24 60:23 137:8 138:18 139:16 142:1 143:21
	exhaust 129:19	facts 140:23
	exhausted 129:17	fade 104:21
	exhibit 25:15 26:3 30:14 35:19 40:10 41:2 44:10,18 50:2 81:2 105:14 137:7	failure 15:6
	exhibited 119:6	fair 23:21 33:7 35:3 43:12 68:9 85:11 129:21 135:11
	exhibiting 100:9 115:24 142:4	fairy 29:16 30:4,7,22
	exhibits 44:15 115:17 119:8	fall 11:13,24 12:6 53:16 59:2
	exist 146:10	fallen 57:6
	existing 94:19 95:3,5,16 98:4	falling-outs 23:14,17
	expectations 91:4,5,9,14,15,18 92:7,14 102:23 147:7	familiar 141:13
	expected 91:6,12 92:19	families 88:12 119:14 146:19
	expecting 151:11	family 43:19 55:12,19,21 70:24 71:3 72:18 75:21 80:4 89:3,4,18 90:11,12 91:21,25 92:2,3,10 103:10 119:15 124:15 143:19 146:1,5
	expects 91:21,22 92:4	fast 141:11
	experience 107:16,23 108:6,16 124:5 145:13	
	experiences 103:13 105:6,9	
	explain 52:19 91:10	

faster 131:7	findings 153:21,23	free 80:9,10,11 82:25
father 55:21 57:3 60:4 74:6,9,18, 23 81:13 89:18,25 90:11,15 91:1, 2 103:2 109:7 120:2 123:21 124:10	fine 7:2 19:10 27:2 37:19 43:1 67:18 73:4 74:4 151:2	frequently 32:18,19 101:20 144:4
father's 76:13,22 90:24 121:15 125:12	finish 7:25 15:6 104:12 127:8	Friday 8:18,19 63:10,11 84:17 151:20
fault 44:1	finished 35:7 126:7 127:6,10 149:11,22	Fridays 9:9 10:3,4,6 131:25 132:2
favorite 71:13,24 78:22 79:2 83:9,16,19,20 84:3	finishes 78:15	fried 78:20,25
FDF 43:18	fire 64:24	friend 10:7 72:25
Fe 34:12 39:21	fire...a 64:24	friends 20:14 72:12
February 20:5,10 89:7 130:13,21	fires 65:2 106:22	front 25:11 30:13 45:21 46:11 51:6
feel 56:8 88:20 95:11 103:7 106:25 132:23	Fitzpatrick 48:10 49:5,10 51:13	full 3:18 86:16
feeling 107:19 108:1 114:4,6	five-cent 38:22	fully 88:3
feelings 113:19 114:1,2	floor 45:5 102:20	fun 56:23 60:11
feels 95:15 108:24	focus 4:24 105:3	functions 109:12 110:3
felt 63:9 108:2	focused 4:24	fund 30:11,25
Ferrari 143:19	focusing 116:24	fundraiser 8:16
Ferraro 3:3,14 11:1 15:7 20:13 28:8,16 29:13 126:14,15 130:2 143:23 144:1,3,5,8 147:20 149:8	folders 8:18	
Ferraro's 146:10 147:19 148:5	follow 19:23 97:19 98:8 99:10 104:10,17 118:19 120:9 122:4 149:7	G
Ferrera 76:2 80:24 82:1	food 16:15 65:13 78:21	gamble 79:12
festival 50:16	Foreclose 62:14	gambling 63:25 64:1,4,8 79:10, 19
field 8:20 128:3 140:7	foreclosure 25:6 26:1,22 62:24, 25	game 39:19 52:25
Fiesta 39:22	foreclosures 24:8,14	games 10:18 33:17 72:8,11 104:25 118:5,8
fight 60:17	forever 28:5,6	gaming 35:10,14,16 42:13,16
figure 112:24	forgetful 105:10	garage 43:20
figures 102:21	form 43:4 44:10,23 45:21 46:4 64:3 102:18,19	gave 31:12 41:23
file 46:13 95:21 96:8	forms 44:5	general 105:12 111:22 112:3 148:19
filed 151:14	fortunate 115:11	generalized 101:11,23,25 108:6, 16 113:2,5
finally 123:17	forward 54:11	Generally 132:23
financial 30:19 42:9,12 43:4 44:4,10 45:21 46:4 64:3	found 36:19 136:6	GENTILE 3:2,11,17,22 4:3,10,19, 21 5:14,17,21 6:1,8,14,19 7:7,12, 14,23 15:15,18 17:15 18:13,17 19:2,5,8,11,16,19,21,25 24:12 36:17,23 37:24 38:3,5,9,14,17,25 39:6,16 40:15,18,20,24 41:2,8,13, 18,21 43:16,18,24 44:6,22 45:1, 10,16,18 46:23 47:5,9,12 52:3,8,
find 6:3 44:17 46:20 71:11 115:19 135:2,3,7,13 136:3,4 137:16,17 138:17	foundation 92:25 93:4,6,7 120:18 121:24 122:13 141:1,3 148:16	
finding 140:5	foundational 121:18,20	
	foundations 120:24 121:8	
	frame 42:21	

12,14 53:23 54:5,8,12,15,18,22 56:18 57:9 58:16,19,22 61:15 67:21,24 68:1,5,6,8,11 73:5,16 74:4 82:8,12,18 84:8,19 85:11,15, 18 86:5,8 93:2,10,21 94:10,15 95:9,12,19 96:1,5 97:3,10 98:2,11 99:3,8,11 100:1,23 108:12,18 109:17,21,25 110:5,10,17,19 111:7,22,25 112:6 121:1,4,7,19 122:14,19,24 125:19,22 126:1,6 136:12,16,25 137:6,12 141:4,6 142:7,15 143:13 146:12 147:14 148:17,22 149:11,13,17,21,25 150:5,10,14,19,24 151:2,18,25 152:5,9,15,22 153:2,6,9,11,15	greater 135:14 gross 46:4 48:2 group 80:17 guards 56:16,25 guess 3:18 5:17 12:3 16:8 39:21 46:12 65:12 82:14 142:16,19 guy 115:10 guys 69:11 81:8,9 138:17	he's 10:14 16:4,5,6,7 57:5,6,13 69:23 71:6,10 74:22 75:3 77:3,17, 25 78:1 81:3,6 84:20,21 90:14,15, 20,23 91:11 head 56:10 57:5,14,18 health 87:23 88:25 103:3 138:23 hear 5:2 13:1 54:6 74:25 98:9 116:12 153:12 heard 29:16 41:12 52:11 99:24 hearing 20:22 hearsay 56:17 57:7 58:10 59:9 61:14 70:5 73:9 93:1,16,17,20 94:5,21,22,25 97:12 98:1 109:14 110:7,16,21 111:5,13 122:20,22 123:3 125:17 Hedge 69:5 heed 90:7 held 33:9 Helix 94:4,11 helped 8:16 111:15 112:9 123:5 helps 114:16 115:4 heresy 147:13 hes 113:21 hesitant 97:19 98:8 hesitating 98:13 Hey 71:25 78:2 high 15:25 72:10 101:7 112:20 117:14 124:14 highly 90:5 132:22 hit 38:12 57:13,17 hit...what 57:24 hits 151:19 hockey 22:4 56:6,8,20 57:12 60:6,11,12 61:2 83:16,19,20 107:10 hold 52:5,8 93:25 96:1 151:22 Hollywood 34:12 home 17:11,17,19,20,23 23:21 24:11,25 27:25 55:23 75:22 77:4, 13,20 78:17 81:3 91:19,20 92:13, 14,19,20,23 93:13 96:21 97:17 105:4 116:4,5 118:16,19 119:17
get all 153:18 get along 91:23 gist 53:25 give 8:2 30:9 31:14 36:13 45:11 51:4 56:1 68:15 75:23 81:7 82:3 85:24 87:22 88:4 96:25 97:21 102:18 107:8 113:22 123:12 124:5 126:4 142:19 145:2 148:11 150:4 giving 5:12 goal 58:6 117:16 goals 116:24 117:19 120:14 god 8:4 68:17 86:1 Gold 34:22 good 3:5,12 10:25 45:10 68:21 69:23 70:12 73:16 81:19 104:20 113:1 115:9 153:17 grade 5:3 17:3,5,6,7 22:21 grader 138:1 graders 138:4,6 graduate 14:20,21 15:2,24 grandchildren 70:19,20 grandfather 71:5 grandmother 30:10 31:2 grandpa 71:17 grandparents 81:5 92:9 gratification 117:18 118:7 great 4:12 63:1 70:2 77:14 78:1 107:11 115:18 116:18	hadn't 152:3 hair 148:13 half 3:18 5:16 9:9 74:21 127:15 130:17 Halfway 13:8 hampered 115:12 hand 37:15 68:13 85:21 handle 103:9 114:24 handled 113:9 138:13,15 hands 68:12 handwriting 104:10 hanging 77:9 happen 62:19 79:8 123:16 happened 15:11 16:6 40:21 58:5 60:3 65:2,7,8 67:11 107:14 happening 6:6 100:2 114:2 148:18 150:21 happier 117:21 happiness 124:7 happy 81:3 hard 20:22 34:12 104:22 115:19, 20 119:10 124:15 127:3 141:11 hasn't 40:21 138:12 hat 71:19,20 hate 44:4 haven't 35:7 114:20,22 117:5 118:20 119:15 122:24 124:23 130:3 he'll 70:2 77:3 85:10 118:9	

122:5 123:7 125:7 135:21 143:23 144:1 146:1,9,10 147:19 148:18 149:9	67:18 69:3 81:25 82:6,20 83:4,25 86:9,11 87:22 89:10 93:6,25 95:19 96:2,10,13 100:2,24 121:8 122:15 128:14 134:13,14 136:7, 11 137:24 150:19 153:2	included 42:13 includes 35:25 income 42:13,17 43:19,25 45:12 46:5,21,24 47:24 48:2 64:4,8 67:17 inconsistent 37:13 147:3 Indefinitely 27:15 indicators 133:22 individual 135:3 individuals 88:12 146:19 indulgence 123:23 infatuated 71:9 information 30:12 112:23 informed 147:11 initial 50:14 initially 50:21 injuries 56:10 57:12,23 58:1 60:13 inside 55:22 instance 37:12 instances 36:19 55:20 instant 118:7 institute 138:22 141:14,16 institutional 150:17 instruct 18:11 19:9 73:2 instructions 134:4 instrument 128:20,21 instruments 129:5,7,9,14,16,17 insult 45:5 insurance 64:23 intend 28:4 intending 5:11 intense 23:2,5 intent 50:3,6 51:3 106:21 intentions 10:15 27:25 interact 112:15 119:25 interaction 123:15 interactive 35:16
homes 147:2,5,8 homeschooling 14:4 homework 104:10,12 honeymoon 150:6 honor 3:24 5:25 7:16 15:13,17 17:14 18:9 24:11 35:13 36:14 37:1,18 40:8 41:15 43:23 45:6 53:18 54:7,17 67:23 68:3 73:1,15 74:3 81:21,24 82:10,22 85:14,16 86:4,7 98:10 111:13,15 120:19 121:10 125:18 142:6 149:3 horse 54:19 hour 74:20 77:22 132:9 hours 4:4 6:15,16,20 7:3 77:13 hours- 3:19 house 75:1 77:7,10,12 78:3 81:5 83:19,24 99:16,17 148:5,21 household 69:17,18 hug 81:8 huge 64:23,24 hundreds 142:22 143:9 145:21 hurt 56:24 101:5 106:21 107:10 108:23,24 husband 10:1 28:24 69:10 71:5 79:13 85:9 husband's 70:21 hyper 105:3 hyperactivity 101:14 103:18 117:14,17 134:22	I've 33:14,15 34:8,18,21,22,23 36:7 55:11,15,18 62:12 64:19 79:4 92:19 102:16 112:20 115:17 116:25 137:24 151:24 ice 57:2,5 60:15 ID 34:6 ID'D 34:4 idea 82:3 identification 33:25 34:3 identified 142:17 identifier 38:10 identify 64:7 113:19 135:17 illustrates 113:8 illustrative 37:19 imagine 113:1 immediately 127:11 important 5:4 108:3 impossible 129:19 145:5 impression 95:3 110:2,23 147:23,25 148:1,4,9 impressions 91:17 109:10 120:22,25 121:5 148:7 improve 101:18 103:7 125:6 improvement 137:19,21 139:15 improving 101:12 104:22 113:14 impulsiveness 117:17 impulsivity 134:22 in- 141:24 in-depth 134:5 inappropriate 114:7 inattention 134:9,18 inaudible 7:6,10 31:21 incidences 107:3 include 24:3 42:17,21 44:9 72:12 153:19,21	
<hr/>		
I		
I'd 13:24 73:1 150:3 I'll 6:3 7:20 20:24 40:20 42:22 65:19 78:14 118:9 152:5 I'm 5:6 6:10,14,25 13:1 14:22 17:4 18:9,10 19:9 20:8,20,22 22:22 24:2 25:19,20 30:16 32:1 34:3 39:22 42:23 47:1,5,7 55:14 56:12,15 57:8,17,18,21 58:17 59:18,22 60:1 61:22,25 65:3		

interacts 92:8,9	issues 7:17 106:4 137:21 146:21	judgment 26:7,13,17
interest 16:19 62:8	it-- 38:3	judicial 35:14
interested 105:1	it's 4:6,18 5:22,24 10:9 12:3 17:13 18:16,23,25 19:2,3,19 20:23 25:25 27:2 28:4 35:3 38:13, 22 39:8 40:10 41:6 44:13 45:15, 17 48:1,6,22 53:24 54:8,9 58:20, 23 59:19 62:25 65:1 68:24 69:13 71:24,25 72:24,25 73:8 74:4 75:13 76:25 77:14 80:1,3,17 82:18,20 90:20 93:22,23,25 95:5, 8,15,16 97:6 98:25 99:11 107:19, 20 110:22 111:3,4 114:13 116:9 121:17 127:14 132:20 136:7 137:9 138:3 139:13 141:2 143:13, 17 147:15,16 152:4	Judith 9:14 86:18
interestingly 111:13		July 151:23 152:3
interject 37:17		jump 122:15
intermittent 90:20		jumped 52:11
intern 89:5 127:17		June 46:5,9 48:2 144:11
international 141:17		junior 14:7,9,12,13
internship 87:5 127:2,11,13		jurisdiction 28:12
interrupt 118:3		
intervene 103:5		K
interventions 117:22,24 118:15		Kayla 20:18 21:4,16,21 69:10 72:3,9 77:3 78:14 84:12
interview 119:16	J	Kayla's 76:24 84:9
interviewed 117:4	January 46:5,7,8 48:2	keeping 84:21 134:5 138:16
interviews 129:22	jar 116:14	kick 106:12
inventory 128:25 129:15	Jason 3:5 44:9 68:20,21 86:10	kicked 62:22
inverse 55:6	job 21:10 77:14	kid 54:24 69:23 78:1 104:17 106:1 107:21 119:2,9
invest 50:24	jobs 19:22 33:9	kid's 79:2
investment 38:6 39:2,16 49:14 50:15	jog 51:8	kidding 150:19
investments 65:14	Joseph 10:1	kids 31:20 79:5 80:5 115:10 118:8
investor 49:16	judge 3:2,11,17,22 4:3,10,19,21 5:14,17,21 6:1,8,14,19 7:7,12,14, 23 15:15,18 17:15 18:13,17 19:2, 5,8,11,16,19,21,25 24:12 26:12 36:17,23 37:24 38:3,5,9,14,17,25 39:6,16 40:15,18,20,24 41:2,8,13, 18,21 43:16,18,24 44:6,22 45:1, 10,16,18 46:23 47:5,9,12 52:3,8, 12,14 53:23 54:5,8,12,15,18,22 56:18 57:9 58:16,19,22 61:15 67:21,24 68:1,5,6,8,11 73:5,16 74:4 82:8,12,18 84:8,19 85:11,15, 18 86:5,8 93:2,10,21 94:10,15 95:9,12,19 96:1,5,10,15 97:3,10 98:2,7,11 99:3,8,11 100:1,23 108:12,18 109:17,21,25 110:5,10, 17,19 111:7,22,25 112:6 121:1,4, 7,19 122:14,19,24 125:19,22 126:1,6 136:12,16,25 137:6,12 141:4,6 142:7,15 143:13 145:24 146:12 147:14 148:17,22 149:11, 13,17,21,25 150:5,10,14,19,24 151:2,18,25 152:5,9,15,22 153:2, 6,9,11,15	kind 9:4 16:16 33:22 46:24 60:15 69:20 72:2,11 75:11 76:23 77:23 78:19 81:1,2 92:6,21 100:14,15 102:7 104:15 105:22,23 107:1 115:21 116:9 117:16 132:21 134:6 136:7 141:9 147:15
involved 11:16 55:24 56:3 89:2, 18 90:6,11,12 113:20 114:17 125:1		kindergarten 8:9,13 22:7,11 63:17 144:16
involvement 8:12 61:2		kinds 72:14 81:15 91:13 112:23 118:12
irritability 102:6		kiss 81:8
irritable 102:23		knew 60:16
is- 96:3 150:23		knowing 3:25
ish 3:20		knowledge 110:8 122:23 123:20 150:17
Island 34:11		
isn't 12:23 14:2,16,19 15:5,9 18:1,4 20:4,9,17 21:20,24 22:14, 24 23:13,18 24:24 25:5 27:23 30:3,6,9 32:8,15,24 33:3 49:19 116:18 125:2 134:7 137:20 139:7 145:8 147:2		
issue 47:6 82:19 109:9 119:18		
issued 28:13 35:16 128:5		

L		
lack 141:3	licensed 88:3 126:18,19	loves 10:20 70:9,10 115:21
lady 61:12	licenses 87:12	loving 69:22,24
language 95:20	licensing 87:6 126:16	low 20:23
lapse 111:4	lied 6:1	lunch 79:5 109:6,7
large 35:4	lieu 5:7 26:21 62:14,21,24	lunches 109:9
Las 23:7,21 24:20 26:15 69:5 124:2,6 150:8	life 124:20	
Lasagna 78:20	light 122:9	M
late 12:17,25 20:14 21:11 52:20, 23,24,25	likes 76:16 79:1 113:11	mac 79:1,5
law 106:11 150:21	limine 53:17	machine 38:22,23 39:19
lay 45:12 93:4,5,7 141:1 142:21	limit 4:22,23	made 5:7 21:21 39:12 40:10 48:15 49:10,13 50:16 59:10 76:7 82:9,19 116:2 119:21 121:21 152:18
lead 88:19 113:25	list 34:19 46:25 153:19	magic 153:12
leading 141:16	listen 104:12 118:4 134:3	main 134:8,17
leads 88:20	listening 100:25	maintain 141:9
league 10:15 12:24 13:4,12	lists 35:25	major 134:11
learn 107:20 118:3 145:18	literature 113:8,11 115:18,22 144:14,15	majority 74:24 103:16 132:5
learned 33:20 92:15 107:18	live 25:1 27:14 28:5	make 39:4 41:5,6 65:12 69:16 75:19 76:18,21 95:22 96:2 114:3 118:11,18 120:21 122:2 136:17 137:6 152:24 153:18
learning 108:2	lived 23:24 24:4,25 33:15	make- 152:25
lease 27:17,20	lives 23:6	makes 79:5 104:8,16
leased 27:17	living 28:2	makeup 133:1
leave 75:1,2 126:3	loan 48:15 49:10	making 41:3,9,17 50:20 51:11,14 78:6 99:13 134:1 153:20
left 21:11,12 28:21 37:15 58:8 136:13	local 80:6	MALE 151:9
left-- 30:22	log 43:11	manage 138:19
legalities 62:21	loneliness 124:6	manageable 106:8
legality 62:17 63:3	long 27:13 55:13 69:11 74:19 77:9 84:12 87:24 88:5 99:20 117:21 132:7 141:8 146:24 150:12	mandated 100:7
lesser 135:13	longer 123:15	manual 82:17 127:21
let's 7:5,7 9:1 33:18 49:21,24,25 51:7,22 54:13,15 93:4 94:16 117:11 127:3,19 128:23 136:4 151:8,18	looked 44:1,3	March 12:16 28:22 29:10
Lets 44:17	loose 58:7,8,25 59:4	Margaret 29:15,19,22 56:3
letter 41:3,9 50:2,6 51:3	lose 102:24 116:16	Maria 50:22
letters 136:24	losses 41:25 42:3,5,7 64:1 116:14	marked 26:5 50:1
level 72:10 117:15 124:13	lost 39:8 71:19	married 150:6
license 87:8,9,15	lot 5:1 16:5,7 48:23 53:2 65:11 70:24 102:16 105:19 114:16 115:10 118:3 137:25	Mary 10:2
	love 71:8 72:16,17 79:4 81:9,19 114:16 124:25	mashed 78:25

master's 87:3,15 127:6,9,10	mind 46:18	16
match 114:3	mine 60:25	more- 106:13
materials 134:5	minute 4:4 52:9 96:1,2	morning 76:8,11 85:8
math 46:12 127:3	minutes 13:25 33:5 38:18 63:22, 24 136:13 142:10	mother 30:6 57:4 69:3,21 81:4 89:17,21 90:9,15 109:6 119:25 124:8 131:8,11 135:21
matter 3:3 75:20 86:11 126:14	misbehave 92:11	move 13:11 25:25 54:7,11,16 71:25 74:2 77:12 100:3 107:10 134:14 148:24
matters 73:7	missed 63:4 132:17,18	moved 9:9 10:6 14:12 19:2 27:9, 11 60:17 62:18
MCCULLOCH 3:1	misses 132:24	movement 114:15
meal 78:22	missing 32:6	moves 116:19
meals 78:4,19	misstatements 142:6	movie 10:8 105:1
meaning 92:10 116:13 125:7	misstates 37:20	movies 70:23 72:18
means 38:11 39:2 78:10 102:3 105:3 142:23 149:8	mistake 59:10	moving 10:14
means- 151:20	mistakes 104:9 134:1	multi 133:9,11
measure 119:11 129:5	misunderstood 121:9	multiple 22:1 129:14 134:24
measurement 143:10	MLSW 87:19	multiples 135:14
measurements 142:24	Mm-hm 24:7 36:17	muscle 102:6
measures 145:23	Mm-hmm 80:13 85:18 86:8 87:10	
mediator 56:4	MMH 120:7	
medical 93:23 94:1,2 128:5	modalities 127:20	
medication 139:1,4,6	Moddy 126:15	
meet 80:5	modeling 33:16 43:19	
meeting 91:3,8	modification 63:1	
meetings 131:6	mom 130:2 149:18	
meets 133:16	moment 25:17 37:18 99:5 115:4 123:24	
member 143:18	moments 113:9	
memorized 40:21	mommy 56:13 70:3,4	
memory 51:8 137:24	moms 8:14	
mental 94:19 95:3,5 98:4 103:3	Monday 9:3 34:15 84:22 85:7,9	
mentioned 10:5 11:19 58:4 72:20 84:4 118:17 139:2	Mondays 9:2	
messes 104:16	money 39:15 42:17 43:3,13 51:12,14 116:9	
messy 134:6	Mont 69:5	
met 11:2	month 12:10 29:11 43:10 131:25 132:3 150:14	
method 144:25	months 64:13,14 80:3,20	
methods 88:14 140:13,15	Moody 3:15 56:17 67:22 70:5 71:23 73:1 74:2 81:23,25 150:15,	
Michelle 22:1 55:9 75:10		
middle 9:5 47:24 63:11 70:3		

N

N7 41:6,10,12,19

Naimi 3:5,6,21 4:2,7,17 5:5,15
6:13,17,21,24 7:5,9,13 18:9,15,
20,25 19:4,7,10 24:9 32:12 36:25
37:2,5,17 38:1,4,7,13,16,20 39:4,
10,11 40:14 41:11,14 43:23 44:4,
12,17,20 45:4,23 46:15,18,22
47:3,7,8 52:5 53:19 57:15 58:13
59:7 67:5,11,14,16,20 68:3,7,10,
20,22 82:6,10,13 84:7 85:13,16
86:4,7,10 93:9,17,20,22 94:7,19
95:10,17 96:13,14 97:7 98:4,19,
25 99:7,10,24 100:21 109:15
110:12,18 111:20 112:1 136:18,
23 137:5,11 140:22 142:12,25
143:6,12 145:11 147:21,24 148:3,
7,11,15,20 149:2,12,16,19,23
150:2,12,23 151:1,5,10,24 152:2,
12,20 153:1,4,7,10,14

Naimi's 37:10

Nance 3:3,6 10:25 15:14,21
26:14,15 27:1 35:18 37:6,9,14
39:19 41:22 45:20 46:3 68:4,18,

22,24,25 69:2 81:25 84:11,20 86:11 132:17	NYS 10:16	114:13 115:3 120:1 135:21
Nancy 35:21,22	O	older 60:17 130:23
Nassau 28:14		on-the-job 33:21
national 138:22	object 18:16,22 82:6 122:19 125:24 140:23	ongoing 130:6
naturally 59:2	objected 58:14,20 59:9	online 14:4,10,14,21,25 17:8
nature 60:6	objection 17:12 18:25 24:9 32:12 37:18 40:14 53:13 56:17 57:7,15 58:9 59:7 61:14 70:5 71:23 73:1,10 74:2 92:25 93:6 95:20 96:22 98:1,18 99:1,14,25 100:2,19 108:7 109:13 110:4,5,25 111:12 120:18 121:16,20 122:13, 22 142:5,25 143:6,12 145:11 147:13 148:16,23	oops 116:13
neck 56:16,25 57:1 100:13		open 44:25
needed 5:11 8:17 35:1 136:2 140:6		opened 53:18 54:3
negative 96:2,3,6,8 98:14 148:4, 7		operational 65:5
negatively 75:21		opinion 62:5 73:7 100:24 139:23 140:10 143:13,14
neighbor 116:1	objectionable 58:20 152:19	opportunity 19:12 80:22 81:11 114:21,22 118:20 119:16,24
nervousness 102:5	objections 112:4 151:14,15 152:13,16,17,24 153:8	opposed 70:7 73:11
neuropsychic 128:7 140:3	objective 117:18	opposing 40:12
Nevada 11:19 12:20 13:11,21 24:20 26:16 29:8 33:15 35:10,14 94:1	obligation 50:15	opposition 107:22
nice 150:1	observation 70:7 73:11 97:8,15 107:21 142:16 144:2 146:8	oppositional 101:13 102:8,10, 15 103:17,22 104:1 106:11 113:15,18 116:6
night 10:9 84:21	observations 69:16 74:5 91:17 96:19,24 109:11,16 110:1 119:20, 23 120:21,23,25 121:6,21 122:1 147:4	oppression 98:5 99:4,5
nights 10:8	observe 74:14 80:23 81:12 104:6 110:9	order 28:8,17,19,24 29:4,7,13 37:13 53:17,21 60:19 134:6 135:2,19
nobody's 105:4	observed 108:9 142:2 145:14,20	ordered 26:12 56:25
nonresponsive 18:16,24 19:1,3	occasion 89:18 103:6 144:6	ordinary 15:25
norm 140:1	occasionally 89:17	organic 101:16
normal 63:23 100:16 105:22,24 119:14,19	occasions 22:1	organized 104:19,20
notch 106:12	occur 56:10	organizing 134:4
noted 38:25	occurred 64:24	originally 16:22 126:18 130:23
notes 45:15	occurs 123:7 147:19	original 130:25
notice 26:7 35:14	ODD 131:2	out-of-town 63:13
notified 32:16	of- 147:12	outbursts 62:4
notify 32:21	offending 47:7	outcome 113:1
November 21:25 32:14 53:22	offer 22:20 73:6	outfits 76:6
number 3:6,9,13,15 24:20 32:2 35:4 37:13 43:8 63:19 135:18 138:3	offered 22:7 85:10 95:8	overall- 99:9
numbered 30:18	offhand 66:10	overly 105:21
numbers 36:16,20 37:11	office 89:24 102:16 103:10	overnight 22:2
		overreacts 124:14
		overrule 100:2

overruled 17:15 24:12 74:4 93:3 99:1,3 100:24 110:25	pay 22:8 49:18 67:3 114:2	place 95:14
owned 24:17 62:11	paying 104:8 133:25	places 72:13,14
ownership 16:18	payment 66:21,25 67:2	plain 119:19
<hr/> P <hr/>	payout 38:19	plaintiff 26:13
pace 14:17 15:10 16:8	Pears 72:24 73:24 74:1	plan 10:8 28:2 100:8 117:10,12 139:19,20
pages 36:21	Pearson 73:17	plane 81:18
paid 51:12,18,23	pediatrics 138:23	Planet 34:12
Palms 34:12	pending 126:7	planned 6:5 8:15
paper 43:11	Penguins 83:23	plans 117:13
papers 25:23	people 4:25 70:10 73:3 74:25 75:3,6 88:14 92:8 113:20 127:20 153:22	play 22:4 23:11 56:5 60:11,24 72:8,11 80:7,15 82:19,25 83:1 118:4,8
paperwork 153:18	perceived 142:16	player 33:23,24 36:1 39:20
pardon 44:3 83:13 108:12	percentage 51:2	player's 79:15,18,21 82:2,15,16
parent 90:20 91:4,9 105:17 108:24,25 117:3 125:4 145:5	Perfect 60:2	playing 56:20 57:12 60:23 71:19 134:2
parent's 105:14	period 17:18 20:12,14 32:14 46:5 77:3 95:6 131:21	pleading 44:14 100:21
parenting 91:6 92:18 100:8 120:5,6,8,17,22 121:15,22 122:1, 9	periods 23:16 77:8	PM 85:1
parents 27:22 28:5 55:22 62:17 89:15 90:4,6,7 101:5,6 102:21 103:1 108:21 109:11 110:3 114:17 116:3 117:5,6 119:22,24 121:12 124:25 125:3 145:10,15, 17	permitted 40:11	PMKS 37:20,21
park 70:23 72:16	person 35:16,17 36:11 106:23 118:4 130:7 132:10 142:21 143:5, 9	point 4:11,23 14:13,24 19:6 49:11 82:19 94:5 107:13 121:24 139:17,22 140:4,9,12,14,19 143:22 149:20 152:7
part 41:6 63:3 100:8 113:11 118:10 129:25 144:12 146:25	personal 146:8	police 18:2 55:23
participate 8:22 9:2 60:20 89:15 90:4 105:16	personalities 55:5	polite 91:22
participated 11:20 12:4	personality 102:12	pomes 116:17
participates 100:16	personnel 101:21	pomp 116:14,16,17
participation 10:11	Peter 75:7	pool 80:1,2,10,11,15
parties 8:16 151:11 153:7	phone 26:25 89:19 103:9	portion 58:10 74:24
partner 48:12 50:22	physical 94:20	position 128:4
party 129:21	pick 22:2 55:10 77:2 81:6 84:23 85:10 120:12	positive 148:4
pass 7:18,20 10:21 15:19 52:3,13 65:19 126:9	Pickard 29:15	possibly 32:4 39:23
past 56:8	picked 81:6	post 58:7
patient 89:9,11 128:4	picking 55:13,14 101:21	potatoes 78:25
	picks 55:12 84:16,17	potentially 138:25
	picture 71:20 76:9	practice 9:8,10 87:25 88:3,9,10 113:13 146:18
	pictures 76:8	practices 10:6,17
	piece 7:1	
	piggy 30:25	

practicing 126:21,25 127:1	program 12:12,13,14,15,18,21,24 13:4,21 14:4,10,14,21,25 146:17	<hr/> Q <hr/>
pre- 106:9		
prefer 128:22	progress 90:19	qualifies 103:3
preferable 73:12	project 78:14	quarter 38:23
prepare 16:15 65:13 81:12	projects 76:14,15	question 13:2 18:12 20:9 29:1,3 35:7 42:21,25 43:16 54:4,24 67:9 73:14 77:15 84:1 97:13,14 100:4 101:1 108:14 109:23,24 112:4,7 119:11 121:2,17,23 122:16 125:18 126:7 129:12 137:7 140:8 141:5 142:1,11,14 147:17
prepared 37:1,2	properties 34:9,10,18 35:4 62:11	questioned 49:25
presence 99:5 110:11,22	property 24:16,17 25:6 26:14,20,24 27:3,4,10,17,18,21 34:23 62:13,14,17	questioning 67:10 99:14,22
present 3:7 37:12 59:13,15 135:8 139:14	proposed 153:21,23	questions 7:19 11:5 20:1 61:12 81:20 84:6 86:12 125:25 134:15 143:16 149:2
presentation 101:14	protection 53:21 95:1	quickly 40:23 131:5 133:9 134:14
presented 33:24 103:21 140:2	protective 28:7	<hr/> R <hr/>
presents 102:1	provide 37:11 88:8 117:2	raise 68:13 85:21
pretty 104:20 118:6 140:8 145:8	provided 22:25 109:6,7 121:11,14 123:5	raised 70:22
principal 142:3,17	providing 24:10 113:5,16 134:9,19	Rampart 34:21 80:4
principal's 142:6	proximity 45:6	rare 132:20
print 95:22 96:12	psychiatric 128:7 129:24	re-evaluated 139:13
prior 11:17 21:24 22:20 33:4 40:12 50:15 51:25 52:1 53:22 144:18	psychiatrist 94:3	reach 144:4,10,18
private 87:24 88:1,3	psychological 128:13,15,24 129:23	reached 144:13
privileged 119:24	psychologist 94:3	reaching 144:8
privileges 116:10	psychosocial 129:15	react 105:21
problem 19:15,24 20:3 27:2 96:4 113:21	puberty 106:10	reaction 81:1 102:11 126:4,5
problematic 45:17	publish 15:13	reacts 109:11,17 110:3
problems 55:18 62:2 104:4 105:19 113:19	pulled 60:4 125:2 148:14	read 16:2 46:13 50:8,17 115:16 142:2
proceed 26:21 95:25 96:13	punished 92:21	reading 76:5
proceeded 62:14	punitive 148:10,12,19	readings 151:14
proceeding 25:25	purchasing 27:25	ready 81:18 93:25 137:9
proceeds 49:19	purpose 99:23	real 62:10
process 63:2 65:4,16 107:5 111:9,16,19 112:9,12 115:2	push 102:18	realm 151:15
processed 107:12	put 4:22 5:3 6:9 7:14,24 30:10 37:16 39:18 42:17 43:3 45:15,21 61:23 68:12 101:11 150:15	reason 22:25 62:18 146:25
processing 111:21 112:23	putting 4:23 60:14	reasons 15:12 56:11,19 61:16
produced 37:3 40:12 44:11		
profession 127:21		
professionals 141:19		
profile 88:25		

Rebecca 26:14 68:4,24	reflect...you've 64:4	rephrase 73:14 77:15 109:24 112:6 120:19 141:7 147:17
rebuild 65:14	reflective 64:1	replace 36:21
rebuilding 65:4,17	refrain 73:2	report 64:4 103:13 115:15 135:21,23 137:1 142:3
recall 11:3 14:11 22:22 36:14 43:10 44:18 46:3 48:9 50:3 66:4,8 130:4,11 131:17	refusal 23:1	reported 136:9 138:12 144:24 145:3
receipt 38:6	refused 13:10,18 22:17 55:20	reporting 94:11
receive 26:13 67:1 87:7,17	refusing 56:1	reports 93:14,16,18 135:20 144:3
received 29:3 38:19 66:21 136:20	regard 10:10 58:25 63:24 113:2,5 116:23 119:21 121:15 122:8,9,11 123:4,6 124:24	represent 11:1 41:25 43:5 68:22 86:10 126:14
recently 42:10 71:18 74:10,12 83:23 84:21	regression 139:15	representation 39:12
receptive 115:5,7	regular 78:7,9	representations 152:17
recess 47:11 67:23,25 94:18	regularly 90:9 120:13	represented 48:1,6 103:16
recognize 37:14	regulation 35:15	representing 39:14
recognizes 94:1	regulations 35:10	represents 126:15
recognizing 105:17	reinforces 115:3	reprimanded 91:12 95:15
recommend 90:16 97:18 114:22 132:22	related 69:1	request 140:4
recommendation 90:8,22 122:4	relating 95:13	require 10:16
recommendations 122:2 138:24	relation 119:23	required 128:3,8 141:8
recommended 90:3,5 138:21 139:4	relationship 53:8 69:20,23,25 70:11,13 71:4 72:2 75:11,19 76:2, 23 77:24 119:21 121:11	requirement 141:12
reconciliation 20:13	relationships 69:17	requiring 141:2
record 3:1,2 37:21 47:8,10,19 68:2,23 86:17 94:17 129:25 137:16,18	released 136:24	requisite 135:18
recorded 105:5	Relevance 17:12	reserved 5:20
recording 99:11	relevancy 24:9 82:7	reside 27:13 69:4,7,9
records 36:16 37:4 41:7,10 82:2 128:5 136:19 137:4	relevant 17:13 72:1 82:9,21	resided 69:11
Red 34:11	religious 9:23,24	residence 62:19
redacted 36:20	relocation 82:14 152:4,8	residences 23:24
redirect 7:17 65:21 67:7 146:14	remaining 3:21,22,23 5:6,10	residing 69:15
reduce 112:14	remember 5:20 21:6 24:19 83:4 114:13 127:12 136:5	resources 28:1 30:19
refer 128:6	reminded 106:24 120:13	respect 11:5,10 54:10 94:2 137:22
referral 43:21	remission 101:12	respected 92:20,23
referred 128:9 140:10	renewed 120:15	respectful 95:15 125:3
reflect 39:2,6,7	rent 65:6	respond 114:9 116:21 141:4
	rented 27:18 65:11	responded 29:22
	repayment 50:20	responds 113:10 118:6
	repeat 22:20 97:14 101:1 108:13 109:18,23	response 61:1 94:7 102:25

125:16,19	salad 78:20	self-develop 143:10
responsibility 50:20	sales 43:20	send 81:16
responsible 44:18	Sam 78:1	senior 79:14
rest 153:13,14	Sandra 3:6,10 7:14,16 8:5,8	sense 41:6 110:22
rested 153:17	26:14 52:19 59:20 68:22 69:2,9	September 12:5 27:11
restraining 28:17,19,23 29:4,7,13	75:18 76:1,5 78:4,8 79:7 81:12	served 87:4
resulting 116:19	86:11 103:6,15,18 105:5,20	Services 87:23
results 117:7,9 147:3	114:18,24 115:5 116:6 118:15,17	session 63:23 95:11 103:11
return 48:18 85:5 137:13	124:11,13 131:23 132:24 146:4	132:24 133:1
returned 80:23	147:8	sessions 63:21 90:17 132:7,17
returns 85:4,7	Sandra's 79:23 82:12 91:18,20	139:8,11,17 140:6,11 141:9
review 37:6 88:25 117:1 144:11	120:5,6,8 122:5	sets 135:9
reviews 128:4	Sandy 49:8,19 50:3	setting 106:22
revised 37:11	Santa 34:11 39:21	settings 135:17
reward 116:9,17,20 144:23	Saturday 84:13,16,18,24	Seuss 76:6
rewind 107:23	Saturdays 85:2	Seventeen 17:2
ringing 26:25	scale 114:7	severe 56:10 106:15
rings 73:25	scenario 141:10	severity 106:12
risk 99:13	scene 150:17	Shannon 3:12 10:24 11:1 65:22
Rock 34:11,13	schedule 3:19 9:7 61:23,24	126:12,13 149:6
roles 116:22	132:11,13	share 9:20 20:5 21:12 27:6 56:11
room 8:14,19 45:9 74:11,18	scheduled 4:5	60:21,24 63:5,16 71:8 84:9
135:13	school 5:3 8:9,12 9:3 11:8 14:3	145:20 151:11 153:7
rooting 83:22	15:25 17:3,5,6,7 22:8,10,15,18	sharply 4:24
routine 71:1	23:1 31:25 32:6 33:19 61:10,17	she- 121:19
routinely 78:17	62:8 63:4,10,14 72:10 76:3,4,19	she...she 49:13
rule 40:15 94:21,22,25 95:2	79:6 85:7 92:10 101:21 109:12,19	she'll 150:20
110:22	110:3,9 115:16 132:21 135:20,23	she's 18:17 48:14 51:9 75:20
ruled 99:1	136:8,21 137:2 138:11,18 142:2	78:5 93:4 94:9,10 100:21 120:13
rules 40:11,16	151:17	124:18
run 17:11 117:21	schools 80:5	sheet 41:23
running 70:2 92:5 111:2	scope 5:22 67:6 141:3 152:20	Shelly 3:8 8:7 30:17 52:17 86:10,
runs 73:25 81:5 119:13,18	screaming 73:24	15 96:18 108:14 146:15
RVS 64:25	season 10:11 11:14,21,25 12:7,8	Sheregina 50:22
	13:8,9,13,21	shirt 100:13
	seasons 11:24 12:2,3	short 33:7,8
	seat 137:25	show 114:25
	section 36:7	shows 43:18 106:23 107:1
	Security 36:15,20	shut 74:18 100:14,18 101:3
	seek 129:21	112:20
	sees 108:10	
	self- 33:14	
<hr/> S <hr/>		
safe 138:3		

siblings 91:24 92:8	son 13:24 56:1 124:5	stamp 46:13
sick 63:6 132:20	sooner 151:8	stand 7:15 68:4
side 3:20 44:1 55:12,19,21 79:1	sort 104:14	standard 133:17 139:7,10
sides 153:24	sounds 67:6 93:1	standing 152:19
signs 106:23	source 141:17	Stanley 83:24
similar 10:13	South 86:22	start 11:13 12:7,15 13:20 19:12 47:1 49:25 51:22 78:15 118:9 127:5,11,17 150:20
sincere 26:25	sparkles 76:17	started 9:4 12:8,16 13:13 14:9, 12,21 16:22 31:2 60:14 74:10 127:2,12,24 130:10,12,19
single 4:4 41:22 43:5	speak 6:4 20:24 59:16 103:4,6,9 114:21 118:20,22	starting 12:4 112:20
sister 22:1 23:6,9,14,17 75:10 81:4 91:23	SPEAKER 151:9	starts 18:18 73:24
sit 57:4 72:10 115:19	speaking 59:20 99:14,24 118:2 124:4 132:24	state 68:23 86:16 87:6 94:4,11
situation 29:16,20,23 101:6 102:3,4 103:7 108:23	special 116:10	statement 69:18
situations 56:22 102:1,13,14 109:2 111:10,18 112:5,10,13 114:19,21,23,25 122:3	specialize 146:16	states 35:15 70:9
six-year 56:25	specialized 141:24 146:20	stating 46:3 56:12 95:2
Sixty-four 50:11	specific 8:20 36:13 109:2 111:10,18 112:4 140:8 146:21	Station 34:12,25
skate 57:1	specifically 30:17 53:21 104:8 111:23 118:24 123:13 128:23 136:8	Station's 34:24
skill 113:3	speculation 100:20 108:8 143:1, 7 145:12	Stations 34:17
skills 112:14,18 113:7,14,23 114:10	spell 86:19	status 64:20 67:13
slapped 148:13	spend 31:5	stay 77:3
sleepovers 73:22	spending 77:19 124:19	stayed 21:12
sleeve 100:14	spends 124:2,8	staying 115:25 137:25
sliced 57:1	spent 64:16	stealing 106:22
sloppy 104:9,10	spoke 23:6 50:16 144:8	step 40:9 107:24,25 149:13
slow 112:21,24 117:20	spoken 104:13 114:24 134:3	steps 108:3
smart 115:10	sport 56:9,24	sticking 7:2
Smith's 33:2	Sports 11:20 12:21 13:11,21	stipulated 137:8
so- 152:11	spot 6:3 45:11 46:23	stop 18:18 33:18 70:3 113:12 115:20
social 36:15,19 87:3,15,16 94:4 128:24	spring 11:25 12:13,15,25 13:4,21 52:20 109:5	stopping 19:17
socially 107:19	St 10:1	storage 64:24 65:2
society 92:4	stable 23:21 24:10	stored 64:25
sole 50:19	staff 36:18	stories 118:9,11
solemnly 8:1 68:14 85:23	stairs 73:25 111:2	story 19:13 118:9
solicited 129:24	stammering 102:5	strained 75:13,15,16,17
solve 109:9		strange 75:14

strategies 118:15,21,23	surprise 145:18	teeth 58:4,5,25 59:4 60:3
streets 92:5	surrounding 53:7	telling 46:18 57:16 111:23
stressed 124:15,17	sustain 58:22 60:13 93:6 95:20 110:20 148:22	tells 81:19 99:12 122:17,23 123:1
stressful 112:16	sustained 56:18 57:9,12,23 61:15 104:23 111:7 122:14 147:14	temper 102:24
stricken 149:1	sustaining 100:2,3 104:13 121:20 134:1	tension 102:6
strike 19:3 58:9 125:16 148:24	sustaining- 121:8	term 38:21
struggle 115:11	swear 8:2 68:14 85:23	terminate 28:20
struggles 91:3	swimming 70:22 72:17	terms 20:13 37:24 38:9 45:6 50:5 70:7 88:10 99:8 114:23 120:8 136:13 139:11
stuff 92:6 102:7 114:14 117:16 137:25	symptoms 102:1 103:12,16,19, 20 104:5 105:8 106:16,19 108:6, 16 112:10 115:13,14,15,16,23 116:3,5 139:14 145:19 148:2	testified 16:12 31:11 37:22 113:3 126:15 142:3,12 143:2 146:7
style 92:18 121:15	system 116:8,9 133:10 144:23	testify 75:25 94:23 99:20 108:10 142:8 143:8
subject 35:5,9		testifying 88:22,24 94:23,24 148:21
submit 152:16		testifying- 152:21
subpoena 82:1		testimony 8:2 32:20 37:20 68:15 82:20 85:24 94:6 96:25 142:6 143:22 148:25
subscribes 146:4		Texas 34:12,24
subsequent 31:17		than- 135:24
subsequently 26:21		that- 109:18 142:4
substantial 133:19		that...like 53:5
successful 140:13,15,20,25		That'd 11:13
successfully 123:18,20		that's 4:6 5:8 6:1 10:7 11:20 19:10,16,17,22 26:25 30:13 31:10 37:19 38:14 39:12 41:20 43:1 44:7,20 46:12 48:20 50:25 52:10 58:17 65:7 66:15,18 67:18 79:14 82:19 84:3,5 85:3 93:15,17,20 94:20 95:6,12,16 98:2 104:17 105:22 110:24 111:3 112:15 114:5,16 116:15 119:19 128:7 136:11,24 138:17 150:21 151:7
suffers 135:3		that's- 99:2
suggested 114:18 118:14		theoretical 110:21
suggestions 115:6 116:2 123:8, 9 153:19		theory 88:19
Suite 86:23		therapeutic 136:24 137:4
suites 150:21		therapist 68:6 88:6 89:13 95:10 100:21 126:25 127:1,3 130:9
sum 26:17		therapists 119:12
summaries 37:3,6 40:9,12,18, 22,25 41:12 63:24		
summary 37:4 40:16 41:4 88:8 136:1		
summer 20:15 21:22 79:25 80:3, 20		
Summerlin 10:14 13:6,11		
Suncoast 34:22		
Sunday 84:13,21 85:4		
support 56:20 121:14 123:6		
supposed 105:11		

therapy 9:12 16:10 62:2 88:13, 17,18 89:18 90:11,12 91:17 92:15 105:16 108:9 110:2 117:25 118:18 120:13 125:1 126:21 139:2,8 141:17,18 143:19	times 36:1 39:13 71:3 73:22 79:14 80:19 90:10 101:19	travelling 61:23 131:19
there`re 11:24	timeshare 20:10 22:5 56:6	Treasure 34:11
there`s 11:24,25 12:1 48:23 50:14 53:23 83:1 89:23 134:8 147:3	timeshares 31:25	treat 90:13 111:21 116:10 148:2
Thesis 110:14	timing 136:12	treated 93:13 96:21 97:17
they`re 71:12 73:22	title 26:6	treating 100:5 146:24
thing 80:17 81:7 97:6,24 100:14 104:15 107:11 110:24 113:24 114:6,12 115:9 119:3 120:12	to-- 143:8	treatment 90:23 93:24 94:1,2 96:3,6,8,20,24 97:16 100:7,10 109:3 111:8,15 112:9 113:4,16 116:22,24 117:10,11,13 120:4,20 121:10 122:7 123:19 127:20 131:14,22 132:11 139:18,19,20 140:13,15,16,19,25 146:20 147:1
things 8:17 58:3 60:20 70:17,18, 24 71:7 75:24,25 76:1,18 81:15 91:13 104:24 105:11 114:8 118:12 122:3,25 123:11 125:4 131:20 132:23 145:6 152:10	today 4:1,12,16 54:13 58:22 86:12 88:22,24 124:23	treatments 138:22
thinking 44:2 108:1 112:21,22, 25 113:25 114:4 150:22	Todd 3:15 81:23,25 126:14	treats 92:7
thinks 77:25 97:4 119:1,5,7 124:1	told 13:3 30:24 32:8 51:11 56:12 57:5,10,13 59:6,8 60:10,19 61:25 73:3 75:20 97:5,7 119:7 123:13, 24 124:1,11 147:16	trial 4:1
Thirty 63:22	Tolman 9:14 85:17 86:2,6,9,13, 18,19 94:3,6 124:22 146:13	trials 151:24 152:1,2
thought 23:2 34:4 43:22 50:13 59:17 93:8 107:11 132:2	tooth 29:16 30:4,7,22 31:9,12,15, 16,18	trip 8:21 21:21
thoughts 88:19 149:24	Torino 24:20,22,23	trouble 71:22 97:20 104:13 106:10 115:21
throwing 102:19	total 26:18 39:24 40:2,4 46:4	true 12:23 14:2,16,19 15:5,9 18:1,4 20:4,9,17 21:20,24 22:14, 24 23:13,18 24:24 25:5 27:23 28:4 30:3,6,9 32:8,15,24 33:3 55:6 134:7 138:9 139:7
thrown 57:5	totally 55:4,5	truth 8:3 68:16 73:6 85:25 86:1
Thursdays 9:22	tough 147:15	Tuesdays 9:6,7,8,10
till 72:7 84:21 151:22	tour 61:11,12	turn 15:20 25:15 30:14 35:18,19 64:4 65:24 88:20 118:2,6
time 3:19 5:5,6,10,11 6:3,7,11,15 8:24 9:4,17,20 13:22 15:4,6,10 16:4,7 17:1 18:10 20:5,22 21:11, 12 24:3 27:23 28:17,24 29:4 32:25 33:3,4,6 38:12 42:21 46:10 51:9,10,18,22 53:8 54:11 55:25 56:2,11 60:21,24 62:2,6 63:1,5,7, 16 70:1,2,17 71:10 72:7,8 74:24 77:3,8,19 80:1,4,9,10 81:9,19 83:2 84:9,14,23 89:7 95:6,13,14 103:24 110:14 111:4 113:21 124:2,7,19,20 126:22 130:9 131:1,18,21 132:25 136:14 137:5 139:21 144:7,12 145:20 146:13 150:3,4,11	toured 22:10	turns 118:4
timeline 32:13	town 63:8 150:3	Twenty 26:12
	track 14:20 15:2 131:18	two-year 87:4
	traditional 14:3 91:21,24 92:1,3, 10 140:13,15 146:1,5,9	twofold 138:25
	trained 101:21 119:12	type 102:14 103:18
	trainee 143:4	types 75:24 76:1
	training 21:10 33:21 141:17	typical 141:10 152:24
	traits 100:11	typically 20:1 139:8
	transfer 14:3	
	transferred 14:14,25	<hr/> U <hr/>
	transitions 125:5,6	Uh-hmm 50:7 52:22 53:3 59:1 64:11 66:22
	transpired 95:7	Uh-huh 53:11
	travel 61:24	
	traveling 61:19	
	travelled 21:16,18	

understand 11:23 19:5 21:15 38:6,7,11 39:9 42:20 47:13 62:23 98:21,23 107:24 113:25 119:16 126:17 129:11 143:23,25 147:17 150:2	video's 125:10	we've 11:2 18:6 36:20 37:1 54:18 55:20 59:21 75:22 120:11
understanding 35:24 42:23 57:11,22 60:3 96:20 97:16 98:16, 19 100:6 147:18,21	videos 125:8,14	wear 56:16,25 71:20
understood 38:21 39:17 53:25 77:16	view 86:22 107:13 152:7	wears 83:12,14
unlimited 6:11,15	violating 106:22	weather 143:18
unpleasant 106:7	violent 56:9,24	Wednesdays 9:9,11 132:1,3
unsuccessful 140:25 141:2	visit 32:25	week 9:1,15,16 10:17 63:11 71:3 73:23 76:3,5 79:14 80:19 131:8, 10 132:14
Untraditional 146:3	visiting 80:23	weekend 10:9,18 77:6,7 84:10
unusual 139:24	visits 81:12	weekly 77:17 90:14,17,19 131:23 140:17,21 141:9
upcoming 10:11	volume 25:9,12,13 35:19 46:15	weeks 12:17 52:20 76:4 83:5 151:13
update 128:1	volunteer 8:8	weight 140:16
updated 116:25	volunteering 8:15	weren't 12:17 15:12 44:18 58:8
upset 107:4		Westgate 43:20
upsetting 125:9	<hr/> W <hr/>	what's 5:3 26:5 31:10 35:24 46:13 54:13 78:1,2 81:1 93:18,21 105:3 110:23 114:1
utilize 4:4 5:5,10 35:18 36:11 80:14 127:23 129:6,18	wagered 43:14	whe 101:19
utilized 36:2 37:5 129:10,16	wait 4:2 5:13 96:1 118:2	whets 143:3
utilizing 99:19	wakes 71:10	who- 143:5
utterance 110:25 111:3	walk 9:1	who's 3:7 27:16 55:13,14 56:3 61:21 78:6 125:10
	walks 39:3	WILSOM 44:15 122:13
	Walmart 32:25	Wilson 3:12,13 6:4,10,25 7:11,21 10:24 11:1 18:11 36:24 45:25 47:14,17 52:13 53:13,16 57:7 58:9,18 61:14 65:22 67:9,18 92:25 93:15,18,25 94:13 95:4 96:6,7,22 98:1,18,21 99:13 100:19 108:7,11,13 109:13,19 110:4,6,16 111:12,17 112:3 119:3 120:18,24 121:16 122:21 125:16, 21 126:12,13 147:13 148:16,24 149:1,6 150:8 151:4,7,16,22 152:7,14 153:12
	wanted 31:6 50:24 60:11 61:23 62:20 76:20 124:5	Wilsons 150:3
	war 137:4	win 43:5
	was- 125:23	win-loss 41:23
	wasn't 29:1 37:23 51:14 52:23,24 58:19 123:4 130:7,8 131:19 152:23	winds 108:25
	watch 57:4	winnings 43:14
	watched 125:8,11,23	
	watching 83:24	
	waterfalls 80:4	
	ways 92:21 138:16	
	we'd 15:13 35:13 40:23,25	
	we'll 4:19 7:14 10:21 41:5 47:8 52:13 53:12 54:7,11,16 93:5 94:13 100:3 118:4	
	we're 3:1,2 4:3,7,15 5:6,10,13 6:13 7:2,9 33:11 39:5,14 41:3,17 47:19 50:10,11 54:19 67:6 70:23 73:13 75:1 93:1	
<hr/> V <hr/>		
vacation 17:20,24		
Vague 32:12		
Valley 86:22		
values 91:21 92:2,3,10 124:19 146:1,5,10		
vary 31:22,23		
Vegas 23:7,21 24:20 26:16 69:6 124:2,6 150:8		
vehicles 64:25		
versus 3:3 82:4 94:4,11 110:22 144:8		
vibrant 60:6		
video 126:5		

wins 63:25	years 14:14 33:10,11 34:5 56:2
winter 12:2,12,13	69:14 87:11 88:2,7 92:5 100:13
Wishful 150:22	106:4 127:14,15 130:15,16
	140:17
withdraw 54:23 125:18 141:5	yelling 102:19
142:11,14	yesterday 5:8 16:12 23:6 29:17
withdrawn 137:8	31:11,19 37:5 43:22 44:2 58:4,11,
withdrew 137:11	14,19 59:10
witnessed 57:23,25 76:1	York 20:6,10,19 21:4,17,21 24:4
witnesses 3:25 5:23 6:5	28:15,21 146:2
won 43:9,10	you- 150:11
won't 92:4	you'll 7:21
wonderful 69:22,25	you're 4:10,14,25 8:2 13:6 25:18
word 126:5 153:13	30:16 31:22 32:25 37:2 38:22,23
words 56:9,21 60:14 98:24	45:5 59:20,23,24 65:16 68:15,22
work 84:15 85:2 87:3,6,15,16	73:9 79:19 80:12 85:24 92:5 93:3
88:12,13 105:24 107:6 136:2	126:16 132:10 149:24
147:1 150:15 151:3	you're- 137:4
worked 89:5	you've 18:1,4 23:13,16 29:12,16
worker 94:4	35:3 37:2,16 64:8,16,18 69:15
working 76:13 88:2,6,7,11	76:1 82:8,19 92:15 98:25 145:19
114:11,12 130:11,12,19 136:7	young 60:11
139:18 146:19	Youth 11:19 12:20 13:11,21
worksheet 115:1	Yup 57:9
worries 96:14	
worst 45:19	<hr/> Z <hr/>
Wow 132:20	zip 24:21
write 86:23	
writing 48:24	
written 136:1,8 137:18	
wrong 43:24 116:13	
wrote 30:21 137:21	
Wynn 34:24	
<hr/> Y <hr/>	
year 8:13 9:5,10 11:12 14:7,9,12	
16:24 34:13 42:19 53:12 63:14,18	
66:19 103:14 106:7,8 127:8	
130:24 142:22 143:9 145:22	
151:17	
year's 144:19	



CLERK OF THE COURT

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DISTRICT COURT- FAMILY DIVISION

CLARK COUNTY, NEVADA

SANDRA LYNN NANCE

Plaintiff(s),

v.

CHRISTOPHER MICHAEL FERRARO

Defendant(s).

CASE NO. D-10-426817-D

DEPT NO. F

DEFENDANT'S MOTION TO REOPEN
TRIAL OR IN THE ALTERNATIVE FOR
NEW TRIAL LIMITED TO HEAR
TESTIMONY OF DESMOND NANCE

Date of Hearing: 9/7/2016

Time of Hearing: 9:30 AM

Oral Argument:

Defendant Christopher Ferraro, by and through his attorney's of record of Hutchison & Steffen, files this motion to reopen trial or in the alternative for a new trial limited to hear testimony of Desmond Nance, as well as any rebuttal or impeachment testimony as either party may offer. Following trial, Desmond Nance, who is Plaintiff Sandra Nance's older son and Evan's half brother, contacted Defendant first via text message and then via phone with allegations that are disconcerting and directly relevant to essential elements of Defendant's case.

Defendant is reluctant to bring this motion because he does not wish to delay the Court's decision, and he does not believe that this motion should alter the time line already set for the parties to submit their written closing arguments. Nevertheless, the allegations are important enough for the Court to decide whether or not they form grounds to reopen evidence in a limited way.

HUTCHISON & STEFFEN

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This motion is made and based on *inter alia*, *Ford v. Ford*, 105 Nev. 672, 676, 782 P.2d 1304, 1307 (1989), NRCP 59(a)(4), the pleadings and papers on file herein and any oral argument this court may allow.

DATED this 21st day of July, 2016.

HUTCHISON & STEFFEN, LLC

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Attorneys for *Defendant Christopher Michael Ferraro*

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the foregoing **DEFENDANT'S MOTION TO REOPEN TRIAL OR IN THE ALTERNATIVE FOR NEW TRIAL TO HEAR TESTIMONY OF DESMOND NANCE** has been set for hearing on the ____ day of _____, 20____, at the hour of _____.m., in Department F, Courtroom 3 of the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada.

MEMORANDUM OF POINTS & AUTHORITIES

1. FACTS

This is a post-divorce, child custody action arising from Defendant Christopher Ferraro's motion to relocate the parties' son, Evan Ferraro, from Las Vegas to New York. (Mot. filed Jun. 19, 2015.) Plaintiff Sandra Nance opposed the relocation request. (Oppn. filed Aug. 4, 2015.) Discovery was open from August 12, 2015 to January 4, 2016. (See Ord. re Hg. of Aug. 12, 2015 & Case Mgmt. Ord. filed Oct. 13, 2015; *see also* Stip. & Ord. filed Dec. 23, 2015.) Trial was held on June 27, June 28, and June 29, 2016. Defendant rested his case in chief on June 27, 2016. Plaintiff rested her case in chief on June 29, 2016.

After trial, on July 11, 2016, Chris received a text message and phone call from Sandra's adult son, Desmond Nance who turned nineteen (19) on May 10, 2016 and who is Evan's half brother. The text message, a true and correct copy of which attached hereto as Exhibit A, read in part:

Desmond: Hello is this Chris Ferraro

Chris: Who is this?

Desmond: This is Desmond Nance

Chris: You okay?

Desmond: Yes im fine im just contacting you because I would like to meet with your lawyer

Chris: For what reason?

Desmond: **I have every reason to say why evan should not be in that house**

(Exhibit A, emphasis added.) Desmond called Chris made disconcerting allegations concerning the welfare of Evan and his half-sister, Kayla. Chris did not give Desmond his attorney's contact information at that time.

Later that evening, Chris received a text message from Sandra, a true and correct copy of the text message is attached hereto as Exhibit B. The sum and substance of this text message was Sandra telling Chris that Desmond had threatened Sandra that he would call Chris with outlandish and false allegations if Sandra did not help Desmond repair his relationship with his

1 girlfriend, that Desmond was suicidal, and that “for weeks” her family, Desmond’s father and
2 his girlfriend’s family had been “dealing with” Desmond, and that Desmond had been kicked
3 out of Sandra’s home and his girlfriend’s family’s home. (*See Exhibit B.*)

4 On July 12, 2016, Chris called Desmond for the limited purpose of providing him with
5 the name and contact information for his attorneys, if Desmond was inclined to speak with
6 them.

7 On July 15, 2016, Desmond called Chris, and again Chris told Desmond to contact his
8 attorneys if he was so inclined.

9 On July 16, 2016, Chris received a lengthy email from Sandra, a true and correct copy
10 of which is attached hereto as Exhibit C. Sandra’s email includes an excerpt of a text from
11 Desmond, which states:

12 Just want to let you know I will be meeting with shannow [*sic*]
13 wilson in the morning and thank you for doing everything to wreck
14 my life she and everyone else will know about everything you put
your kids through

15 Incidentally, Desmond has not made contact with Chris’s attorneys.

16 Some of the contents of Sandra’s email appear to be at odds with her testimony at trial.
17 At trial, Sandra testified that among her concerns about Evan’s possible relocation to New York
18 was that:

19 He [Evan] won’t have a relationship probably, if any, with his
20 siblings or his grandparents here that he’s been raised with since
21 birth or his extended family, because we can’t all travel to New
York and do that. My daughter is in school. My son [Desmond] is
older now so he is with his girlfriend a lot and they are planning on
moving in college and all that in a different state.

22 This testimony suggests that there is a sibling relationship between Desmond and Evan to
23 protect by keeping Evan in Nevada, even though or perhaps because Desmond is planning a
24 move out of state with his girlfriend. Yet Sandra’s email to Chris states, “Desmond has been
25 acting out for months now, and his antics have gotten worse when his girlfriend ended their 2+
26 year relationship, and he got kicked out of our home.” Her email goes on to allege that
27 Desmond is using drugs, and that “Desmond has been telling us *for a while now* that he has a
28 personal vendetta out on a list full of people, and you and your family are not an exception.”

1 (Exhibit C, emphasis added.)

2 At the time of Sandra's first text message to Chris on July 11, her testimony was only
3 thirteen (13) days old, yet her text indicated that she had been dealing with this situation with
4 Desmond "*for weeks.*" (Exhibit B, emphasis added.) It is not clear when he was "kicked out"
5 of Sandra's home, or in what manner Desmond had been "acting out for months" or what
6 "antics" had "gotten worse," or why Sandra is suddenly uncomfortable for anyone to be in
7 Desmond's presence, when Sandra's mother testified on June 29, 2016, that Desmond was still
8 among the residents of their household. (Exhibit D, excerpt of unofficial trial transcripts by
9 Nevada Court Reporting (hereinafter "Trans. excerpt") dated Jun 29, 2016 at 69:7-10.)

10 Chris cannot say whether either Desmond's allegations against Sandra or Sandra's
11 allegations against Desmond are to be trusted. Chris does not wish to exploit what may be a
12 difficult family situation with a struggling young adult. However, Chris's personal experience
13 with Sandra leads him to believe that her children live in an atmosphere of fear and
14 intimidation, that is perpetuated by Sandra and her parents. Whatever has transpired in
15 Desmond's life, it is highly irregular that a child should proceed on a course to threaten their
16 parent as Desmond has. In Chris's view, Sandra's text message and email seem to protest too
17 much and take unwarranted digs at Chris's own family. If Sandra wanted to appeal to Chris's
18 understanding and sympathy based on his late-brother Joey's prescription drug use, that was all
19 she needed to say. But instead, she chose to 'make a record' and an inaccurate one at that.¹ If
20 her motives are pure, why the vitriol against Chris's late-brother?

21 But that is only an aside, not the relevant point: what is directly relevant for the Court's
22 consideration are the allegations underlying Desmond's statements that he "has every reason to
23 say why Evan should not be in that house" and "everyone else will know about everything you
24 [Sandra] put your kids through." Also potentially relevant is Sandra's apparent inability to
25 successfully guide Desmond to complete highschool and in healthy directions, and then kicking
26

27 ¹ The comparison between Desmond and Chris's brother Joey is inapt, assuming that
28 Desmond is even using drugs. Joey was an adult in his 40's, who was married, with his own home,
assets and career who struggled with prescription drug use when he was lawfully prescribed them.

1 him barely two months after his nineteenth birthday with no family or financial support. The
2 point was made by Sandra's counsel at trial that Desmond and Evan are two different children,²
3 which is true enough, but they are raised by the same mother.

4 **2. LAW & ARGUMENT**

5 It is not entirely clear whether the facts Desmond possesses existed prior to, during or
6 after trial. In all likelihood, there is a combination of both. If the facts Desmond possess
7 existed prior to or during trial, then the operative rule to reopen the trial is NRCP 59(a)(4).³
8 NRCP 59(a) states in relevant part

9 A new trial may be granted to all or any of the parties and on all or
10 part of the issues for any of the following causes or grounds
11 materially affecting the substantial rights of an aggrieved party . . .
12 (4) Newly discovered evidence material for the party making the
13 motion which the party could not, with reasonable diligence, have
14 discovered and produced at the trial.

15 NRCP 59(a)(4). "Newly discovered evidence, to have any weight in the consideration of a trial
16 court must be material or important to the moving party. . . . It must be sufficiently strong to
17 make it probable that a different result would be obtained in another trial." *Whise v. Whise*, 36
18 Nev. 16, 131 P.967, 971 (1913). In the context of NRCP 59(a)(4), 'newly discovered evidence'
19 means evidence that existed at the time of trial, not facts occurring subsequent to trial. *Fox v.*
20 *First Western Sav. & Loan Ass'n*, 86 Nev. 459, 473-74, 470 P.2d 424, 427 (1970).

21 Alternatively, if the facts Desmond possesses came into existence post trial, then a
22 motion to reopen trial for the introduction of evidence arising post-trial is the proper procedure.
23 *See e.g., Ford v. Ford*, 105 Nev. 672, 676, 782 P.2d 1304, 1307 (1989) (*citing Andolino v. State*
24 *of Nevada*, 99 Nev. 346, 351, 662 P.2d 631, 634). "In order that justice be done, district courts
25 should freely grant leave to amend and reopen. When an essential element of a party's case can

26 ² Exhibit D, Trans. excerpt dated Jun. 29, 2016 at 54:24-55:8.

27 ³ NRCP 59(a) states in relevant part: "A new trial may be granted to all or any of the parties
28 and on all or part of the issues for any of the following causes or grounds materially affecting the
substantial rights of an aggrieved party . . . (4) Newly discovered evidence material for the party
making the motion which the party could not, with reasonable diligence, have discovered and
produced at the trial.

1 be easily and readily established by reopening the case, refusal to reopen will most often
2 constitute an abuse of discretion.” *Id.* (internal citations omitted).

3 Based on the foregoing whether the operative procedure is NRCP 59 or a motion to
4 reopen, the evidence must be either ‘material’ or an ‘essential element’ of the case, which are
5 effectively one and the same. A question pending before the Court is which relocation standard
6 will be applied, but either standard requires the court to make findings as to Evan’s best interest
7 as an essential element of Chris’s case. *See e.g.*, NRS 125C.007; *see also, Ellis v. Carucci*, 123
8 Nev. 145, 153, 161 P.3d 239, 244 (2007). The essential elements of the best interest analysis
9 that are raised by Desmond and Sandra’s post-trial communication with Chris include, but may
10 not necessarily be limited to: the nature of the relationship of the child with each parent; any
11 history of parental abuse or neglect of the child or a sibling of the child; and the ability of the
12 child to maintain a relationship with any sibling. NRS 125C.0035(4)(h, i, j). Specifically, the
13 Court is primarily concerned with information that Desmond has pertaining to Sandra’s
14 relationship with Evan, abuse or neglect – if any – against Evan, and secondarily, abuse or
15 neglect of Desmond or Kayla, and the maintenance of sibling relationships.

16 Reasonable diligence could not have uncovered the evidence that Desmond possesses
17 because Desmond was a minor during discovery, and through trial he lived in Sandra’s home
18 and relied upon her for familial and financial support. Additionally, some of it appears not to
19 have existed until the conclusion of trial.

20 Additionally, evidence of a purely impeaching nature, typically, is not evidence on
21 which a new trial should be granted unless “the testimony of the witness sought to be
22 impeached was so important to the issue, and the evidence impeaching the witness so strong
23 and convincing that a different result must necessarily follow.” *Whise v. Whise*, 36 Nev. 16,
24 131 P. 967, 969 (1913). One of the best interest of the child factors for the court’s
25 consideration in an child custody matter is the level of conflict between the parents. NRS
26 125C.0035(4)(d). At trial Sandra testified that she lives with her parents because she fears for
27 her life because of “ongoing threats, harassments, and problems that are going on which Chris”
28 and are from Chris and his family. (Ex. D, Trans. dated Jun. 28, 2016 at 155:19-156:9.)


1 On cross-examination Sandra testified that she had not sought any protective orders since 2010,
2 and she admitted that during her deposition that she does not plan to live with her parents
3 forever and plans to purchase her own home when she has the resources to do so. (Exhibit. D,
4 Trans. excerpt dated Jun 29, 2016 at 27:23-28:6; 29:12-14.) Post-trial in her email appeals to
5 Chris as she appeals to him as "Evan's mother and *a friend*," which further belies her purported
6 fear and the level of conflict represented by her bogus testimony.

7
8 **3. CONCLUSION**

9 Based on the foregoing, Defendant Christopher Ferraro respectfully requests the Court
10 reopen trial for the limited purpose of taking evidence from Desmond Nance as relates to the
11 post-trial statements he made via text message to Chris and Sandra. A request to hear this
12 motion on an order shortening time shall be submitted, and it is not Chris's intention that this
13 motion should alter the time line already set for the parties to submit their written closing
14 arguments or delay the Court's decision on this matter.

15 DATED this 21st day of July, 2016.

16 HUTCHISON & STEFFEN, LLC

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27
28

UNSWORN DECLARATION⁴

1. My name is Christopher Michael Ferraro, I am the Defendant in the case styled *Sandra Nance v. Christopher Ferraro*, Case No. D-10-426817-D, lodged in the Eighth Judicial District Court, Clark County, Nevada. I am over the age of eighteen. I am competent to make this declaration and do so based on personal knowledge.

2. I have read the foregoing Defendant's Motion to Reopen Trial or in the Alternative for New Trial to Hear Testimony of Desmond Nance ("Motion"); I know the contents thereof and that the same is true of my own knowledge

3. Exhibit A, attached to the Motion is a true, complete and correct copy of a text message that I received from Desmond Nance on July 11, 2016.


4. Exhibit B, attached to the Motion is a true, complete and correct copy of a text message that I received from Sandra Nance on July 11, 2016.

5. Exhibit C, attached to the Motion is a true, complete and correct copy of an email that I received from Sandra Nance on July 16, 2016.

Furthermore declarant sayeth naught.

I, Christopher Ferraro, declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on 7/21/16
DATE


SIGNATURE

Executed at Thousand Oaks
CITY

CA
STATE

⁴ NRS 53.045 provides in relevant part, "Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated"

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 27th day of July, 2016, I caused the above and foregoing document entitled **DEFENDANT'S MOTION TO REOPEN TRIAL OR IN THE ALTERNATIVE FOR NEW TRIAL LIMITED TO HEAR TESTIMONY OF DESMOND NANCE** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent via **facsimile**; and/or
- ☒ pursuant to EDCR 8.05, sent electronically via the Court's electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail.
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

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An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



Messages

Desmond

Details

Text Message
Today 10:51 PM

Hello is this chris ferraro

Who is this?

This is desmond nance

You okay?

Yes im fine im just
contacting you because i
would like to meet with
your lawyer

For what reason?

I have every reason to
say why evan should not
be in that house



Text Message

Send

< Messages (1) **Desmond**

Details

I have every reason to
say why evan should not
be in that house

Would you like to talk?

Im all for it

Now or tomorrow?

Whenever is good for
you

Call me in 5 minutes

Okay

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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



Messages

Sandra

Details

Chris,

Just wanted to let you know I'm well aware that Desmond has decided to text you and that you are communicating with him. I know each of the texts. I have all the records, times, etc. I pay for his phone and have access to account details.

Desmond already threatened my family, his girl friend and her family that he was going to call you with outlandish accusations if she wouldn't come back to him and if we all didn't help him mend the relationship.



iMessage





Messages

Sandra

Details

So you are aware....
Desmond's girlfriend
broke off their
relationship weeks ago
and he has been suicidal
over it, lashing out, etc.
Her father, my family and
Byron have been dealing
with him for weeks and
he has been kicked out
of our home and his
girlfriends.

I do not wish to go into
further details, but I
would refrain from
speaking with him if I
were you.

My attorneys are well
aware of the situation as
well and have informed
him of his false



Take a photo



accusations and the repercussions he will face as an adult. They have also been informed you are communicating with him.

If you have any questions feel free to contact me

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EXHIBIT PAGE ONLY

EXHIBIT C

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

Shannon Wilson

From: Chris Ferraro <cferraro1513@aol.com>
Sent: Saturday, July 16, 2016 3:04 PM
To: Shannon Wilson; Todd Moody
Subject: Fwd: Desmond

Sent from my iPhone

Begin forwarded message:

From: sandra nance <fabulouslyfitmom@gmail.com>
Date: July 16, 2016 at 2:36:55 PM PDT
To: "CFERRARO1513@aol.com" <CFERRARO1513@aol.com>
Subject: Desmond

Chris,

After reaching out to you Monday July 11, and letting you know the situation with Desmond I see that you have choose to go another route.

It is to my understanding that you are attempting to harm me in some way and use Desmond as an accomplice.

The following email is to let you know that there is a serious matter taking place and it should be addressed as such.

[CONTINUED ON NEXT PAGE]

Messages (1) Desmond-cell Details

8:50 PM Hello is this chris ferraro

You think im a bull shitter bitch fuck
you

Thursday 6:32 PM

Just wanted to let you know i will
be meeting with shannow wilson in
the morning and thank you for
doing everything to wreck my life
she and everyone else will know
about everything you put your kids
through



6:32 PM

Send

I will begin by letting you know that I will not tolerate threats, threats of blackmail or any of this type of behavior.

My family and I have choose to remove Desmond from our home, for the safety of his brother and sister and all of us.

We found out several weeks ago of Desmond's serious drug use, physical abuse against his girlfriend, and much more!

We have a ZERO tolerance drug rule in our home and family.

I told you in the text last Monday that I did not want to go into details, and gave you the option to reach out if you had any further questions....you choose not to. As mentioned, I feel it is VERY important you know the details now of what has taken place so you can use your own judgement to do what is right from this point forward.

Desmond has been acting out for months now, and his antics have gotten worse when his girlfriend ended their 2+ yr relationship, and he got kicked out of our home. He has made every attempt of blackmail/threats to myself, my family, his girlfriend, etc and after not getting the response he wanted from any of us he is now reaching out to you.

This email is not to sway what you choose to do with Desmond, but to provide you with the necessary information you need. You will have to come to your own conclusion of what is the best way to handle the situation for everyone's safety including yours, and especially OUR SON EVAN.

As mentioned above Desmond is on a barrage of drugs. I have done my research as a responsible parent and found out from friends, and people that know Desmond the types of things he is involved in right now. They are not good! (drugs, drug dealers, etc)

As you know from having an addict in your own family (Your Brother Joey) this is not something to take lightly. Desmond is headed down the same path, and has already showed many signs that you and your family have seen and dealt with. He is hanging around with drug dealers, possibly dealing, involved with a really bad crowd, making threats of blackmail to myself, his girlfriend, and doing anything he can in his desperation and to get his way.

Just as you and your family offered help to your brother for years and years we have done the same. Your brother had the world offered with jobs, a home, car, etc and still choose to go to jail from dealing, stealing from your family business, causing chaos, over dosing several times, and ultimately leading to his death.

There is no help except professional help for anyone in this situation!

Desmond has been offered jobs by my sister, his girlfriends father, Sam, myself and several others (these jobs were very high paying positions, not a min wage situation). He has been offered schooling from all of us as well and at any school of his choice. Desmond's girlfriend's Dad offered to start his own business for him, and the list goes on. He has choose to decline everyone's help, and keeps blaming everyone else for his own decisions and actions. He has physically hurt his girlfriend of numerous occasions I have learned and is facing a possible temporary order of protection from her and her family. He has lost everyone one of his friends, family and now his girlfriend and is desperate.

Desmond has been telling us all for a while he has a personal vendetta out on a list full of people, and you and your family are not an exception. He has told us several times your are one of his top choices to seek revenge against. He has not stated this to just us, but to his girlfriend and several close friends. Everyone is very confused as to why *you* of all people (who he claims ruined his life and hates so much) is who has moved onto for his next plan. I AM EXTREMELY CONCERNED!!!!!! TAKE THIS SERIOUS!!!

Desmond is extremely harmful to himself and others right now, and this is nothing to try to "fix" or use for any other purpose. He is in need of a medical evaluation of what drugs he is using! He has threatened suicide and to hurt many! We have proof in written word from Desmond, and dozens of family, friends, etc to back what I am telling you up. You are *more than welcome* to speak with any of them!

I DO NOT feel comfortable with Evan in the presence of Desmond, nor any of us (including you) at this time. The drugs he is using are altering his thinking and this is not something to take lightly.

Desmond has admitted his is using marijuana regularly, but I have confirmed from others it is more than that. Plus...we do not know if he is using 'Spice' a form of marijuana that is extremely serious, and has a heavy presence with young people right now. Please do your research on it,

because his actions are in line of the behavior of those who use it. They just had a serious situation with it in NYC that has been in the media.

Chris, I know under the circumstances this is not a great time for any of this. Nor is it something anyone ever wishes in their life to have to go through. But I am speaking to you right now as Evan's mother, and a friend. As you and your family already know the difficulties of dealing with an addict, you can try to help, give them love, offer them everything but the only help they need is professional help until they can pull their life together themselves.

It is my duty as a responsible parent to inform you of how critical this situation is. You and I need to co-parent for OUR SON and the safety of him!! I cannot have Desmond around Evan at this time. I am extremely concerned for his safety!

If you feel you and your family can help Desmond you are more than welcome to try. Help has not worked up to this point from myself, my family, his girlfriend, her family, his dad, his dad's family, his friends, and so on. But who knows....you've all dealt with this situation before so maybe there is something you learned through the process...I don't know. *I do know*, we cannot have Evan around him in the meantime if this is the route you are choosing until Desmond is clean and mentally stable and we can trust there is not threat to Evan's safety. I don't want a tragedy to happen that we all regret! I know the threats, plans, etc that Desmond has spoke of and I see them unfolding. As we see in the media all the time the warning signs of tragedy, and I cannot sit back and do nothing to protect myself, family and society.

I hope your true intent is to help Desmond if that what path you are choosing and not to use Desmond as a ploy for another ulterior motive. *Please get him immediate medical attention/rehab if you are able to.* Desmond is upset with his *OWN* choices and doings at this time, he wants to blame everyone else, and cannot come to grips that he continues to choose to make the wrong decisions with his life and the drugs are making it worse. He feels his life is ruined and there is nothing else. These are the people who act out the worse, and are most dangerous (the ones that feel they have nothing to lose). He told me all his intentions in an outrage to my face 3 days before he was kicked out. I took everyone of them serious, and I'm glad I did!!

I will take any necessary precautions and steps I need to on my end to keep Evan, my family and everyone else safe at this time until he is clean and free of drugs.

As mentioned previously...if you have anything you would like to discuss regarding this matter you can reach out anytime.

-Sandra

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EXHIBIT PAGE ONLY

EXHIBIT D

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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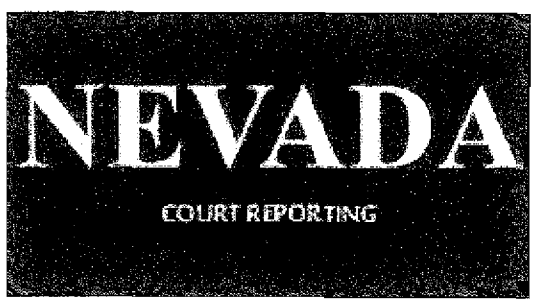
DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA LYNN NANCE,)	Case No.: D-10-426817-D
Plaintiff,)	Dept. No. F
vs.)	
CHRISTOPHER MICHAEL FERRARO,)	
Defendant.)	
_____)	

TRIAL TESTIMONY
Taken on June 28, 2016

Nevada Court Reporting

10080 Alta Drive, Suite 100
Las Vegas, NV 89148
Office: 702-490-3378
Calendar@Nvreporting.com



1 immediate area. We are up the Vistas in Summerlin.

2 What else about the neighborhood?

3 Q: Do you go to the parks?

4 A: Like almost every day. We're there
5 several times a week, yes.

6 Q: Describe your residence.

7 A: It's a five-bedroom home. One,
8 two, three, four baths, two-story, everyone has their
9 own room. We did a game room with a pinball machine
10 that we inherited from my grandmother and that the
11 kids play in. We have our family room, a kitchen, an
12 office, a backyard.

13 Q: Who lives in your residence?

14 A: Myself, my three children, and my
15 parents.

16 Q: And does everyone have their own
17 room?

18 A: Yes.

19 Q: And why do you live with your
20 parents?

21 A: One is to be a full-time mom. It
22 gives me the opportunity to do that more.

23 Q: Are there any other reasons? Need
24 a second?

25 A: The number one reason is because I

1 fear for my life.

2 Q: And why do you fear for your life,
3 Sandra?

4 A: Because of the ongoing threats,
5 harassments, and problems that are going on with
6 Chris.

7 Q: These are threats, harassments that
8 Chris has done to you?

9 A: Him and his family.

10 Q: Where was Evan born?

11 A: Nevada.

12 Q: When has Evan been raised?

13 A: Nevada.

14 Q: Where is Evan's community?

15 A: Nevada.

16 Q: Where is Evan's school?

17 A: Nevada.

18 Q: Where is Evan's church?

19 A: Nevada.

20 Q: Where are Evan's Friends?

21 A: Nevada.

22 Q: Where is Evan's home?

23 A: Nevada.

24 MS. COOLEY: I'll pass the witness.

25 JUDGE GENTILE: Okay. It's 4:55. We'll

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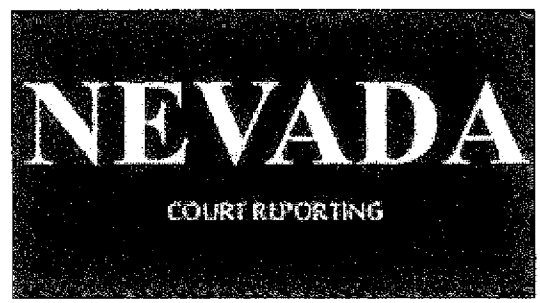
DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA LYNN NANCE,)	Case No.: D-10-426817-D
Plaintiff,)	Dept. No. F
vs.)	
CHRISTOPHER MICHAEL FERRARO,)	
Defendant.)	
_____)	

TRIAL TESTIMONY
Taken on June 29, 2016

Nevada Court Reporting

10080 Alta Drive, Suite 100
Las Vegas, NV 89148
Office: 702-490-3376
Calendar@Nvreporting.com



1 apologies to you Ms. Nance as well.

2 A: No problem. It`s fine.

3 Q: The Baronet Drive property, how
4 many bedrooms did that property have?

5 A: Four.

6 Q: Did you and Evan share a bedroom
7 there?

8 A: We did, yes.

9 Q: How old is he when you moved in
10 that property?

11 A: Well, we moved in September, so he
12 was six going on seven.

13 Q: How long do you continue to reside
14 where you live now?

15 A: Indefinitely.

16 Q: Who`s name is on the -- I assume
17 that you leased that property as a lease property or
18 a rented property?

19 A: Correct, yes.

20 Q: Who is on the lease of that
21 property?

22 A: My parents are.

23 Q: Isn`t it true that at the time of
24 your deposition that you indicated that you have
25 intentions on purchasing your own home when you have

1 the resources to do so?

2 A: Yes. I don't plan on living --

3 yes. Sorry.

4 Q: So it's true that you do not intend
5 to live with your parents forever, correct?

6 A: Forever, no.

7 Q: Have you ever had a protective
8 order against Mr. Ferraro?

9 A: Yes, I have.

10 Q: When?

11 A: December 2009.

12 Q: And what jurisdiction was that
13 issued on?

14 A: In Nassau County I believe, New
15 York.

16 Q: Did Mr. Ferraro also have a
17 restraining order against you at that time?

18 A: Not that I know of.

19 Q: And when did that restraining order
20 terminate?

21 A: When I left New York. I believe it
22 was March of 2010.

23 Q: Have you ever had a restraining
24 order since that time against your husband?

25 A: I applied for one.

1 Q: That wasn't the question.

2 A: No.

3 Q: My question is have ever received a
4 restraining order against him since that time?

5 A: No.

6 Q: And when did you apply for a
7 restraining order against him?

8 A: When I came back to Nevada.

9 Q: And when was that?

10 A: It was around March I believe was
11 the month in 2010.

12 Q: So since 2010, you've not had or
13 applied for a restraining order against Mr. Ferraro?

14 A: Not since then, no.

15 Q: You complained to Margaret Pickard,
16 about the tooth fairy situation that you've heard
17 about yesterday, correct?

18 A: Correct, yes.

19 Q: And Margaret sent an email to Chris
20 regarding that situation, correct?

21 A: Yes.

22 Q: And Chris responded to Margaret
23 regarding that situation, correct?

24 A: Yes.

25 Q: And you were copied on that email,

1 don't know with..

2 MS. COOLEY: Correct. But on... we get
3 to ask about that because she opened the door to that
4 question.

5 JUDGE GENTILE: I really don't want to
6 hear about that.

7 Q: Okay. We'll move on, Your Honor.

8 JUDGE GENTILE: I mean it's so...
9 again, it's nothing I want to consider.

10 Q: All right. We will respect the
11 court's time and we'll move forward.

12 JUDGE GENTILE: I mean you want to get
13 what's necessary out today so let's do that.

14 Q: Okay.

15 JUDGE GENTILE: Let's get...

16 Q: All right. We'll move on, Your
17 Honor.

18 JUDGE GENTILE: Yeah. I think we've
19 beaten that horse enough we know where we're going
20 with that one.

21 Q: Okay.

22 JUDGE GENTILE: Okay. All right.

23 Q: All right. I will withdraw that
24 question. Are Desmond and Evan the same kid or two
25 different children?

1 A: Two different children.

2 Q: So if Desmond does something, does
3 that mean that Evan is going to do it?

4 A: Absolutely not. They have totally
5 different personalities. Totally.

6 Q: And the inverse would be true that
7 Evan is not Desmond.

8 A: Right.

9 Q: Why did you allow Aunt Michelle to
10 pick up Evan?

11 A: I've always been cooperative with
12 Chris' side of the family and who picks and
13 exchanges. As long as I am aware of who's picking
14 him up... Evan, I'm sorry... who's picking up Evan,
15 I've always been cooperative with him with that.

16 Q: And what do you mean by
17 cooperative?

18 A: I've never had problems with his
19 side of the family... exchanges and everything.
20 We've had instances where Chris refused to drop Evan
21 off to my side of the family because his father was
22 at the door even though my parents were inside the
23 home. I want to say the police were called or
24 something involved with that or about to be called at
25 that time because he drove up and down the block,

1 excuse me, how if and all, are you related to Mrs.

2 Sandra Nance?

3 A: I`m her mother.

4 Q: Where do you reside?

5 A: At 11220 Hedge Mont Avenue in Las
6 Vegas.

7 Q: Whom, if anyone, do you reside
8 with?

9 A: I reside with Sandra and her three
10 children, Evan, Desmond, Kayla, and my husband, Dan.

11 Q: How long have you guys resided
12 together?

13 A: Since 2010. I think it`s been
14 about six or seven years.

15 Q: In residing together, you`ve been
16 able to make some observations as to the
17 relationships within the household, outside the
18 household, would that be an accurate statement?

19 A: Yes.

20 Q: What kind of relationship would you
21 say Evan has with his mother?

22 A: He has a wonderful loving
23 relationship. He`s a very good kid.

24 Q: Describe what you mean by a loving
25 wonderful relationship.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Sandra Lynn Nance

Plaintiff/Petitioner

v.

Christopher Michael Ferraro

Defendant/Respondent

Case No. D-10-426817-D

Dept. F

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☒ Other Excluded Motion (must specify) Motion for New Trial Before Final Judgment.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☒ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

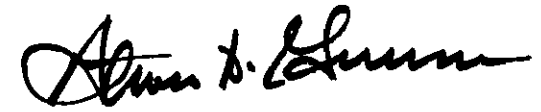
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Defendant Christopher Ferraro Date 7/21/14

Signature of Party or Preparer 



CLERK OF THE COURT

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Attorneys for Plaintiff

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

SANDRA L. NANCE,

Plaintiff,

vs.

CHRISTOPHER M. FERRARO,

Defendant.

Case No. D-10-426817-D
Dept No. F

Dates and Times of Evidentiary Hearing:
6/27/2016 at 9:00 a.m.
6/28/2016 at 1:30 p.m.
6/29 2016 at 1:30 p.m.

PLAINTIFF'S CLOSING ARGUMENT

Plaintiff, SANDRA L. NANCE ("Mother"), by and through her attorneys of record, JASON NAIMI, ESQ., of STANDISH NAIMI LAW GROUP, and SHELLEY BOOTH COOLEY, ESQ., of THE COOLEY LAW FIRM, hereby respectfully submits her Closing Argument for the Court's consideration:

I.

INTRODUCTION

The subject minor child at issue in this case is Evan Daniel Ferraro, born September 30, 2008 ("Evan"). In Mother's Opening Statement, this Honorable Court was reminded that it is

1 indisputable that Evan was born and raised in Nevada. Evan's home is in Nevada. His family
2 is in Nevada. His friends are in Nevada. His school is in Nevada. He participates in baseball,
3 basketball, and religious education in Nevada. His doctors and therapist are in Nevada. To
4 Evan, home means Nevada.

5 On or about June 19, 2015, Defendant, Christopher M. Ferraro ("Father"), filed a Motion
6 seeking the modification of Evan's custodial arrangement in order to relocate him to the state of
7 New York. As stated in Mother's Opening Statement, Father has no basis to remove Evan from
8 his home in Nevada. Accordingly, Father's requested relief must be denied.

9 On or about August 4, 2015, Mother not only opposed Father's foregoing Motion, she
10 filed her Countermotion to confirm her as Evan's primary physical custodian, and all related
11 relief.

12 Before the Court are the following issues:

- 13 A) Determination of physical custody;
- 14 B) Confirmation of Mother as defacto primary physical custodian;
- 15 C) Modification of child custody;
- 16 D) Father's request to relocate Evan;
- 17 E) Modification of child support; and
- 18 F) Attorneys' fees.

19 II.

20 ARGUMENT

21 In order to apply the appropriate standard for making a determination on the request for
22 modification of physical custody, with the intent to relocate the minor child out of Nevada, the
23 Court must first resolve the current custodial arrangement between the parties. As eluded to in
24 each parties' respective opening statement, Father argues that he exercises joint physical custody,
25 whereas Mother argues that she maintains primary physical custody of Evan.

26 The trial Court has broad discretion to determine custody of the minor children. *Sims v.*
27 *Sims*, 109 Nev. 1149, 1148, 865 P.2d 328 (1993); *Culbretson v. Culbretson*, 91 Nev. 230, 233,
28 533 P.2d 768 (1975). In accordance with NRS 125C.0035(4), the Nevada Supreme Court has

1 held that “in custody matters, the polestar for judicial decisions is the best interests of the child.”
2 *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268 (1991). NRS 125C.0045(1)(a)
3 provides this Court with continuing jurisdiction to modify or vacate its prior custody Orders.

4 **A. DETERMINATION OF PHYSICAL CUSTODY:**

5 The Nevada Supreme Court in *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 224 (2009),
6 held that “each parent must have physical custody of the child at least 40 percent of the time to
7 constitute joint physical custody.” The Supreme Court in *Rivero* also held that a “A parent has
8 primary physical custody when he or she has physical custody of the child subject to the district
9 court’s power to award the other parent visitation rights.” *Rivero* at 226. Pursuant to *Rivero*,

10 The focus of primary physical custody is the child’s residence. The party with
11 primary physical custody is the party that has the primary responsibility for
12 maintaining a home for the child and providing for the child’s basic needs. This
13 focus on residency is consistent with NRS 125C.010, which requires that a court,
when ordering visitation, specify the habitual residence of the child. Thus, the
determination of who has primary physical custody revolves around where the
child resides.

14 *Rivero*, 226. Therefore, it is the opinion of the Supreme Court of Nevada that physical custody
15 is determined by (1) how much time the child spends with either parent, and (2) where the child
16 resides. To clarify, if a parent has physical custody of the child more than 40%, and that child
17 resides in the State of Nevada, that parent must be deemed the primary physical custodian of the
18 child.

19 Based on the plain language of NRS 125C.003(1)(a), forty percent (40%) of the time
20 equates to 146 days per year. It is anticipated that Father will argue that pursuant to *Bluestein*
21 *v. Bluestein*, 131 Nev. Adv. Op. 14 (Mar. 26, 2015), the 40% threshold is not a hard and fast rule.
22 However, the legislature’s subsequent adoption of NRS 125C.003(1)(a) mandates that a parent
23 *must* have at least 146 days each year to be considered a joint physical custodian.

24 Mother acknowledges entering into the Stipulation and Order Re: Parenting Plan
25 (hereinafter “Parenting Plan”), filed November 30, 2012, which provides that “the parties shall
26 share joint physical custody of the minor child, with the child to reside with the Mother subject
27

28 ///

1 to the following parental timeshares by the Father." PP 5:18-21. With regard to Father's
2 visitation, the Parenting Plan states:

3 Until such time as the Father permanently relocates to the Las Vegas, Nevada,
4 area, the parties shall maintain a monthly schedule which permits the Father to
5 exercise his timeshare for a 10 day uninterrupted period at the end of each month
6 with the parties' minor child.

7 The Parenting Plan further sets forth exchanges between the parties for Father's
8 visitation, wherein his schedule begins after school on the third Friday of each month, or at 3:00
9 p.m. if school is not in session, and concludes before the first morning bell, or at 9:00 a.m. if
10 school is not in session, on the last day of his visitation. PP 6:1-8.

11 Lastly, the Parenting Plan provides Father with 14 days of visitation with Evan in each
12 month of June, July and August. Despite the "joint physical custody" label under the Parenting
13 Plan, Father was entitled to 132 visitation days per year. Father testified that he adheres to the
14 terms of the Parenting Plan. Video Transcript 06/28/2016 14:02:57-14:03:00.

15 In *Rivero*, the Nevada Supreme Court concluded that, "the terms of the parties' custody
16 agreement will control except when the parties move the court to modify the custody
17 arrangement. In custody modification cases, the court must use the terms and definitions
18 provided under Nevada law." *Rivero*, 226. "Therefore, once parties move the court to modify an
19 existing child custody agreement, the court must use the terms and definitions provided under
20 Nevada law, and the parties' definitions no longer control." *Rivero*, 226.

21 Pursuant to *Rivero*,

22 The district court should calculate the time during which a party has physical
23 custody of a child over one calendar year. Each parent must have physical
24 custody of the child at least 40 percent of the time, which is 146 days per year.
25 Calculating the timeshare over a one-year period allows the court to consider
26 weekly arrangements as well as any deviations from those arrangements such as
27 emergencies, holidays, and summer vacation. In calculating the time during
28 which a party has physical custody of the child, the district court should look at
29 the number of days during which a party provided supervision of the child, the
30 child resided with the party, and during which the party made the day-to-day
31 decisions regarding the child. The district court should not focus on, for example,
32 the exact number of hours the child was in the care of the parent, whether the
33 child was sleeping, or whether the child was in the care of a third-party caregiver
34 or spent time with a friend or relative during the period of time in question.

35 *Rivero*, 225. When questioned about his visitation by Ms. Wilson, Father referenced his Exhibit

1 G1, explaining that he created this schedule from his calendar and flight records. Father further
2 argued that, despite picking up the child at 3:00 p.m. on the start of visitation and returning the
3 child ten (10) days later at 9:00 a.m., Father testified that he exercised eleven (11), not ten (10),
4 days, improperly crediting himself with both the pick up and drop off days. Importantly, Father
5 acknowledged that "he may be off." Video Transcript 06/27/2016 9:44:57-9:45:38.

6 When specifically asked to review his flight itineraries and text messages exchanged
7 between him and Mother, Father acknowledged and confirmed that he exercised the following
8 visitation schedule for one (1) calendar year before the filing of his Motion as required by *Rivero*:

9

MONTH	VISITATION DATES	NUMBER OF DAYS
10 June, 2014	06/14-06/26	13
11 July, 2014	07/17-08/01	16
12 August, 2014	08/08-8/23	16
13 September, 2014	09/19-9/29	11
14 October, 2014	10/25-11/2	9
15 November, 2014	11/21-11/30	10
16 December, 2014	12/26-1/04/15	10
17 January, 2015	1/16-1/25	10
18 February, 2015	2/20-2/03	11
19 March, 2015	3/17-3/27	11
20 April, 2015	4/21-05/01	11
21 May, 2015	05/22-06/01	11
	TOTAL	139

22 Video Transcript 06/28/2016 14:23:16-14:53:47.

23 This Court must be reminded that Father is taking credit for having visitation with Evan
24 on both exchange dates, which is inconsistent with the calculation of days under *Rivero* and NRS
25 125C.003(1)(a). Even looking at this in the light most favorable to Father, his ceiling in the year
26 prior to him filing his Motion is 139 days. In reality, Father had as few as 127 days. Coupled
27 with Mother's testimony that she has custody of Evan for approximately 230 to 232 days per
28 ///

1 year, Father does not meet the minimum requirement of 146 days to qualify as a joint physical custodian.

3 **B. CONFIRMATION OF MOTHER AS PRIMARY PHYSICAL CUSTODIAN**

4 Based on the foregoing, it is irrefutable that Mother is the *de facto* primary physical
5 custodian of Evan. Pursuant to *Rivero*, each parent must have “physical custody of the child at
6 least 40 percent of the time” (a minimum of 146 days) to have joint physical custody. *Rivero v.*
7 *Rivero*, 125 Nev. 410, 216 P.3d 213, 225(2009). Pursuant to the *Rivero* calculation, Father had
8 no more than 139 days.

9 By Father’s own admission, Father does not have physical custody of Evan at least 40
10 percent of the time. Likewise, Father acknowledged that most of his visitation time with Evan
11 takes place in Nevada. Thus, the Court has no alternative than to confirm Mother as Evan’s
12 primary physical custodian.

13 **C. MODIFICATION OF CUSTODY**

14 When considering whether to modify a physical custody agreement, the district court
15 must first determine what type of physical custody arrangement exists because different tests
16 apply depending on the district court's determination. A modification to a joint physical custody
17 arrangement is appropriate if it is in the child's best interest. NRS 125.510(2). In contrast, a
18 modification to a primary physical custody arrangement is appropriate when there is a substantial
19 change in the circumstances affecting the child and the modification serves the child's best
20 interest. *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007).

21 Based upon the evidence and testimony offered during the evidentiary hearing, it is
22 undeniable that Mother is Evan’s primary physical custodian. Consequently, the Court must
23 apply the standard set forth in *Ellis v. Carucci*, to determine whether there is good cause to
24 modify the current custodial arrangement.

25 In *Ellis*, the Nevada Supreme Court held that, “A modification of primary physical
26 custody is warranted only when (1) there has been a substantial change in circumstances
27 affecting the welfare of the child, and (2) the modification would serve the child's best interest.”
28 *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).

1 The modification for child custody in the instant matter is solely tied to Father's request
2 for permission to relocate. When asked the reasons why he wishes to relocate Evan to New York,
3 Father offered the following testimony:

4 Father: It's my home. It's my community. It's where I live, his friends,
5 the community relationships that I have as a hockey player, my
6 family business for almost 50 years, and these community
7 connections I will pass along to Evan. The school systems.
Financial resources. To save on financial resources for my travels
back and forth to Las Vegas. I'd like to dedicate those resources
solely to Evan and to his future.

8 Video Transcript 06/27/2016 10:52:31-10:53:26. On cross-examination, Father confirmed his
9 bases to relocate Evan from his home state:

10 Naimi: The reasons you wish to relocate Evan to New York are - you
11 believe it's better for your business?

12 Father: Not in that order . . .

13 Naimi: Fair enough. But this is one of the reasons you identified
yesterday, correct?

14 Father: Evan would benefit from that, yes.

15 Naimi: Your ability to work.

16 Father: Correct.

17 Naimi: You would have a flexible schedule?

18 Father: Yes.

19 Naimi: Because New York is your home.

20 Father: Yes.

21 Naimi: In fact, you stated that a couple of times yesterday, is that correct?

22 Father: I don't recall, I'm sure I did.

23 Naimi: New York is your community.

24 Father: Yes.

25 Naimi: New York is where you were raised. These are all reasons why
26 you wish to relocate Evan to New York?

27 Father: Yes.

28 Naimi: Because you have resources in New York?

1 Father: Yes.

2 Naimi: And that you would pay for Evan's travel costs?

3 Father: Yes.

4 Video Transcript 06/28/2016 14:13:11 - 14:14:08. Applying this testimony to the standard set
5 forth in *Ellis*, not a single reason offered by Father establishes a substantial change in
6 circumstances affecting the **welfare of the child**. (Emphasis added.)

7 In Father's Opening Statement, he offers two bases to support his change of
8 circumstances. First, according to Father, behavioral issues associated with Evan's diagnosed
9 Attention Deficit Hyperactivity Disorder ("ADHD"), Generalized Anxiety Disorder ("GAD")
10 and Oppositional Defiance Disorder ("ODD") only occur when Evan is in Mother's custody.
11 Judith Tolman, MSW, LCSW, Evan's therapist, testified that (1) Evan meets the Diagnostic and
12 Statistical Manual of Mental Disorder 5th Ed. ("DSM-5") classification for diagnoses of these
13 conditions (2) that one is born with these characteristics and cannot be cured, (3) these
14 characteristics can improve with age, and (4) Evan was recently placed in remission for
15 Generalized Anxiety Disorder because his characteristics are improving. Video Transcript
16 06/29/2016 15:50:55 - 15:54:00. Moreover, Father acknowledged that he's not an expert,
17 therefore, and cannot opine as to whether or not these disorders may be cured. Video Transcript
18 06/28/2016 14:25:56 - 14:26:42. As such Father fails to meet the criteria to modify custody
19 under this alleged basis.

20 The second change in circumstance alleged by Father is his financial circumstances.
21 Father anticipates starting a new job and his resources are questionable as to his ability to travel
22 to Las Vegas. This factor has nothing to do with Evan's welfare so it is irrelevant. In addition,
23 Father's twin brother, Peter, testified that, "in his opinion, Chris would do whatever it takes to
24 continue his relationship with Evan." Video Transcript 06/27/2016 16:36:42-16:36:55. As such,
25 it is difficult to believe that Father would stop visiting Evan in Las Vegas as he has historically
26 done.

27 Therefore, Father's request for modification must be denied.

28 ///

1 **D. RELOCATION**

2 Nevada Revised Statutes 125C.007(1) provides the three-pronged threshold test that the
3 party wishing to relocate with the child must first demonstrate to the Court:

- 4 (a) There exists a sensible, good-faith reason for the move, and the move is
5 not intended to deprive the non-relocating parent of his or her parenting time;
6 (b) The best interests of the child are served by allowing the relocating parent
7 to relocate with the child; and
8 (c) The child and the relocating parent will benefit from an actual advantage
9 as a result of the relocation.

10 Once the relocating parent sufficiently demonstrates that the threshold test has been
11 sufficiently met, the Court must consider the *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2D
12 1268 (1991) factors, which were codified in NRS 125C.007(2):

13 2. If a relocating parent demonstrates to the court the provisions set forth in
14 subsection 1, the court must then weigh the following factors and the impact of
15 each on the child, the relocating parent and the non-relocating parent, including,
16 without limitation, the extent to which the compelling interests of the child, the
17 relocating parent and the non-relocating parent are accommodated:

- 18 (a) The extent to which the relocation is likely to improve the quality of life
19 for the child and the relocating parent;
20 (b) Whether the motives of the relocating parent are honorable and not
21 designed to frustrate or defeat any visitation rights accorded to the non-relocating
22 parent;
23 (c) Whether the relocating parent will comply with any substitute visitation
24 orders issued by the court if permission to relocate is granted;
25 (d) Whether the motives of the non-relocating parent are honorable in
26 resisting the petition for permission to relocate or to what extent any opposition
27 to the petition for permission to relocate is intended to secure a financial
28 advantage in the form of ongoing support obligations or otherwise;
29 (e) Whether there will be a realistic opportunity for the non-relocating parent
30 to maintain a visitation schedule that will adequately foster and preserve the
31 parental relationship between the child and the non-relocating parent if
32 permission to relocate is granted; and
33 (f) Any other factor necessary to assist the court in determining whether to
34 grant permission to relocate.

35 **1. Threshold Test:**

36 NRS 125C.007 provides the three-pronged threshold test that the party wishing to
37 relocate with the child must first demonstrate to the Court:

- 38 (a) **There exists a sensible, good-faith reason for the move, and the move
39 is not intended to deprive the non-relocating parent of his or her parenting
40 time;**

41 Father testified that New York is better for his business; he will have a flexible schedule;

1 New York is his home; New York is his community; New York is where Father was raised;
2 Father has resources in New York. Father's reasons for the move are not sensible, nor does he
3 provide a "good-faith" basis to remove Evan from his home in Nevada. Rather, Father's reasons
4 for permission to relocate are speculative, subjective, and self-serving.

5 The proposed visitation schedule Father offered in Exhibit A to his Motion outlines the
6 alternative schedule Mother would be afforded in the event Father is granted permission to
7 relocate. In Father's proposed schedule, Evan would be entitled to visitation with his mother
8 approximately 66 days every odd year, and 70 days in even years. Video Transcript 06/28/2016
9 14:16:30-14:21:43. Based on all evidence presented, Evan is accustomed to at least 226 days
10 up to 238 days every year with his mother. Effectively, Father would be reducing Evan's time
11 with his mother by more than two-thirds of what Evan is accustomed to.

12 Clearly, Father's proposed visitation schedule is a deprivation of Mother's parenting time
13 with Evan.

14 **(b) The best interests of the child are served by allowing the relocating**
15 **parent to relocate with the child;**

16 Again, this is a factor that Father must establish. No testimony was offered by Father.

17 **(c) The child and the relocating parent will benefit from an actual**
18 **advantage as a result of the relocation.**

19 Father offered no evidence of an "actual" advantage resulting from the requested
20 relocation. Any evidence offered was merely speculative, subjective, and self-serving.

21 Father failed to meet the burden prescribed by this threshold test. Thus, any analysis
22 should end here with the Court denying all of Father's requests for relief that were the subject
23 of the Evidentiary Hearing held herein.

24 For purposes of being thorough, and in the unlikely event the Court determines Father
25 has met his threshold burden, Mother will address each of the factors to be weighed by the court
26 pursuant to NRS 125C.007.

27 **2. Factors for the Court to Weigh Pursuant to NRS 125C.007:**

28 Once the relocating parent sufficiently demonstrates that the threshold test, as set forth
in subsection 1 above, has been met, the Court must then weigh the following factors and the

1 impact of each on the child, the relocating parent and the non-relocating parent, including,
2 without limitation, the extent to which the compelling interest of the child, the relocating parent
3 and the non-relocating parent are accommodated:

4 **(a) The extent to which the relocation is likely to improve the quality of**
5 **life for the child and the relocating parent;**

6 Mother, Father, Evan's grandmother, uncle, therapist, and school principal, all offered
7 testimony indicating that Evan is doing well here in Las Vegas. Any evidence offered by Father
8 as to his proposed relocation likely improving the quality of life for Evan was speculative,
9 subjective and self-serving.

10 **(b) Whether the motives of the relocating parent are honorable and not**
11 **designed to frustrate or defeat any visitation rights accorded to the**
12 **non-relocating parent;**

13 As stated herein, Father's proposed visitation schedule is not honorable and it is designed
14 to defeat Mother's custodial rights. Father would be reducing Evan's time with his mother by
15 more than two-thirds of what Evan is accustomed to. Ironically, Father believes that it is
16 appropriate for Evan and Mother to have approximately one-half the time that Father currently
17 enjoys with his son.

18 **(c) Whether the relocating parent will comply with any substitute**
19 **visitation orders issued by the court if permission to relocate is granted;**

20 Father offered no evidence or testimony to support this factor. In fact, both parties
21 testified that Father regularly interfered with Mother's custodial time with Evan.

22 **(d) Whether the motives of the non-relocating parent are honorable in**
23 **resisting the petition for permission to relocate or to what extent any**
24 **opposition to the petition for permission to relocate is intended to secure a**
25 **financial advantage in the form of ongoing support obligations or otherwise;**

26 Mother's motives are honorable in denying Father permission to relocate and have
27 nothing to do with securing a financial advantage. In fact, both parties acknowledge that Evan
28 was born in Nevada, has been raised in Nevada, goes to school in Nevada, and his home is in
Nevada. To Evan, Home Means Nevada.

(e) Whether there will be a realistic opportunity for the non-relocating
parent to maintain a visitation schedule that will adequately foster and
preserve the parental relationship between the child and the non-relocating
parent if permission to relocate is granted; and

1 Father provided no realistic opportunity for Mother to maintain an adequate schedule
2 with Evan. The proposed schedule was a significant reduction of time between Evan and his
3 mom of more than two-thirds of what they are historically accustomed to (and one-half of the
4 time Father enjoys with Evan).

5 The Court will recall that, during trial Father attempted to expand his proposed visitation
6 schedule for Mother by offering Mother the ability to travel to New York each month for a long
7 weekend visitation with Evan should relocation be permitted. Mother testified, however, that
8 such monthly travel is not feasible in light of her primary physical custodian responsibilities here
9 in Nevada related to her daughter, Kayla, Evan's half-sister. Video Transcript. 06/28/16.
10 15:55:55 - 15:56:43.

11 **(f) Any other factor necessary to assist the court in determining whether**
12 **to grant permission to relocate.**

13 Father offered testimony from certain Persons Most Knowledgeable ("PMK") from
14 various casinos in the Las Vegas area, none of whom offered any relevant testimony to assist the
15 court.

16 The Court was asked to take judicial notice of Nevada Gaming Control Board Regulation
17 5A.110, which Father's counsel stated requires "a person who is issued a card for interactive
18 gaming must affirm that they will not allow another person to utilize their card." Video
19 Transcript 6/29/16 14:22:25 - 14:22:46.

20 Father provided no evidence as to how this issue is relevant to the instant custodial issues
21 before the Court. Also, there is no evidence supporting Father's contention that Mother knew
22 of this regulation, or that Mother made such an affirmation upon receiving her players cards. In
23 the event Father's seeks any relief relating to Nevada Gaming Control Board Regulation 5A.110,
24 Mother requests the Court deny the same.

25 **3. Best Interest Factors:**

26 Pursuant to NRS Chapter 125C.0035(4), as amended and effective October 1, 2015, in
27 determining the best interest of the child, the court shall consider and set forth its specific
28 findings concerning, among other things:

- 1
2 (a) The wishes of the child if the child is of sufficient age and capacity to form an
3 intelligent preference as to his or her physical custody.
4 (b) Any nomination of a guardian for the child by a parent.
5 (c) Which parent is more likely to allow the child to have frequent associations and
6 a continuing relationship with the noncustodial parent.
7 (d) The level of conflict between the parents.
8 (e) The ability of the parents to cooperate to meet the needs of the child.
9 (f) The mental and physical health of the parents.
10 (g) The physical, developmental and emotional needs of the child.
11 (h) The nature of the relationship of the child with each parent.
12 (i) The ability of the child to maintain a relationship with any sibling.
13 (j) Any history of parental abuse or neglect of the child or a sibling of the child.
14 (k) Whether either parent or any other person seeking physical custody has engaged
15 in an act of domestic violence against the child, a parent of the child or any other
16 person residing with the child.
17 (l) Whether either parent or any other person seeking physical custody has
18 committed any York act of abduction against the child or any other child.

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

21 Not applicable.

22 **(b) Any nomination of a guardian for the child by a parent.**

23 As stated herein, both parties confirm that Mother has primary physical custody of Evan
24 the majority of the year in Nevada.

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

27 Mother testified that she is routinely flexible with Father so that he can exercise visitation
28 time with Evan. Further, she testified that she fosters Evan's relationship with Father by working
with Evan to make gifts for Father for occasions such as Father's Day, Christmas, etc. Video
Transcript. 06/28/2016. 15:59:50 -16:00:35. This testimony was confirmed by Evan's
grandmother. Video Transcript. 06/29/2016. 15:18:50 - 15:19:44.

Additionally, Mother testified that she ensured that Evan was in his room in an
environment conducive to a positive interaction between father and son for video and/or
telephonic conversations. Father's conversations with Evan typically occurred anywhere from
30 minutes or more. Video Transcript. 06/28/2016. 16:08:50 - 16:09:46. By contrast, Mother
testified that Evan was regularly on the go while visiting with Father subsequently limiting her

1
2 ability to have video and/or telephone conversations with Evan of more than 5 minutes. Rarely
3 were these visits in an environment conducive to a meaningful interaction between mother and
4 son. Video Transcript. 06/28/2016. 16:07:43 - 16:08:38.

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

6 Neither party testified to any issues with child exchanges or the like. In essence, they've
7 always managed to cooperate in that regard. In terms of their ability to co-parent their child
8 together, there seems to be a consensus that they are not on the same page. Mother testified that
9 Father habitually attempts to "one up" Mother in everything she does as a parent. For instance,
10 purchasing newer sporting equipment and forcing Evan to use it, and providing Evan larger
11 "payouts" from the Tooth Fairy. Video Transcript. 06/28/2016. 16:00:59 - 16:07:04.
12 Similarly, despite agreeing to counseling with Evan, Father confirmed in his testimony that he
13 does not take Evan to his weekly counseling appointments while in his care.

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

15 Mother testified that she coparents with Father by informing him of everything, and
16 never talking negatively about Father and his family despite issues in the past. As another
17 example, Evan's grandmother testified that Mother dressed Evan up every day in different outfits
18 from Dr. Seuss books during reading week for school and ensured that Evan sent Father pictures
19 every morning saying, "Hi, Dad, look how I look this morning." Video Transcript. 06/29/2016.
20 15:18:50 - 15:19:44.

21 Looking at the emails and text messages between the parties, they do fairly well with
22 exchanges. However, Father refuses to consider Mother's opinion with regard to how Evan
23 should be raised. Mother has attempted to involve Father in her parenting of Evan but Father
24 continues to use Mother's attempts against her in this litigation.

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

26 Neither party offered evidence that Mother's mental or physical health is at issue. Father
27 testified that he is involved in a lawsuit alleging post-concussion injuries.
28

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

3 Evan has been diagnosed with ADHD, GAD and ODD. According to Father, Evan does
4 not suffer from the symptoms associated with these diagnoses when Evan is in his care. Evan's
5 therapist, Judith Tolman testified that the characteristics of these conditions are organic and
6 cannot be "cured." Video Transcript. 06/29/2016. 15:50:55 - 15:54:00.

7 Nonetheless, everyone who testified as to their observations of Evan confirmed that,
8 overall, he is a good kid, who is doing well and is thriving in Las Vegas.

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

10 Testimony demonstrated that both parents have a close relationship with Evan. Judith
11 Tolman testified that by her observations Evan experiences traditional family values in Mother's
12 home and that Mother embraces these values. Video Transcript. 06/29/2016. 15:34:53 -
13 15:44:45.

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

15 On Mother's side, Evan has a 19-year-old brother and a 13-year-old sister. Though not
16 a sibling, Evan and his cousin, Pierce, are extremely close. Grandmother testified that Evan has
17 a very close relationship with Kayla. They do a lot together. Kayla includes Evan in the things
18 she does. Video Transcript. 06/29/2016. 15:14:27 15:15:10. She also testified that Evan is
19 extremely close to his cousin and that Evan is extremely excited when he knows that Pierce is
20 coming over. Video Transcript. 06/29/2016. 15:15:12 - 15:16:26.

21 Father testified that he has no children outside this marriage.

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

23 Not applicable.

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

27 No recent history of domestic violence.
28

1
2 (I) Whether either parent or any other person seeking physical custody has
3 committed any act of abduction against the child or any other child.

4 Not applicable.

5 **E. CHILD SUPPORT**

6 Pursuant to NRS 125B.145(1), "An order for the support of a child must, upon the filing
7 of a request for review by: (b) A parent or legal guardian of the child, be reviewed by the court
8 at least every 3 years pursuant to this section to determine whether the order should be modified
9 or adjusted."

10 The Order filed on or about August 30, 2012, provides that Father's child support
11 obligation is set at \$201.50, pursuant to *Wright v. Osborn*, 114 Nev. 1367, 970 P.2d 1071 (1998),
12 commencing November 1, 2011. Mother is seeking to review Father's child support obligation
13 pursuant to NRS 125B.145(1)(b).

14 Father testified that his total monthly income received is \$7,500 per month. Video
15 Transcript 06/27/2016 09:55:28-9:58:33; 06/28/2016 13:54:36-13:57:00. As set forth herein
16 above, Mother has primary physical custody of Evan. Eighteen percent (18%) of Father's gross
17 monthly income is \$1,350. Father falls into the third tier of the presumptive maximum amount
18 of child support and the maximum amount Father may be required to pay per month per child
19 is \$820.00. Thus, Father should be ordered to pay Mother the sum of \$820.00 per month for child
20 support.

21 Alternatively, in the remote event that this Court grants Father's request to relocate, it
22 should be reminded that Father testified that he would waive child support. Video Transcript
23 06/27/2016 11:04:30-11:05:52. Additionally, Father testified that he would solely bear all travel
24 expenses related to Evan. Id.

25 **F. ATTORNEYS' FEES**

26 Father testified that he incurred, excluding trial preparations, trial, post-trial closing
27 briefs, etc., approximately \$115,000 in attorneys' fees. Video Transcript 06/28/2016 14:00:30-
28 14:02:07.

1
2 Pursuant to *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), the Court has the
3 discretion to award Mother her attorneys' fees and costs¹. Moreover, considering Father did not
4 meet his burden to relocate Evan to New York, Mother's pro bono counsel must be awarded
5 attorneys' fees pursuant NRS 18.010, as the prevailing party.

6 **III.**

7 **CONCLUSION**

8 It is Father's burden to prove that Evan should be removed from his home in Nevada.
9 Father failed to meet his burden and his request for permission to relocate to New York with
10 Evan must be denied. Father describes Evan as bright, talented, special and gifted. Father further
11 elaborated that Evan has a great personality, is a great child. Father characterizes Evan as a
12 straight A student, gifted with other children, popular, a leader, other kids migrate to him and
13 he's a great little athlete. Importantly, Father concedes, "Evan is doing well." Video Transcript
14 6/27/16 10:20:38

15 No one refutes that:

- 16 * Evan was born in Nevada.
- 17 * Evan has been raised in Nevada since his birth.
- 18 * Evan has significant family, including siblings, in Nevada.
- 19 * Evan has significant friendships in Nevada.
- 20 * Evan's community is in Nevada.
- 21 * Evan's doctors are in Nevada.
- 22 * Evan's school is in Nevada.
- 23 * Evan's church is in Nevada.
- 24 * Evan's home is in Nevada.

25 //

26
27 ¹Counsel will provide a Memorandum of Fees and Costs pursuant to *Brunzell v. Golden Gate Nat'l Bank*,
28 85 Nev. 345, 455 P.2d 31 (1969), upon request from the Court.

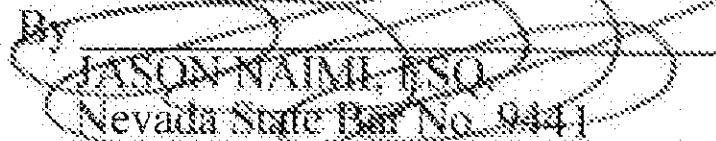
1
2 To Evan, "Home Means Nevada." Based upon the foregoing, Mother respectfully requests the
3 following relief:

- 4 1. Father's motion for permission to relocate be denied.
5 2. Mother be confirmed as Evan's defacto primary physical custodian.
6 3. Father be ordered to pay child support pursuant to NRS 125B.070.
7 4. Mother be awarded reasonable attorneys' fees and costs.
8 5. Any other relief deemed appropriate by this Court.

9 Mother's proposed Findings of Fact, Conclusions of Law, and Decision and Order are
10 attached hereto as Exhibit "1".

11 Respectfully Submitted this 5th day of August, 2016.

12
13 STANDISH NAIMI LAW GROUP

14 By 
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17
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21 *Attorneys for Plaintiff*
22
23
24
25
26
27
28

1
2
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of STANDISH NAIMI
5 LAW GROUP, and that on August 5, 2016, I caused the document entitled *PLAINTIFF'S*
6 *CLOSING ARGUMENT* to be served as follows:

7 [XX] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5b)(2)(D) and Administrative
8 Order 14-2 captioned "in the Administrative Matter of Mandatory Electronic Service in the
9 Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial
10 District Court's electronic filing system;

11 [] pursuant to EDCR 8.05(a) and NRCP 5b)(2)(D), because the individual listed is
12 not registered with the Court's mandatory e-service system, by depositing a copy of the same in
13 the United States Mail in Las Vegas, Nevada, postage prepaid; and/or

14 [] by placing same to be deposited for mailing in the United States Mail, in a sealed
15 envelope upon which first class mail postage was prepaid in Las Vegas, Nevada; and/or

16 [] via electronic mail.

17 To the individual listed below at the address, email address, and/or facsimile number
18 indicated below:

19 Shannon R. Wilson, Esq.
20 Hutchison & Steffen
21 10080 West Alta Drive, Suite 200
22 Las Vegas, Nevada 89145
23 *Attorneys for Defendant*

24 and placing the same in the mail bin at the firm's office services.

25 I am readily familiar with the firm's practice of collection and processing mail. Under
26 that practice it is deposited with the U. S. Postal Service on the same day it is placed in the mail
27 bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

28

An employee of Standish Naimi Law Group

EXHIBIT “1”

1 **FFCL**
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14 *Attorneys for Plaintiff*

11 **DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

14 SANDRA L. NANCE,
15 Plaintiff,

16 vs.

17 CHRISTOPHER M. FERRARO,
18 Defendant.

Case No. D-10-426817-D
Dept. No. F

Date & time of Trial: Day 1, 6/27/2016 @ 9:00 a.m.
Date & time of Trial: Day 2, 6/28/2016 @ 1:30 p.m.
Date & time of Trial: Day 3, 6/29/2016 @ 1:30 p.m.

19 **FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

20 THE ABOVE-ENTITLED CAUSE, having come on regularly for Evidentiary Hearing on
21 June 27, 28, and 29, 2016, before the Honorable Denise Gentle, Plaintiff, SANDRA L. NANCE
22 ("Mother"), appearing in person, and by and through her attorneys of record, JASON NAIMI, ESQ.,
23 of STANDISH NAIMI LAW GROUP, and SHELLY BOOTH COOLEY, ESQ., of The Cooley Law
24 Firm, and Defendant, CHRISTOPHER M. FERRARO ("Father"), appearing by and through his
25 attorneys, SHANNON R. WILSON, ESQ., and TODD I. MOODY, ESQ., of HUTCHISON &
26 STEFFEN, LLC.

27 THE COURT having heard the evidence of the witnesses sworn and examined in open court,
28 the cause having been submitted for decision and judgment following the close of evidence and the

parties' respective closing arguments having been submitted in writing per the Court's instruction, and the Court being fully advised, and having taken the matter under advisement, enters the followings findings of fact, conclusions of law and Decision and Order:

THE COURT HEREBY FINDS that it has jurisdiction in the premises, both as to the subject matter thereof as well as to the parties thereto under NRS 125A.315, that Nevada is the home state of the minor child, Evan Daniel Ferraro, born September 30, 2008, that Plaintiff is an actual and bona fide resident of Clark County, Nevada, and has been actually physically present and domiciled in Nevada for more than six (6) weeks immediately prior to the commencement of this action, and has had and still has the intent to make the State of Nevada her home, residence and domicile for an indefinite period of time.

THE COURT FURTHER FINDS that, based upon Father's testimony at trial, Father confirmed his visitation schedule for the one-year period prior to the filing of his Motion requesting relocation consisted of the following:

MONTH	VISITATION DATES	NUMBER OF DAYS
June, 2014	06/14-06/26	13
July, 2014	07/17-08/01	16
August, 2014	08/08-8/23	16
September, 2014	09/19-9/29	11
October, 2014	10/25-11/2	9
November, 2014	11/21-11/30	10
December, 2014	12/26-1/04/15	10
January, 2015	1/16-1/25	10
February, 2015	2/20-2/03	11
March, 2015	3/17-3/27	11
April, 2015	4/21-05/01	11
May, 2015	05/22-06/01	11
	TOTAL	139

Video Transcript 06/28/2016 14:23:16-14:53:47.

1 THE COURT FURTHER FINDS that the foregoing schedule provided Father credit for
2 having visitation with Evan on both exchange dates, which is inconsistent with the calculation of
3 days under *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009) and NRS 125C.003(1)(a).

4 THE COURT FURTHER FINDS that, even looking at the foregoing schedule in the most
5 favorable manner to Father, his ceiling in the year prior to the filing his Motion is 139 days; but, in
6 reality, Father exercised visitation with Evan as few as 127 days.

7 THE COURT FURTHER FINDS that, coupled with Mother's testimony that she has custody
8 of Evan for approximately 230 to 232 days per year, Father does not meet the minimum requirement
9 of 146 days to qualify as a joint physical custodian.

10 THE COURT FURTHER FINDS that, by Father's own admission, Father does not have
11 physical custody of Evan at least 40 percent of the time.

12 THE COURT FURTHER FINDS that Father acknowledged that most of his visitation with
13 Evan takes place in Nevada.

14 THE COURT FURTHER FINDS that Father offered two bases to support his change of
15 circumstances.

16 THE COURT FURTHER FINDS that one of the basis for his change of circumstances is
17 Father's contention that the behavioral issues associated with Evan's diagnosed Attention Deficit
18 Hyperactivity Disorder ("ADHD"), Generalized Anxiety Disorder ("GAD") and Oppositional
19 Defiance Disorder ("ODD") only occur when Evan is in Mother's custody.

20 THE COURT FURTHER FINDS that, pursuant to the testimony of Evan's therapist, Judith
21 Tolman, MSW, LCSW, Evan: (1) meets the Diagnostic and Statistical Manual of Mental Disorder
22 5th Ed. ("DSM-5") classification for diagnoses of ADHD, GAD and ODD, (2) that one is born with
23 these characteristics and cannot be cured, (3) these characteristics can improve with age, and (4)
24 Evan was recently placed in remission for GAD because his characteristics are improving. Video
25 Transcript 06/29/2016 15:50:55 - 15:54:00.

26 THE COURT FURTHER FINDS that Father's second basis for a change in circumstance is
27 his financial circumstances, which Father anticipates improving when he starts a new job and his
28 resources are questionable as to his ability to travel to Las Vegas.

1 THE COURT FURTHER FINDS that Father's ability to obtain employment and his
2 financial circumstances have nothing to do with Evan's welfare.

3 THE COURT FURTHER FINDS that Father's twin brother testified that Father would do
4 whatever is necessary to continue his relationship with Evan. Video Transcript. 06/27/2016.
5 16:36:42 -- 16:36:55.

6 THE COURT FURTHER FINDS that, based upon the evidence and testimony offered during
7 the evidentiary hearing, it is undeniable that Mother is Evan's primary physical custodian.

8 THE COURT FURTHER FINDS that, based upon the finding that Mother is Evan's primary
9 physical custodian, the Court must apply the standard set forth in *Ellis v. Carucci*, 123 Nev. 145,
10 161 P.3d 239 (2007), to determine whether good cause exists to modify the current custodial
11 arrangement.

12 THE COURT FURTHER FINDS that, in applying the standard required by *Ellis*, "A
13 modification of primary physical custody is warranted only when (1) there has been a substantial
14 change in circumstances affecting the welfare of the child, and (2) the modification would serve the
15 child's best interest." *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).

16 THE COURT FURTHER FINDS that, in the instant matter, modification of custody is tied
17 solely to Father's request for permission to relocate Evan, who was born and raised in Nevada, to the
18 state of New York.

19 THE COURT FURTHER FINDS that Father offered testimony at trial that New York is
20 Father's home, his community, where he was raised, where he has resources and connections.

21 THE COURT FURTHER FINDS that Father testified at trial indicating his desire for Evan to
22 relocate to New York because it will be better for Father's business and Father's ability to work;
23 Father will have a flexible schedule from which Evan will benefit.

24 THE COURT FURTHER FINDS that Father failed to provide any evidence at trial to show
25 that a modification of custody would serve Evan's best interest.

26 THE COURT FURTHER FINDS that Father failed to meet his burden to show that there has
27 been a substantial change in circumstances affecting Evan's welfare.
28

1 THE COURT FURTHER FINDS that Father failed to meet his burden to demonstrate that a
2 sensible, good-faith reason for relocating Evan from Nevada to New York exists.

3 THE COURT FURTHER FINDS that Father failed to meet his burden to demonstrate that
4 the relocation is not intended to deprive Mother of her parenting time.

5 THE COURT FURTHER FINDS that Father failed to meet his burden to demonstrate that
6 Evan's best interests would be served by allowing the relocation.

7 THE COURT FURTHER FINDS that Father failed to demonstrate an actual advantage or
8 benefit to Evan as a result of the relocation.

9 THE COURT FURTHER FINDS that the evidence presented at trial confirmed that Evan is
10 doing well in Las Vegas, and any evidence offered by Father as to his proposed relocation likely
11 improving the quality of life for Evan was unfounded.

12 THE COURT FURTHER FINDS that Father's proposed alternative timeshare for Mother
13 and Evan is not honorable and is designed to defeat Mother's custodial rights by reducing Mother
14 and Evan's time by more than two-thirds of what Evan is accustomed to.

15 THE COURT FURTHER FINDS that, pursuant to the testimony of both parties, Father
16 regularly interferes with Mother's custodial time with Evan.

17 THE COURT FURTHER FINDS that no evidence was presented at trial to substantiate any
18 claim that Mother's motives are anything but honorable in resisting Father's request to relocate Evan
19 to New York.

20 THE COURT FURTHER FINDS that Mother's opposition to Father's request to relocate
21 Evan to New York is not financially motivated.

22 THE COURT FURTHER FINDS that, given the limited alternative contact Father proposes
23 to provide Mother and Evan in the event of a relocation, as well as Mother's parental obligations
24 necessary in the state of Nevada, it is not likely that a realistic opportunity exists for Mother to
25 maintain an alternative schedule that will adequately foster and preserve the parental relationship she
26 and Evan currently enjoy.

27 THE COURT FURTHER FINDS that Evan's relationship with his siblings in Las Vegas will
28 suffer as a result of a relocation to New York.

1 THE COURT FURTHER FINDS that Father failed to sufficiently meet the threshold test
2 pursuant to NRS 125C.007.

3 THE COURT FURTHER FINDS that the testimony of the Persons Most Knowledgeable of
4 the various casinos has no bearing on the custody issues currently before the Court.

5 THE COURT FURTHER FINDS that pursuant to the evidence presented at trial by Mother,
6 Rebecca Nance, and Judith Tolman, Mother fosters Evan's relationship with Father.

7 THE COURT FURTHER FINDS that there exists a mild level of conflict between the
8 parents.

9 THE COURT FURTHER FINDS that Mother's efforts to coparent are not reciprocated by
10 Father.

11 THE COURT FURTHER FINDS that Mother is in good mental and physical health; Father
12 testified that any health issues he may have had as a result of his hockey career are resolved.

13 THE COURT FURTHER FINDS that Evan maintains a close, loving relationship with his
14 older sister, Kayla, which would be adversely affected if Evan were permitted to relocate to New
15 York.

16 THE COURT FURTHER FINDS that there was no evidence of parental abuse or neglect of
17 the child or a sibling of the child.

18 THE COURT FURTHER FINDS that there is no recent history of domestic violence.

19 THE COURT FURTHER FINDS that neither party has committed any act of abduction
20 against the child or any other child.

21 THE COURT FURTHER FINDS that the Father's currently monthly income from all
22 sources is \$7,500.00.

23 THE COURT FURTHER FINDS that Father incurred attorney's fees of, excluding trial
24 preparations, trial, post-trial closing briefs, etc., approximately \$115,000.00.

25 THE COURT FURTHER FINDS that Mother's counsel are acting *pro bono*, however, the
26 Court has discretion, pursuant to *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005) to award
27 Mother her attorney's fees and costs.

28 Based upon the foregoing findings, the Court makes the following conclusions of law:

1 THE COURT HEREBY CONCLUDES that it has jurisdiction over the minor child and the
2 subject matter.

3 THE COURT FURTHER CONCLUDES that, pursuant to *Rivero v. Rivero*, 125 Nev. 410,
4 216 P.3d 213 (2009) and NRS 125C.003(1)(a), Mother is primary physical custodian of the minor
5 child, Evan Daniel Ferraro, born September 30, 2008.

6 THE COURT FURTHER CONCLUDES that the Court must apply the standards of *Ellis v.*
7 *Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), when considering Father's request for modification of
8 custody.

9 THE COURT FURTHER CONCLUDES that Father did not demonstrate a substantial
10 change in circumstances affecting Evan's welfare, and that the modification would serve Evan's best
11 interest. *Ellis v. Carucci*, 123 Nev. 1435, 161 P.3d 239 (2007).

12 THE COURT FURTHER CONCLUDES that Father did not provide any evidence at trial to
13 show that a modification of custody would serve Evan's best interest.

14 THE COURT FURTHER CONCLUDES that Father did not demonstrate a sensible, good-
15 faith reason for relocating Evan from Nevada to New York exists.

16 THE COURT FURTHER CONCLUDES that Father did not demonstrate the relocation is
17 not intended to deprive Mother of her parenting time.

18 THE COURT FURTHER CONCLUDES that Father did not demonstrate that Evan's best
19 interests would be served by allowing the relocation.

20 THE COURT FURTHER CONCLUDES that Father did not demonstrate an actual
21 advantage or benefit to Evan as a result of the relocation.

22 THE COURT FURTHER CONCLUDES that Evan is doing well in Las Vegas.

23 THE COURT FURTHER CONCLUDES that Father's proposed alternative timeshare for
24 Mother and Evan defeats Mother's custodial rights by reducing Mother and Evan's time by more
25 than two-thirds of what Evan is accustomed to.

26 THE COURT FURTHER CONCLUDES that Mother's motives in resisting the relocation
27 are honorable and not financially motivated.
28

1 THE COURT FURTHER CONCLUDES that Mother's parental responsibilities in Nevada
2 for her other minor child limit her ability to travel to New York for visitation.

3 THE COURT FURTHER CONCLUDES that any relocation to New York would negatively
4 impact Evan's relationship with his siblings in Las Vegas.

5 THE COURT FURTHER CONCLUDES that Father did not meet the threshold test pursuant
6 to NRS 125C.007.

7 THE COURT FURTHER CONCLUDES that the gambling evidence presented at trial has no
8 bearing on the custody issues currently before the Court.

9 THE COURT FURTHER CONCLUDES that Mother fosters Evan's relationship with
10 Father.

11 THE COURT FURTHER CONCLUDES that a mild level of conflict exists between the
12 parents.

13 THE COURT FURTHER CONCLUDES that Mother's efforts to coparent are not
14 reciprocated by Father.

15 THE COURT FURTHER CONCLUDES that Mother is in good mental and physical health;
16 Father's health issues he may have had as a result of his hockey career are resolved.

17 THE COURT FURTHER CONCLUDES that Evan maintains a close, loving relationship
18 with his older sister, Kayla.

19 THE COURT FURTHER CONCLUDES that there is no parental abuse or neglect of the
20 child or a sibling of the child.

21 THE COURT FURTHER CONCLUDES that there is no recent history of domestic violence.

22 THE COURT FURTHER CONCLUDES that there is no abduction against the child or any
23 other child.

24 THE COURT FURTHER CONCLUDES that Father's currently monthly income from all
25 sources is \$7,500.00.

26 THE COURT FURTHER CONCLUDES that Father incurred attorney's fees exclusive of
27 trial preparations, trial, post-trial closing briefs, etc., of approximately \$115,000.00.
28

1 THE COURT FURTHER CONCLUDES that Mother's counsel are representing Mother *pro*
2 *bono*.

3 THE COURT FURTHER CONCLUDES it has discretion, pursuant to *Miller v. Wilfong*, 121
4 Nev. 619, 119 P.3d 727 (2005) to award Mother her attorney's fees and costs.

5 Based upon the foregoing Conclusions of Law, and good cause appearing therefor,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Father's request for
7 modification of custody is denied.

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Father's request to relocate
9 Evan to New York is denied.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the parties shall continue to
11 exercise joint legal custody of the minor child, Evan Daniel Ferraro, born September 30, 2008, with
12 Mother maintaining primary physical custody, subject to Father's visitation as set forth in the
13 parties' Stipulation and Order Re: Parenting Plan filed herein on November 30, 2012.

14 **MANDATORY PROVISIONS**

15 The parties are further notified and advised of the provisions of NRS 125C.0045(6) which
16 provides as follows:
17

18 **PENALTY FOR VIOLATION OF ORDER:**

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

28 Pursuant to NRS 125C.0045 (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, apply if a
parent abducts or wrongfully retains a child in a foreign country as follows:

1 If a parent of the child lives in a foreign country or has significant commitments in a
2 foreign country:

3 (a) The parties may agree, and the court shall include in the order for custody of the
4 child, that the United States is the country of habitual residence of the child for the
5 purposes of applying the terms of the Hague Convention as set forth in subsection 7.

6 (b) Upon motion of one of the parties, the court may order the parent to post a bond if
7 the court determines that the parent poses an imminent risk of wrongfully removing
8 or concealing the child outside the country of habitual residence. The bond must be in
9 an amount determined by the court and may be used only to pay for the cost of
10 locating the child and returning the child to his or her habitual residence if the child is
11 wrongfully removed from or concealed outside the country of habitual residence. The
12 fact that a parent has significant commitments in a foreign country does not create a
13 presumption that the parent poses an imminent risk of wrongfully removing or
14 concealing the child.

15 Additionally, NRS 125C.006 provides the following:

16 1. If primary physical custody has been established pursuant to an order, judgment or
17 decree of a court and the custodial parent intends to relocate his or her residence to a
18 place outside of this State or to a place within this State that is at such a distance that
19 would substantially impair the ability of the other parent to maintain a meaningful
20 relationship with the child, and the custodial parent desires to take the child with him
21 or her, the custodial parent shall, before relocating:

22 (a) Attempt to obtain the written consent of the noncustodial parent to relocate with
23 the child; and

24 (b) If the noncustodial parent refuses to give that consent, petition the court for
25 permission to relocate with the child.

26 2. The court may award reasonable attorney's fees and costs to the custodial parent if
27 the court finds that the noncustodial parent refused to consent to the custodial parent's
28 relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written
consent of the noncustodial parent or the permission of the court is subject to the
provisions of NRS 200.359.

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Father shall pay to Mother
2 the sum of \$820.00 per month as and for child support, payable on the first day of each month, and
3 continuing to be due and payable on the first day of each month until such time that Evan reaches
4 eighteen (18) years or nineteen (19) years, if still attending high school, or becomes otherwise
5 emancipated.

6 **MANDATORY PROVISIONS**

7 NOTICE IS HEREBY GIVEN that the parties are subject to the following:

- 8
- 9 1. Pursuant to NRS 125B.145, an award of child support shall be reviewed by
10 the court at least every three (3) years to determine whether the award should
11 be modified. The review will be conducted upon the filing of a request by (1)
12 a parent or legal guardian of the child; or (2) the Nevada State Welfare
13 Division or the District Attorney's Office, if the Division of the District
14 Attorney has jurisdiction over the case.
 - 15 2. Pursuant to NRS 125.140 the social security numbers of the parties shall be
16 provided on a separate form to the Court of the Welfare Division of the
17 Department of Human Resources within ten days from the date this Decree is
18 filed. Such information shall be maintained by the clerk in a confidential
19 manner and not be a part of the public record.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to NRS
21 31A.025 and 31A.250, inclusive, Notice is hereby given to Father (payor), that child support
22 payments shall be subject to wage assignment by the payor's employer should he become more than
23 thirty (30) days delinquent in said child support payments.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to NRS
25 125B.145 the parties are notified that child support shall be reviewed at any time upon a showing of
26 a change in circumstances or every three (3) years.

27 ///

28 ///

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///

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that counsel for Plaintiff shall
2 submit a Memorandum of Fees and Costs with *Brunzell* factors within ten (10) days of notice of
3 entry of the Findings of Fact, Conclusions of Law and Decision and Order, and Defendant shall have
4 ten (10) days thereafter to respond.
5

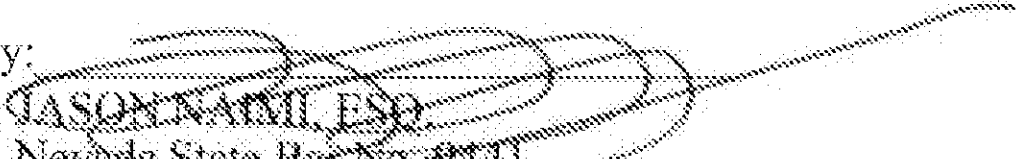
6 DATED this _____ day of August, 2016.
7

8 _____
DISTRICT COURT JUDGE

9 Respectfully submitted by:

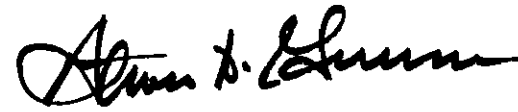
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DISTRICT COURT- FAMILY DIVISION

CLARK COUNTY, NEVADA

SANDRA LYNN NANCE

Plaintiff(s),

v.

CHRISTOPHER MICHAEL FERRARO

Defendant(s).

) CASE NO. D-10-426817-D
) DEPT NO. F

) **DEFENDANT'S CLOSING BRIEF**

) Hearing Dates:
) June 27, 2016, 9:00 a.m. & 1:30 p.m.
) June 28, 2016, 1:30 p.m.
) June 29, 2016, 1:30 p.m.

Defendant Christopher Ferraro, by and through his attorneys of Hutchison & Steffen, LLC, submits his closing brief. Attached hereto as Exhibit A is a proposed findings of fact, conclusions of law and order, an electronic version shall be emailed to the Court's clerk. Attached hereto as Exhibits B, C and D are unofficial transcripts of the hearing prepared by Nevada Court Reporting from the trial videos. The transcript were prepared in three volumes, one for each day of testimony. References in this brief and proposed findings of fact to the transcripts are denoted as V1 for testimony taken on June 27th, V2 for testimony taken on June 28th, and V3 for testimony taken on June 29th.

1. INTRODUCTION AND RELIEF SOUGHT

Defendant Christopher Ferraro seeks to relocate his son, Evan Daniel Ferraro, to Defendant's home state of New York. Consistent with the relocation, Defendant requests the Court order that the parties to continue to share joint legal custody of Evan, that he be granted primary physical custody of Evan and that Plaintiff receive rights of visitation as set forth in

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1 Defendant's proposed order. Defendant understood by the Court's questioning of him during
2 trial that it was looking for ways for Plaintiff to have more visitation with Evan if he was
3 relocated. The plan set forth in Defendant's proposed order differs from his original plan in
4 that it gives Plaintiff a continuous uninterrupted timeshare during the summer months from one
5 week after school lets out to one week before school resumes. Defendant will pay all parties
6 costs of transportation for the specified visits, and he will waive child support from Plaintiff to
7 allow her to put those funds toward visits with Evan and any additional visits that she may
8 notice from time-to-time to be held in New York.

9 Plaintiff must have liberal phone, VTC and other electronic communications with Evan,
10 and such communications need to be in a quiet place, free of distraction. Similar to the existing
11 plan, the parents should have communication with the child four days per week (rather than the
12 current three) to be determined and scheduled in writing each semester or quarter based on
13 Evan's extra-curricular activity schedule. Each party will assure that Evan is in a private
14 location, free of distractions. The scheduled VTCs will be planned for at least thirty minutes
15 duration so that Evan can communicate with his other extended family members as well.

16 Defendant will pay for Evan's health insurance premium. The parties should split out of
17 pocket costs equally pursuant to the 30/30 rule.

18 If the Court thinks it appropriate, Defendant will cooperate and work with Plaintiff to
19 have Evan evaluated by a therapist in New York. Defendant understands, despite his view that
20 Evan's behaviors fall within a normal range of children his age, that the Court must ensure
21 Evan's best interests are carried out and in light of the circumstances it would be reasonable for
22 the Court to want Evan evaluated and also have some assistance through the relocation.
23 Defendant proposes to choose three therapists who he has confirmed are taking new patients
24 and whose qualifications are equal to or greater than those of Ms. Tolman, and from those three
25 Plaintiff will select one within one week of being presented with the selections. Defendant will
26 make the earliest available appointment for Evan, and the treatment recommendations of the
27 therapist will be followed.

28 //

1 **2. EVIDENCE ADDUCED AT TRIAL SUPPORTING DEFENDANT'S**
2 **RELOCATION REQUEST.**

3 The testimony taken and the documentary evidence admitted is set forth at length in the
4 proposed findings of fact attached as Exhibit A. Defendant's argument below is organized
5 according to the legal elements Defendant must meet to sustain his burden.

6 **A. THE EXISTING TIMESHARE IS JOINT PHYSICAL CUSTODY**

7 The first issue for the Court's consideration is the actual timeshare exercised by the
8 parties. When considering a motion to modify custody, the court must first determine the actual
9 physical custody timeshare that is in effect, regardless of what was stated in the last child
10 custody order. *Rivero v. Rivero*, 125 Nev. 410, 430, 215 P. 3d 213, 227 (2009). Different tests
11 apply to modify custody depending on the current custody arrangement. Joint physical custody
12 may be modified or terminated if it is in the best interest of the child. (NRS 125C.0045(2); *see*
13 *also, Truax v. Truax*, 110 Nev. 473, 874 P.2d 10 (1994).) Primary physical custody may be
14 modified only when "(1) there has been a substantial change in circumstances affecting the
15 welfare of the child, and (2) the modification would serve the child's best interest." *Ellis v.*
16 *Carucci*, 123 Nev. 145, 153, 161 P.3d 239, 244 (2007). However, "the child's best interest
17 must be the primary consideration for modifying custody and *Rivero's* 40-percent guideline
18 shall serve as a tool in determining what custody arrangement is in the child's best interest."
19 *Bluestein v. Bluestein*, __ Nev. __, 345 P.3d 1044,1046 (2015). Since *Rivero*, *Bluestein*, and
20 the commencement of this case, the Nevada Legislature enacted NRS 125C.003(1)(a) which
21 states in part that "An award of joint physical custody is presumed not to be in the best interest
22 of the child if . . . The court determines by substantial evidence that a parent is unable to
23 adequately care for a minor child for at least 146 days of the year." First, Defendant does not
24 think this statute applies in this context, but if it does Defendant was clear that he has always
25 been and remains ready, willing and able to care for his child much more than 146 days per
26 year.

27 Here, the parties' post-*Rivero* parenting plan stated they would share joint legal and joint
28

1 physical custody of Evan ("Parenting Plan" at 2:4-5, 5:18-21.), which is evidence that the
2 parties themselves believed joint physical custody was in Evan's interest and they did this even
3 though the terms of the parenting plan, *arguably*, did not give Defendant 146 days of timeshare
4 every year. However, the *Rivero* Court said, "In calculating the time during which a party has
5 physical custody of the child, the district court should look at the number of days during which
6 a party provided supervision of the child, the child resided with the party, and during which the
7 party made the day-to-day decisions regarding the child. The district court should not focus on,
8 for example, the exact number of hours the child was in the care of the parent" *Rivero v.*
9 *Rivero*, 125 Nev. at 225. Therefore, if as Defendant testified at trial, the Court counts every
10 day that Defendant had the child in his care, and not just those days in which Defendant had the
11 child overnight, then Defendant is well over the 40% threshold in every year. Therefore, the
12 parties do, as a matter of law, exercise joint legal custody of Evan.

13 **B. IN THE EVENT THE COURT FINDS THE EXISTING TIMESHARE**
14 **IS PRIMARY PHYSICAL CUSTODY; CHANGED CIRCUMSTANCES**
15 **SUPPORT DEFENDANT'S REQUEST FOR PRIMARY PHYSICAL**
16 **CUSTODY AND RELOCATION**

17 Nevertheless, and in an abundance of caution, the Court can also find that the Defendant
18 meets the additional burden under *Ellis*. Changed circumstances affecting the welfare of the
19 child are shown by: (a) Plaintiff maintaining Evan in weekly therapy when there is very little, if
20 any, evidence that Evan suffers behavioral issues beyond those of an average, active and
21 healthy first grader; (b) Evan is of an age where extracurricular activities and socialization with
22 his peers is important and Plaintiff never fostered this until Defendant filed his motion (the first
23 activity in which she enrolled him was baseball in 2015); she denies him any opportunity to
24 play hockey during her timeshare, which is his father's sport and a sport that Evan loves; (c)
25 now that Evan is in grade school, school quality is important and the specific school district that
26 Evan will attend in New York is better than schools generally in Las Vegas; (d) since the last
27 custody order was entered, Plaintiff has failed to ensure her oldest son graduated high school on
28 time, allowing him to leave regular high school for an on-line home school program, allowing
him to do it at 'his own pace', and failing to obtain resources to assist him when, by her own

1 testimony, she believed he was struggling; instead, she gave him an ownership interest in her
2 business before he was even done school; and (e) albeit of lesser importance than things
3 effecting the circumstances of the child, Defendant's circumstances have changed in that since
4 the parenting plan was entered, his second career has solidly established itself and his client
5 base in New York. Finally, when the last custody order was entered, Evan was not yet in
6 school, the fact that Evan is now in grade school and has very different needs is itself a changed
7 circumstance.

8 **C. RELOCATION ANALYSIS**

9 **1. SENSIBLE GOOD FAITH REASON FOR THE MOVE**

10 NRS 125C.007 sets forth the relocation factors to be weighed by court, which were
11 previously found in *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268 (1991); *Jones v. Jones*,
12 110 Nev. 1253, 885 P.2d 563 (1994); and *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246
13 (2005). NRS 125C.007(1)(a-c) requires the relocating parent to demonstrate to the court that:
14 There exists a sensible, good-faith reason for the move, and the move is not intended to deprive
15 the non-relocating parent of his or her parenting time. Here, the sensible good faith reasons
16 presented by Defendant at trial include: allowing Defendant to reestablish his business; reduce
17 travel expenses to dedicate more financial resources to Evan; afford Evan better educational
18 and more extra-curricular opportunities than exist in Nevada, whereas his mother resists
19 sending Evan to better schools when presented the opportunity, resists enrolling Evan in more
20 sport-related activity even when Defendant offers to pay, and she will not allow him to play
21 hockey at all; and the network of connections that Defendant can provide for his son by raising
22 him in New York is a unique and valuable and promotes Evan's long-term best interests.

23 **2. BEST INTERESTS OF THE CHILD**

24 The best interests of the child are served by allowing the relocating parent to relocate
25 with the child. Here, as set forth above, education, extra-curricular activities, the guidance of a
26 parent who has some unique skills derived from his coaching career to augment his skills as a
27 parent, and a fairly large and very close family to support father and son, all serve Evan's best
28 interest. Then too, there are the best interest factors under NRS 125C.0035(4). Evan is not yet

1 of sufficient age and capacity to form an intelligent preference as to his physical custody;
2 therefore, this factor is inapplicable. There was not a lot of testimony as to which parent is
3 more likely to allow the child to have frequent associations and a continuing relationship with
4 the noncustodial parent; no one testified that they were deprived of their timeshare; concern was
5 raised over the *duration* of FaceTime visits but the Court believes that if ordered, Defendant
6 will comply. The Court's questioning of Defendant over the proposed summer timeshare
7 suggested that it wanted to see more visitation for Plaintiff; therefore, Defendant proposes that
8 Plaintiff shall have the whole summer from one week after school lets out to one week before
9 school begins, and hopes that the parties can readdress summer camp for Evan in the future by
10 mutual agreement. Defendant is willing to share some of his time with Plaintiff (the alternate
11 February and Spring breaks when he has Evan and assuming Evan is participating in a clinic or
12 tournament), and waive child support to help her visit Evan in New York at still other times.
13 This may be difficult while Plaintiff's daughter is still in school, but Plaintiff's daughter is with
14 her father on weekends, and they do live with her grandparents; therefore, it seems that there
15 could be opportunities for Plaintiff to visit Evan in New York, and even when her daughter
16 graduates, Evan will still have six years of school remaining.

17 The level of conflict between the parents has moderated in recent years, mostly they
18 have found ways to avoid co-parenting, this is a neutral factor for the Court on relocation. The
19 ability of the parents to cooperate to meet the needs of the child, at present there is just not
20 much interaction, but cooperation is clearly difficult. If the parties were living in the same
21 community, this would not be a primary physical custody case, but it may not be a bad thing
22 that it happens by default. Defendant very clearly wants to provide every opportunity for his
23 son that he can, but Plaintiff resists and oftentimes denies those opportunities.

24 Some testimony was given by Plaintiff on Defendant's health, but it was old and there is
25 no evidence that either parent presently suffers a physical or mental health condition that
26 inhibits their ability to care for Evan.

27 As to the physical, developmental and emotional needs of the child, both parents have
28 met them to this point; however, Plaintiff's decision or perceived need to keep Evan in weekly

1 therapy is a questionable choice in light of the lack of evidence in any venue, other than
2 Plaintiff's home and the therapist's office to suggest that Evan has the behaviors of
3 ADHD/ODD in number or degree required to support the diagnosis. In deed, Plaintiff did not
4 even say that Evan was behaving in a way that was consistent with the behaviors of
5 ADHD/ODD, which begs the question, why does she keep such a young child in weekly
6 therapy? Whether he actually has ADHD/ODD, the situation was not aided by a therapist who
7 is clearly biased against Defendant and did not have her own patient's best interest at heart by
8 failing to suggest the parties obtain a second opinion from a therapist with whom they could
9 both work. Defendant's strong commitment to his son and experience coaching thousands of
10 children over the years will serve Evan's physical, developmental and emotional needs very
11 well. Defendant was very articulate as to why children need extracurricular activities and the
12 benefits they have for children, he said:

13 [O]ne learns "life skills," including: "respect, preparation,
14 dedication, commitment, working with others, taking instruction
15 from coaches, highs, lows, failures, rewards, successes, all of these
16 are critical to life and career. In fact, athletes are proven better
students . . . and they are more prone to stay away from drugs and
alcohol and live a more focused, dedicated life. V1:67-68.

17 With respect to the nature of the relationship of the child with each parent, there is a
18 close bond between Evan and both of his parents, and both are committed in their different
19 ways; Plaintiff is traditionally maternal, while Defendant is both paternal and a mentor. During
20 his timeshares Defendant has been and will continue to be available for Evan 24/7; he is
21 fortunate to have a business that affords him that flexibility.

22 Plaintiff testified she is first and foremost a stay at home mother, but Defendant believes
23 this is not so much choice but circumstance. Her updated FDF and testimony at trial differed
24 greatly from her prior FDF and testimony at deposition. Plaintiff has no consistent
25 employment, income or means of support. Defendant took the time and incurred the expense to
26 show the time and money that Plaintiff spends gaming.

27 Testimony was taken from persons most knowledgeable from several casinos (Casino
28 PMKs). V1:131-202. The evidence showed that Plaintiff had player cards from at least five (5)

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA LYNN NANCE,

Appellant,

v.

CHRISTOPHER MICHAEL
FERRARO,

Respondent.

Electronically Filed
May 08 2017 04:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 72454

District Court No.: D426817

**APPEAL FROM ORDER GRANTING RELOCATION AND MODIFYING
CHILD CUSTODY**

Eighth Judicial District Court of the State of Nevada

In and for the County of Clark

THE HONORABLE DENISE L. GENTILE

DISTRICT COURT JUDGE

APPELLANT'S APPENDIX – VOL. 4

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INDEX OF APPELLANT'S APPENDIX

VOLUME:

BATES NUMBER:

1	AA00001 – AA00250
2	AA00251 – AA00500
3	AA00501 – AA00750
4	AA00751 – AA01000
5	AA01001- AA01250
6	AA01251 – AA01393

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

<u>VOL.</u>	<u>DATE</u>	<u>PLEADING</u>	<u>BATES NO.</u>
1	03/15/10	Complaint for Divorce	AA00001- AA00005
1	04/29/10	Court Minutes	AA00027
1	05/06/10	Court Minutes	AA0028- AA00029
1	11/21/11	Court Minutes	AA00095-96
3	02/02/16	Court Minutes	AA00592- AA00593
1	03/26/11	Custody Evaluation by John Paglini, Psy. D. ¹	AA00097- 00180
1-3	06/19/15	Defendant Christopher Ferraro's Appendix to Motion to Modify Custody, for Relocation of Minor Child, and Other Related Relief	AA00230- AA00532
6	01/13/16	Defendant Christopher Ferraro's Motion In Limine #2	AA01382- AA1393
1	06/19/15	Defendant Christopher Ferraro's Motion to Modify Custody, for Relocation of Minor Child, and Other Related Relief	AA00199- AA00229
3	08/11/15	Defendant Christopher Ferraro's Reply in Support of Motion to Modify Custody, for Relocation of Minor Child, and Other Related Relief	AA00582- AA00590
4	07/21/16	Defendant' Motion to Reopen Trial or in the Alternative for New Trial Limited to Hear Testimony of Desmond Nance	AA00831- AA00864
4-5	08/05/16	Defendant's Closing Brief	AA00897- AA01185
6	08/15/16	Defendant's Reply to Motion to Reopen Trial or in the Alternative for New Trial Limited to Hear Testimony of Desmond Nance and Opposition to Plaintiff's Countermotion for Attorney's Fees	AA01335- AA01341
6	02/15/17	Notice of Appeal	AA01380-

¹ Submitted under seal subject to Court approval.

			AA01381
<u>VOL.</u>	<u>DATE</u>	<u>PLEADING</u>	<u>BATES NO.</u>
6	01/27/17	Notice of Entry of Findings of Fact, Conclusions of Law and Order, filed 01/27/17	AA01342-AA01379
5-6	08/10/16	Opposition to Motion to Reopen Trial or in the Alternative for New Trial, filed 08/10/16	AA01186-AA01311
3	08/04/15	Plaintiff's Opposition to Defendant's Motion to Modify Custody, for Relocation of Minor Child, and Other Related Relief and Countermotion for Confirmation of Primary Physical Custodian; Modification of Child Support; Strike Chris' Motion as Defective; and Reasonable Attorney Fees and Costs	AA00533-AA00581
4	08/05/16	Plaintiff's Closing Argument	AA00865-AA00896
1	03/15/10	Plaintiff's Motion for Permission to Return the Minor Child to the State of Nevada; UCCJEA Hearing; for an Order Awarding Plaintiff Primary Physical Custody (sic); Supervised Visitation; for a Pick Up Order; Child Support; Back Child Support; for Plaintiff's Legal Costs; Future Attorney's Fees; and Other Related Relief	AA00006-AA00026
1	04/08/11	Stipulation and Order	AA00030-AA00094
1	11/30/12	Stipulation and Order re Parenting Plan	AA00181-AA00198
6	08/12/16	Supplement to Opposition to Defendant's Motion to Reopen Trial or in the Alternative for New Trial Limited to Hear Testimony of Desmond Nance, filed 08/12/16	AA01312-AA01334
3	06/27/16	Trial Testimony Transcript dated June 27, 2016	AA00593-AA00696
3-4	06/28/16	Trial Testimony Transcript dated June 28, 2016	AA00697-AA00764
4	06/29/16	Trial Testimony Transcript dated June 29, 2016	AA00765-AA00830