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

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

Dated this _____ day of _____, 2013.

_____
DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

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

Approved as to form and content:

RADFORD J. SMITH, CHARTERED

By: _____
RADFORD J. SMITH, ESQ.
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Henderson, Nevada 89074
Attorney for Defendant



Docket 72880 Document 2017-36597

# EXHIBIT “3”

A.App. 1039

A.App. 1039

PENNSYLVANIA LawWeekly
www.thelegalintelligencer.com An ALM Publication

Family Law

# Concern Over Judicial Authority Drove Parent Coordinator Elimination

**BY BEN PRESENT**
*Of the Law Weekly*
*bpresent@alm.com*

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

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

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

*Ladov*

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

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

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

David L. Ladov, co-chair of the family law practice group at Obermayer Rebmann Maxwell & Hippel, summed up the high court's sentiment:

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

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

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

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

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

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

Meanwhile, the Lackawanna County

*See 'Coordinator' on Page 5*

Employment

Inside PLW

People in the News . . . . . 2

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# Coordinator

*continued from* **1**

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

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

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

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

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

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

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

"In the cases where it helped, it was a godsend," said Mary Cushing Doherty of High Swartz. "In cases where the parent coordinator was going beyond what was their responsibility, what the parents thought was their responsibility, the Supreme Court is pulling back and saying, 'we are not delegating judicial responsibility.'"

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

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

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

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

## 'Balls and Strikes'

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

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

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

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

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

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

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

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

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

## Psychologists' Involvement

Licensed psychologists and psychia-

*See 'Coordinator' on Page 12*

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## Coordinator

*continued from* **5**

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

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

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

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

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

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

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

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

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

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

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

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

Moving forward, Hoffman said his first order of business approaching the rule change's effective date is to notify his clients of the change.

Hoffman said he would be informing his clients who have parent coordinators that dispute resolution is going to have to go through court.

In wealthier counties such as Montgomery, Chester, Delaware and Bucks, Hoffman said the courts should prepare for increased filings and more backlog.

"It leaves families in tremendous limbo," Hoffman said.

Doherty, although she was not surprised the Supreme Court took the action, did not see a viable alternative to fill the upcoming void.

"Am I shocked the Supreme Court has done this? No," Doherty said. "But do I think we have a solution yet? No."

*Ben Present can be contacted at 215-557-2315 or bpresent@alm.com. Follow him on Twitter @BPresentTLI.* •

## Waiver

*continued from* **9**

Eakin said Pennsylvania law has upheld numerous releases for claims that had not yet accrued when the release

PENNSYLVANIA BULLETIN

# EXHIBIT “4”

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

### [ 231 PA. CODE CH. 1915 ]

### Adoption of Rule 1915.11-1 of the Rules of Civil Procedure; No. 577 Civil Procedural Rules Doc.

[43 Pa.B. 2559]
[Saturday, May 11, 2013]

### Order

*Per Curiam*

*And Now*, this 23rd day of April, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 40 Pa. Bull. 6512 (November 13, 2010):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1915.11-1 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in thirty days on May 23, 2013.

### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

### CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

**Rule 1915.11-1. Elimination of Parenting Coordination.**

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

**[Pa.B. Doc. No. 13-848. Filed for public inspection May 10, 2013, 9:00 a.m.]**

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SEP 11 2013

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Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>v.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO.: D-11-443611-D<br><br>DEPT.: Q<br><br>**FAMILY DIVISION** |

**DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER APPOINTING A PARENTING COORDINATOR AND THERAPIST FOR THE MINOR CHILDREN AS REQUIRED BY COURT ORDERED PARENTING PLAN AND DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SANCTIONS AND ATTORNEY'S FEES**

DATE OF HEARING: September 11, 2013
TIME OF HEARING: 10:00 a.m.

COMES NOW Defendant VIVIAN MARIE LEE HARRISON, by and through her attorneys Radford J. Smith, Esq. of the firm of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria & Kattleman, and submits her Reply to Plaintiff's Opposition referenced above.

I.

## THE COURT SHOULD ENTER VIVIAN'S PROPOSED ORDER APPOINTING A PARENTING COORDINATOR

Vivian has proposed an Order Appointing a Parenting Coordinator as contemplated by the Stipulated Parenting Plan filed with the Court on July 11, 2012. Vivian's goal in agreeing to the appointment of a Parenting Coordinator ("PC") was to avoid litigation over small matters, particularly in light of Kirk's propensity to file extremely long briefs, and exacerbate the cost of litigation. Vivian envisioned the PC as a simple cost effective method of resolving day-to-day non-substantive disputes.

Kirk has objected to Vivian's Proposed Order Appointing Parenting Coordinator (hereinafter "Order") as an unconstitutional grant of power. He has proposed an alternative order that essentially reduces the role of the parenting coordinator to a mediator with no power to enforce any recommendation. Contrary to Kirk's assertion, Vivian's proposed order is an appropriate and constitutional designation of a PC that is consistent with Nevada law, and both case decisions and statutes in other jurisdictions.

The PC's powers as set forth in Vivian's proposed Order, to decide day-to-day disputes and recommend resolutions to the Court, are the primary functions of PCs. Parenting Coordinators offer an alternative to expensive and protracted litigation over small disputes between parents. The procedure set forth in Vivian's proposed Order promotes the best interests of the children by providing a mechanism to resolve parental conflicts in a timely fashion.

### A. Vivian's proposed Order allows the parenting coordinator to make decisions resolving day-to-day conflicts between the parties and provides both parties remedies should they disagree with the parenting coordinator's recommendations

While Nevada does not have a statute that specifically pertains to the appointment of a parenting coordinator, the Courts in Nevada routinely appoint a parenting coordinator in custody cases under NRCP 53.

NRCP 53 states in relevant part,

> **(a) Appointment and Compensation.**
>
> (1) The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner and an assesor. . .
>
> **(c) Powers.** The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. . .

In *Cosner v. Cosner*, 78 Nev. 242, 371 P.2d 278 (1962), the Court found that a grant of the power to master or other subordinate official of the court was an unconstitutional delegation of the Court's power of decision.

Under Vivian's proposed Order, however, the PC would have no right to affect the custodial relationship of the parties; that is specifically prohibited by the Order. *See* Order Appointing the Parenting Coordinator attached as Exhibit "A" to Motion for an Order Appointing a PC, etc. filed on May 10, 2013, paragraph 6.

The PC's role would be to meet or confer with the parties regarding disputes in the enumerated areas, and make recommendations if the parties were unable to resolve the dispute. The parties have a mechanism for review of any recommendation to the district court and the Court's review is tempered by the acknowledgement that a party challenging a recommendation must provide substantial evidence in support of the challenge. *See* Order Appointing the Parenting Coordinator attached as Exhibit "A" to Motion for an Order Appointing a PC, etc. filed on May 10, 2013, paragraph 12.

While there is no reported case in Nevada regarding this issue, in *Jordan v. Jordan*, 14 A.3d 1136 (2011), the superior court of the District of Columbia used a statute similar to NRCP 53 in discussing the issues pertaining to the appointment of a parenting coordinator.

In *Jordan,* the parties were awarded joint legal and physical custody of the parties' two children and the Court appointed a parenting coordinator pursuant to D.C. Super. Ct. R. Dom. Rel. R. 53(c) to mediate and resolve any disputes concerning the children.[1] In that case, the court held that a parenting coordinator has the authority to make decisions about day-to-day issues, such decisions are not, in themselves, subject to the reporting requirements. Rather, the day-to-day decisions made by the parenting coordinator are analogous to the subsidiary decisions that special masters routinely make in other contexts — such as when special masters make evidentiary rulings, or make decisions about what methodology should be used to calculate damages. *Id.* at 1158 (quoting *Fed. Mktg. Co. v. Va. Impression Prods.*, 823 A.2d 513, 533-35 & n.13 (D.C. 2003) (co-special masters appointed to calculate damages arising from violation of consent decree excluded from consideration records that were "unavailable, voluminous or difficult to obtain"; made finding that certain acts did not violate the consent decree; chose to employ a "sampling methodology" instead of examining every transaction that occurred over the course of five years; and ruled on how "profits" should be measured).

These types of ***subsidiary decisions*** must be made in order for the special master to fulfill her duties. Such decisions are necessarily effective immediately, but may be reviewed by the trial court. *Id.*

[1] D.C. Super. Ct. R. Dom. Rel. R. 53, governs the use of "special masters," and provides, in relevant part:

> (c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearing and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary and proper for the efficient performance of the master's duties under the order.

The language set forth in Vivian's proposed Order Appointing the Parenting Coordinator is consistent with the language routinely adopted by the courts in the Nevada and in courts across the Country.

**B. The use of a Parenting Coordinator does not impinge upon Kirk's due process or equal protection rights**

Also in *Jordan,* Ms. Jordan contended that allowing the parenting coordinator to make day-to-day decisions about the children violates her right to procedural due process. *Jordan*, 14 A.3d at 1159. She asserted that this decision-making authority abrogates her right to determine the best interests of her children, and that the process contemplated by the Special Master Order allows the parenting coordinator to enter a "final order" on a disputed issue without giving her adequate notice and opportunity to be heard. *Id.* In deciding that issue, the court first noted that the parenting coordinator's power to decide day-to-day disputes is a standard feature in the cases overseen by the OPC; and indeed, the efficacy of the parenting coordinator would be greatly diminished without this authority.

The court then held that the use of a parenting coordinator under the circumstances presented does not unduly impinge upon Ms. Jordan's "fundamental liberty interest . . . in the care, custody, and management of [her] child[ren]." *In re J.T.B.*, 968 A.2d 106, 116 (D.C. 2009) (citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)). Ms. Jordan's liberty interest must be reconciled both with Mr. Jordan's liberty interest regarding the children, and with the principle that "a biological parent's liberty interest is not absolute, and must give way before the child's best interest." *In re J.T.B.*, 968 A.2d at 116 (internal quotations omitted); *see also In re A.H.*, 842 A.2d 674, 685 (D.C. 2004) ("In the final analysis, the state has the right and duty to protect minor children through judicial determinations of their interest."). Although the parenting coordinator may sometimes supersede Ms. Jordan's authority to make decisions regarding her children, the parenting coordinator may exercise that power only in limited circumstances, *i.e.*, where Ms. Jordan has a dispute with Mr. Jordan, who also has a

liberty interest in making decisions for the children; and where the dispute concerns only a day-to-day issue. *Id.*

The court in *Jordan* further held that even assuming that a fundamental liberty interest is implicated, that interest is adequately protected by the procedures available to a parent aggrieved by any decision made by the parenting coordinator. *Id.* at 1160. In that case, the Special Master Order required that the parenting coordinator's decisions be reduced to writing, and preserved the trial court's authority to "modif[y] or set aside" the parenting coordinator's decisions at the request of either party, through "a timely motion requesting judicial intervention." Ms. Jordan erroneously contended that the parenting coordinator has the power to enter "final orders," and may do so without revealing the evidence relied upon to make the decision at issue. *Id.*

The court in *Jordan* held that the review procedure outlined in the Special Master Order reserved "final" decision-making to the court, and the written record of the decision under review would presumably describe the basis of the parenting coordinator's decision. Although the process contemplates a limited period during which a decision by the parenting coordinator will be in effect before the trial court has an opportunity to review it, this procedure for resolving day-to-day disputes serves a valid government interest. The day-to-day disagreements at issue often will require immediate resolution, and courts are not able to adjudicate such matters in the necessary time frame. The procedure established by the Special Master Order promotes the best interests of the children by providing a mechanism to resolve parental conflicts in a timely fashion. *See Barnes v. Barnes*, 2005 OK 1, 107 P.3d 560, 565 (Okla. 2005) (holding that appointment of parenting coordinator did not violate procedural due process, and that "[t]he extent to which a parent may be inconvenienced by cooperating with a parenting coordinator is subordinate to the need to protect the child's welfare"). Accordingly, the procedure outlined in the Special

Master Order for resolving day-to-day disputes did not violate Ms. Jordan's right to procedural due process.

Similarly, here, the parenting coordinator's powers as set forth in Vivian's proposed Order, to decide day-to-day disputes, is a standard feature in the cases overseen by the parenting coordinators. Indeed, the efficacy of the parenting coordinator would be greatly diminished without this authority.

If the Court were to adopt Kirk's proposed order appointing a parenting coordinator, the parenting coordinator will essentially be limited to the role of a mediator. The purpose of the parenting coordinator is to resolve minor day-to-day issues and avoid costs and fees that the parties will incur if they seek judicial intervention for basic issues. If a parenting coordinator is limited to the role of a mediator, the purpose of appointing a parenting coordinator is defeated.

It does not appear that Kirk is in disagreement with the appointment of Dr. Stephanie Holland as the parenting coordinator in this case. Vivian moves for an order appointing Dr. Stephanie Holland as a PC in this case.

**II.**

**PURSUANT TO THE TERMS OF THE PARENTING PLAN, THE COURT SHOULD DIRECT THE APPOINTMENT DR. LISA M. LINNING OR DR. SHERA BRADLEY AS THERAPIST FOR THE MINOR CHILDREN**

Kirk does not object to the appointment of Dr. Lisa M. Linning or Dr. Shera Bradley as a therapist for the minor children. Accordingly, Vivian moves for an order appointing either Dr. Linning or Dr. Bradley as the children's therapist.

. . .

. . .

. . .

. . .

## III.

## CONCLUSION

Based on the foregoing, the Court should grant the request Vivian seeks in her Motion in its entirety.

Dated this 9 day of September, 2013.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
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*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

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

I served the foregoing document described as "DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER APPOINTING A PARENTING COORDINATOR AND THERAPIST FOR THE MINOR CHILDREN AS REQUIRED BY COURT ORDERED PARENTING PLAN" on this 9 day of September, 2013, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

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

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D
DEPT NO.: Q

**FAMILY DIVISION**

**DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND SANCTIONS**

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION STYLED REQUEST FOR REASONABLE DISCOVERY AND EVIDENTIARY HEARING**

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR EQUITABLE RELIEF;**

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR ATTORNEYS' FEES AND SANCTIONS;**

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR DECLARATORY RELIEF**



A.App. 1054

# UNNECESSARY

# PAGES OMITTED

# Exhibit “S”

**DECLARATION OF GARY R. SILVERMAN**
**DECLARATION EXECUTED IN THE STATE OF NEVADA (NRS 53.045)**

1. I am a licensed attorney in the State of Nevada. I make this declaration of my personal knowledge unless stated otherwise.

2. I am Mrs. Harrison's attorney.

3. I read Mr. Harrison's Opposition to Mrs. Harrison's Motion for Sanctions and Attorney's Fees.

***Preface***

Mrs. Harrison retained counsel to defeat a claim that sought her removal from the marital residence, that she become the visiting parent of children awarded to her spouse, and that she submit to conditions on sleeping arrangements, and blood tests for phentermine and testosterone (Husband's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence, September 14, 2011.) In support of his Motion, Mr. Harrison claimed, *inter alia*, Vivian had battered him, was a Phentermine and Bontril addict, had recklessly stunted a daughter's growth, slept with her daughters, and was an incurable narcissist (via the claim of "disorder" not "condition").

Mrs. Harrison resolved the case with equal physical custody, the marital residence, no blood tests or conditions on co-sleeping. She was further awarded a "teen exception" to equal custody, giving the girls the right to spend extra time with her as they might desire. Mrs. Harrison met and defeated Mr. Harrison's claims by showing those claims had little or no foundation in fact.

**(Rejecting settlement in the Jimmerson mediation and beyond.)**

4. James J. Jimmerson was selected as mediator and the mediation held for a day and a half in the week after Thanksgiving, 2011.

Mr. Harrison's settlement position, fairly characterized, was to enlist a mental health professional and resolve the case through a diagnosis, with "treatment" appropriate to that diagnosis to follow, but with various conditions imposed pending further review by the mental health professional, e.g., cameras in the home and girls' room, drug testing, a nanny to report on activity in the home, etc.

In my professional opinion, Mr. Harrison's settlement posture was designed to foreclose Vivian from gathering more facts, reduce or end her efforts to prepare for trial, and thus leave his claims unanswered. It was designed to keep the case out of the

critical of Vivian. This issue then had to be investigated and an expert, perhaps *the* expert in the field, enlisted to review the facts and give an opinion. That issue showed client and counsel no stone could be left unturned.[2]

Mrs. Harrison had little choice but to meet every attack (remarkably vicious and demeaning), every misguided claim, every theory, every strategy and tactic. Vivian Harrison did not start this fight nor did she ask for a fight on the scale on which Mr. Harrison attacked her. It is strange that Mr. Harrison filed a 180 page pleading seeking primary custody of two young girls and now claims fees were high because his wife had the temerity to resist him.

Mr. Harrison's claim the lawsuit was merely an attempt to "wake her up and get some treatment" defies credulity. Vivian knows Mr. Harrison best and she informed her lawyers they had to do all they could to help her. From the beginning of the case Vivian maintained that if he prevailed Mr. Harrison would strain and stretch her relationship with the girls to a thin tread of communication, and if the Court gave him primary custody, he would act as an intrusive and officious probation officer. Custody, for her, really *was* at stake.

Fight, she had to and fight she did. The result was Vivian met and overcame Mr. Harrison's claims. Mr. Harrison must know that the "teen" exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody.

Mrs. Harrison is neither crazy, mentally ill, disturbed, nor a drug addict. Three mental health experts said so, two of whom have world-wide reputations. Mr. Harrison simply claimed they were all either corrupt and incompetent.

Mrs. Harrison never neglected or abused any of the children, instead raised good, successful ones, while for most of their lives Mr. Harrison was simply not home.

The younger girls love their mother deeply, dearly, widely. Mr. Harrison cooked a scheme against Vivian that alienated the older girls, but which failed to capture the younger ones. But, before the matter settled, the case rent a family that even with estranged parents had soothed or overcome its routine hurts and differences, supported each other, and maintained the affection and care children need to stay intact. After settlement-wreckage.

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[2] Mr. Harrison claimed the experts Vivian retained were, essentially, prostitutes. Yet, he never rebutted them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date: Sept. 9, 2013, at this place: Las Vegas.

Signature: Gary R. Silverman

**NO NOTARY REQUIRED**



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

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

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

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

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

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

. . .

[redacted]

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

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

DATED this 1st day of October, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 30 day of October, 2013, at the hour of 10:00 AM [redacted] .m., or as soon thereafter as counsel may be heard.

DATED this 1st day of October, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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10091 Park Run Drive, Suite 110
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Attorney for Plaintiff

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

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

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

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

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

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



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

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

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

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

## II. STATEMENT OF FACTS

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**C. As a Consequence of the Existence of the "Teenage Discretion" Provision, Vivian Has Convinced Brooke She is Totally In Control Of Not Only Her Time, But Kirk's As Well.**

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

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

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

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

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The situation caused by the existence of he "teenage discretion" provision, combined with Vivian's inability to abide by the limitation of the same and her overt manipulation of Brooke, is untenable and not in the best interests of Brooke and Rylee.

## III. ARGUMENT

### A. The Best Interests of Brooke and Rylee Require This Court To Strike and Invalidate the "Teenage Discretion" Provision.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

. . .

. . .

. . .

. . .

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

> The Legislature declares that **it is the policy of this State**:
>
> 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage, and
> 2. **To encourage such parents to share** the rights and responsibilities of child rearing. (Emphasis added)

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

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

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

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

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

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

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

1. Vivian intentionally circumvented this Court's order to successfully take two of Kirk's custody days with the children and attempted to steal a third day. Vivian unilaterally changed the dates of the "sewing camp" (even though the "sewing camp" never changed dates) and by doing so, Vivian "took" two days from Kirk with the girls – July 31 and August 1 – and tried to take a third.

2. Vivian, upset with the parties daughter, Whitney, without Whitney's knowledge or consent, made over $1,200 in charges on a credit card account for which Whitney was responsible for payment.

3. Vivian has refused to give Tahnee and Whitney their birth certificates, and their childhood memorabilia, including childhood awards, school grades, class and individual school photographs, projects, crafts, etc. Both Tahnee and Whitney have requested their original birth certificates from Vivian. Vivian has either not responded or told them they are lost. Whitney has requested the storage bins containing all of her personal childhood memorabilia that Whitney organized. To date, Vivian has failed to provide the personal property, which indisputably belongs to Tahnee and Whitney. Both Tahnee and Whitney want their original birth certificates and their personal childhood memorabilia. Unless this Court orders that Vivian give these girls their property, they will never see

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

4. Whitney's wedding dress and other clothing were left in the marital residence. As part of her Physician Assistant training, Whitney was working in Southern Nevada during March of this year. Whitney attempted to get her wedding dress and other items of personal clothing when she was here in March. However, Vivian was "not available" and refused to let Whitney get her own wedding dress and clothes, if Vivian was not present. Vivian agreed Whitney could obtain her wedding dress and clothes when Whitney returned in July as Vivian would then be available. However, in July, Vivian rolled Whitney's wedding dress up in a ball with just a couple of other items of Whitney's clothes in a plastic bag and set it outside the front door. All of this begs the question as to why Vivian had to be present. Apparently, Vivian had to be present to not provide the majority of Whitney's clothes to her. Whitney would very much like to obtain the rest of her clothes.

5. Vivian has refused to give Kirk his copies of the bound books that Rylee wrote for her fourth grade class and for GATE. While in Kirk's custody, Rylee gave Kirk a form to purchase additional bound copies of the book that Rylee wrote for school. Rylee received a bound copy without charge. Since the money had to be paid within just a few short days, Kirk ordered two bound copies – one for Vivian and one for Kirk. Kirk has never received a copy of this book. Rylee also wrote a book for GATE. Rylee received a free bound copy. Although Kirk never saw the form, there was also an opportunity to purchase additional bound copies of this book written by Rylee. Kirk never received a copy of either book. Kirk has sent several emails to Vivian in an effort to obtain bound copies of these books, which were written by Rylee. Vivian has never responded. Unless this Court orders Vivian to provide these books, Kirk will be relegated to attempting to enlist the assistance of Rylee's school and the GATE teacher in an effort to obtain his bound copies of Rylee's books from Vivian.

6. Despite Kirk's name still being on the title to the marital residence, Vivian, without Kirk's knowledge or consent, hired an unlicensed handyman to perform significant structural work at the marital residence, who caused damages to the property and neighboring properties estimated to be in excess of $150,000.00. But for Vivian's attorneys ongoing delay, of well over 7 months, in revealing their objections to the Marital Settlement Agreement, Kirk would not be in this precarious position.

7. Vivian has filed a frivolous lawsuit against Dr. Roitman in Washoe County, despite the lack of any legally cognizable ground to do so – Dr. Roitman did not owe Vivian a tort duty.

8. Vivian and Kirk agreed to a division of personal property located at the marital residence and identified on the personal property list prepared by Joyce Newman. Pursuant to that agreement, Kirk was to receive the old stairmaster. When Kirk vacated the marital residence he forgot to take the old stairmaster. As soon as Kirk realized his error, he notified Vivian and requested that he be allowed to come pick up the old stairmaster. Vivian has refused.

## IV. CONCLUSION

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

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

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

DATED this 12th day of October, 2013.

KAINEN LAW GROUP, PLLC

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

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

KIRK R. HARRISON, declares and says:

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

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

FURTHER AFFIANT SAYETH NAUGHT.

Kirk R. Harrison

State of Nevada
County of Clark

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

Notary Public

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

**EXHIBIT "1"**

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

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

Sent from my iPhone

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

> I took Brooke to your house directly from her school dance rehearsal at Dance Etc., with the understanding you would return her in two hours or less. That is the amount of time Brooke requested. Brooke was at your house at 2:50 p.m. You just dropped her off at 8:00 p.m. This is unacceptable.
>
> **From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
> **Sent:** Saturday, August 24, 2013 6:40 PM
> **To:** Kirk Harrison
> **Subject:** Re: dance shoes
>
> Lol.....we know the truth, do you know what yr the store ur referring to closed in BC??!! Funny Rylee Brooke & I have no recollection of the one time u went to trader joe store to by an outfit. if u did go once, ha ha congrats!!!! ur such a good dad!!!!u don't even remember the name of the store. Too funny.,.,,
>
> Sent from my iPhone
>
> On Aug 24, 2013, at 5:00 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:
>
> > You have no idea what you are talking about. I bought Brooke a pair of ballet shoes at the store in Boulder City before they closed. The next year I bought them both dance shoes and clothes at the store near Trader Joe's. Rylee had a growth spurt and sometime later went to the same store and bought Rylee two new leotards and Brooke a pair of shoes. You are the one that is recreating the past by attempting to minimize my role in their lives with your lies.
> >
> > **From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
> > **Sent:** Saturday, August 24, 2013 3:08 PM



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**To:** Kirk Harrison
**Subject:** Re: dance shoes

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

Sent from my iPhone

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

> I have bought shoes and dance clothes there in the past. I assumed you had as well.
>
> ---
>
> **From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
> **Sent:** Saturday, August 24, 2013 1:42 PM
> **To:** Kirk Harrison
> **Subject:** Re: dance shoes
>
> You & I have never bought shoes there in the past.
>
> Sent from my iPhone
>
> On Aug 24, 2013, at 1:01 PM, "Kirk Harrison" <kharrison@harrisonresolution.com> wrote:
>
> > Vivian,
> >
> > Brooke has told me that you and she have made plans to go buy dance shoes for her this afternoon. I will take Brooke to your house shortly after 2:30 p.m. I am assuming you are going to the dance store in the Trader Joe's shopping center at Sunset and Green Valley Parkway, where we have purchased dance shoes and clothing in the past. Brooke said that she expects to be back in two hours or less.
> >
> > Kirk

0001

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff(s),

-vs-

VIVIAN MARIE LEE HARRISON,

Defendant(s).

CASE NO. D443611

DEPT. NO. Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR OPPOSITION TO MODIFY RE: PARENT/CHILD ISSUES, ETC.

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded.** (NRS 19.0312)

*NOTICE:*

*If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*

**Mark correct answer with an "X."**

1. No final Decree or Custody Order has been entered. ☒ YES ☐ NO

2. This document is filed solely to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order If YES, provide file date of Order: ____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☐ IS ☒ IS NOT subject to $25 filing fee

Dated this 1st of October, 2013

Carol Navarro

Printed Name of Preparer

Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

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Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

**FAMILY DIVISION**

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

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

DATE OF HEARING: October 30, 2013
TIME OF HEARING: 9:00 a.m.

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



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

## I.

## INTRODUCTION

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

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

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

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

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

Can Kirk believe his present motion has merit? He argues that a provision recognizing teenage discretion violates public policy even though Nevada law ***requires*** the court to weigh such discretion when determining the best interest of a child.[2] Kirk's refusal to name or approve a therapist or PC for 14 months, his attempt to reduce the power of the Parenting Coordinator to nothing[3], and his current meritless Motion are not good faith attempts to protect the children, but are instead designed to prevent the children from having any mechanism to express their continued desire to spend more time with Vivian. It is a fair inference Kirk believed that if he could torpedo the entire process, he could prevent the inevitable conversation between the children and therapist/Parenting Coordinator about custodial time. It is submitted Kirk entered the Parenting Plan in bad faith, and refused to name a therapist or Parenting Coordinator to block its effect and enforcement. Vivian must now come directly to the Court for relief.

[2] NRS 125.480(4)(a)

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

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

## II.

## STATEMENT OF FACTS

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

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

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

> What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care – we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.
>
> Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. The provision does not place the responsibility of choosing on Brooke, it simply gives each child discretion after 14 to spend more time with one parent or the other, a request that will likely be granted to them in any event by the Court. Again, the provision is designed to avoid litigation.

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

**1. <u>Brooke and Rylees's Longstanding Desire to Live Primarily with Vivian</u>**

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

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

> So that's one of the subfactors that I have to look at, looking at the physical, developmental, emotional needs of the children and the nature of their relationship with both parents. It may be some form of pre-focus assessment to the extent that I need the involvement of an evaluator—again, not for the purposes of a custody evaluation, that's ultimately my decision, but there may be some assistance in providing insight really as it relates to those three subfactors NRS 125. 480 and whether – and who provides that service.
>
> If it's someone on our provider list, I view it as something that expands more beyond just a simple FMC interview of Brooke, especially if [Rylee] is going to be involved – not necessarily for expressing a preference—but for purposes of evaluation her physical, developmental -- and that's been discussed throughout the papers and some of the conditions and treatment that she's going through, as well as the nature of her relationship with both parents.

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

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

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

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

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

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

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

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

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

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

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

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

- Declaration of Kellie Wendt: 2005-2012: Vivian attended games, dance recitals, rehearsals, and birthday parties, traveled to Disneyland, and took the girls Trick-or-Treating. Vivian is "present" and involved.

- Declaration of Melissa Mojica (gymnastics teacher), 2006-2008: Vivian brought Rylee to gymnastics and stayed to watch. Vivian was "involved and enthusiastic."

- Declaration of Brandi Carstensen (gymnastics teacher and fellow parent), 2006-2009: Vivian did majority of driving and waiting for holiday event across town; Vivian assisted and volunteered at school. "Deeply involved in [the children's] wants and was very attuned to their needs."

- Declaration of Noel Kanaley (Rylee's room parent) 2010-2011: Vivian was co-parent in Rylee's classroom. Vivian responded to every parent request, contributed to and participated in classroom parties and events. Vivian is "intimately knowledgeable about their activities, hopes and desires."

- Declaration of Lois Klouse (Brooke's 5th Grade teacher) 2008: Vivian alone was "concerned for their advancement in swimming, who initiated the call and then arranged for private swim lessons"; Vivian was "engaged and absorbed in the children. She knew their habits and needs and she knew how to deal with them in constructive ways. She was interested in them. She was genuinely interested in their activities."

- Declaration of Kelley Gray, (fellow parent): "Vivian was engaged and absorbed in Rylee's life"; Vivian participated in Rylee's activities.

- Declaration of Laurie Larson, (neighbor and friend)[4] "I emphatically state that I never understood I was signing a document which inferred I was 'in support of' primary custody and exclusive possession of their residence for Kirk Harrison . . . I do not claim that Vivian never drove the children to school or activities." Vivian is a "caring, involved and supportive mother."

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

- Declaration of Azure Fectau (Rylee's 3rd grade teacher) 2011-2012: Vivian has participated in a variety of school events and is "an interested, caring and energetic volunteer."

- Declaration of Gretchen Poindexter 2008: "Vivian was focused on Rylee and her swimming efforts" 2010 -2011 – "I recall seeing Vivian drop off and pick up from school from time to time[.] I have seen her assisting at the school. It appears to me that Vivian and Rylee have a very strong mother-daughter relationship."

- Declaration of Sue Broadbent 2008-2009: "I am certain I routinely saw Rylee and her mother and my grandchildren at soccer games in those years."

- Declaration of Tina Coleman 2007-2010: Vivian was actively involved in children's school.

- Declaration of Rosaleen Thomas 2010: "During her summer visit in Ireland . . . Vivian regularly spoke to the girls, and I said hello to them several times on Skype. She was very excited about their coming to Ireland; she was researching/planning what they were going to do when they came. One place in particular which was earmarked for a visit was the leprechaun museum in Dublin."

- Declaration of Lisa Morris, 2011-2012: "When Brooke Harrison was at King Elementary her mother Vivian helped with fund raising and other tasks in 2008 when she was a member of PAC. She was energetic, full of good ideas, always willing to donate her time and efforts. . . I have also witnessed Vivian attending the girls 2011 dance recitals and the 2012 parent observation dance classes in Boulder City, NV."

- Declaration of Sandy Wachtel, 2007-2011: "Since 2007, I have seen Mrs. Harrison at the dance studios, recitals, rehearsals and parent observation dates. I have seen her pick up and drop off, along with Mr. Harrison. I have seen mother and daughter Brooke interact there and at a few social events (including a birthday party this summer (2011)). It appears to me they have a solid, loving relationship; they like and love each other."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Although I believe you were totally wrong in what you did yesterday. I'm also willing to confess that I was wrong too. Can't we both just admit that we were wrong, or is it my fault as always? I know that you think that I disrespect you and don't appreciate what you do for me, but I think, deep down, you know that's not true. If you do believe it to be true, then I think you don't know me as well as you might have thought. Perhaps I just haven't gone about showing it as much as I should. You deserve better. I realize now your life must be awful. You go about your day taking care of all of your children as if it were your only responsibility. You never even think twice about doing something for yourself. Every waking hour is spent tending to our wants and needs. I know this, Mom.
>
> I'm aware of your sacrifices, and that's exactly why I used it against you. You hurt me where it hurts the most. My entire life I've been trying to live up to your expectations. I've always wanted to please you and make you proud of me. I honestly held your opinion in the *highest* regard. In the past few months, however, I felt our approval of me dwindling away. I failed you and myself. I can't stress enough how much my last semester of high school became an absolute embarrassment for me.

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

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

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

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

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

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

[5] This is not different from when Tahnee did not want him to attend the swimsuit portion of her beauty pageants. He did not, to Vivian's knowledge, blame Vivian for that.

practice for the entire time Brooke and Rylee have been in dance. Brooke told Vivian that she wanted Vivian to take her shopping. This did not come as a surprise; Vivian cannot remember a single instance where Kirk bought dance clothes or shoes for the children while Vivian and Kirk were together.

Kirk admits that he argued with the girls when they told him that they could not remember him buying dance shoes or clothes for them in the past. Motion, page 7.[6] Because Kirk's involvement in dance has been limited to driving the children, he does not understand that the children do not equate the purchasing of leotards at Target with the purchase of dance clothes and shoes, which they purchase from a specialty store. Kirk has attempted to create a new reality whereby he was involved in the purchase of dance clothes for the children – he was not, and he was not justified in chiding Brooke for spending time shopping with Vivian.

Further, Kirk presents Brooke's desire to be at Vivian's home to dress and do make-up with her friends for their first Homecoming Dance as an act of alienation by Vivian. It is telling that Kirk does not understand Brooke's desire to be with someone who is skilled and experienced in applying make-up, and who taught *her* how to apply make-up. Also, Kirk leaves out important facts. Brooke and her friends planned to go from one mother's home to another when preparing for the dance. Brooke and one of the friend's mother's told Vivian about the plan. The plan involved the girls traveling to three different homes for different events (hair and make-up at Vivian's home, other events at two other homes).

Moreover, Brooke is a very feminine girl who has discussed her interest in being a make-up artist. Kirk's response to her is that she is too intelligent to be a make-up artist, and should consider law or medicine. While a 14 year old may change her idea about a career many times, dismissing her stated

[6] In his emails attached to his Motion as Exhibit "1," he states (in an email to Vivian dated August 24, 2013 at 5:00 p.m.) that he had purchased a pair of ballet shoes for Brooke "at the store in Boulder City before they closed" (he could not identify the name of the store or when it closed). The store to which he referred is Danceworks, that closed in ***2007***. Vivian has no recollection of Kirk ever purchasing any shoes at that store. In comparison, Vivian regularly purchased dance supplies and clothing there from the time the parties' adult daughters Tahnee and Whitney were involved in dance, to the time of its closure.

desire as frivolous puts an end to communication. Vivian has not done this, and will love and support Brooke if she eventually chooses to be a make-up artist, surgeon, or a circus clown. Vivian understands that Brooke is now in a different developmental stage in her life, and criticism and behavioral demands must give way to patience and encouragement. Kirk does not share that view.

In August, 2013, Vivian travelled with the children first to a Disney Cruise, then to Disneyworld, and then to Huntsville, Alabama to their annual trip to sewing camp. Kirk planned to travel with the children upon their return to an amusement park near Salt Lake City, Utah, for eight days. Brooke (who was then experiencing cramps) was tired, and wanted to rest at the hotel the first day of the trip. Brooke's statement of Kirk's actions was set forth in an email that Brooke sent from her iPad to Vivian on that date:

> Dad took my phone away and he is being so mean to me. There is no other way to contact you except email. I'm sorry Rylee is next to me in one bed watching her iPad and dad comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to stay in the hotel room because apparently we're staying here for another 8 days. He rips my phone out of my hands takes off the charger and headphones and he asks me why i'm listening to people who are telling me that he is a bad person (he is referring to you) I tell him there isn't and he says its not good to lie. Then he states that I am lying about being hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts going on about he raised me since I was 7 and how he took me to school. Then he asked why I don't love him and I said he doesnt respect privacy, he barges in, doesn't support me in anything I do, Then he asks what he doesn't support me in, and I say dance and he says he drives me to and from and he pays tuition. Then, I say that he doesn't support me in Makeup Artistry and then he says that he's bought me makeup and that what else can he do to support me. And then I say that he always says he'd rather me be a lawyer or a doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show is done and she closes her iPad because dad stated earlier that she MUST stop after that episode. So she turns it off and dad not respecting Rylee starts saying how if he died today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate him. Then he starts calling me selfish and how I don't want to do anything with the family and I say we aren't a family. Then I start to ignore him while he starts blaming everything on "the person that is telling me all about the bad stuff isn't doing the right thing and how its affecting our relationship. He walks back to his bed and says that he is sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm around her and turns away from me. Then I ask dad for my phone because I want to talk to you and he says no and then I say he is not letting me talk to you. Thats all that happened. I miss you mommy. I want to come home and be with you and Rylee without her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

**Exhibit "F"** attached. Brooke's email outlines several of Kirk's behaviors that are part of a larger pattern that has damaged his relationship with Brooke.

1) *Kirk's Disparagement of Vivian:* Nothing is more divisive to children than one parent speaking poorly about the other parent whom they love. Brooke describes Kirk's thinly veiled assertion that Vivian is telling her that Kirk "is a bad person" and asks why she is "listening" to Vivian. When she denies that Vivian has said that (Vivian has not disparaged Kirk to the children), Kirk suggests that she is lying.[7]

Vivian is particularly concerned about this issue. Before and during this case, Kirk stated to others, including the parties' adult children and Vivian's real estate lawyer (Mr. Woodbury), that Vivian was both a drug addict and suffered from mental illness. In an act of enormous insensitivity, he solicited the adult daughters to provide affidavits in his efforts to limit Vivian to supervised visitation. As evidenced by his recent filings, he continues to assert that Vivian suffers from mental disorder. In his present motion, he again asserts DSM-IV findings without an expert report or opinion. Kirk will never fairly present Vivian to Brooke or Rylee, or refrain from directly, or indirectly suggesting that she suffers from some disorder. It is difficult to imagine that if Kirk believes Vivian is mentally ill, he does not say so around the house. We already see this in his thinly veiled reference to her as someone who has led the girls astray, and who they should not trust.

Moreover, Kirk's filings in this case, including his present motion, evidence his repeated efforts to both directly and indirectly convince the children, both adult and minor, that Vivian does not care about them, and that she is "crazy." Kirk continues to try to plant seeds with the younger children to lose confidence in Vivian, and to think poorly of her. He disguises his statements as being "supportive" and

[7] Kirk's assertion that the children are lying adds them to a long list of anyone who has taken a position contrary to Kirk's. Littered throughout Kirk's filings are claims that Vivian, her friends, neighbors, coaches, counselors, experts, and attorneys are "perjurers", "liars" and "co-conspirators." He specifically told Brooke that she was lying when she explained to Kirk that (contrary to his repeated assertion in this case), Vivian was not in the children's bed when Rylee fell out of bed and hurt herself. *See,* Affdavit of Vivian, filed October 27, 2013, page 77, paragraph 209.

either does not see it, or does not think anyone else will see it, as harmful or abusive. There are numerous examples of this in Kirk's filings, including the present motion. The following are just a few examples from Kirk's initial affidavit filed in this case (attached to his September 14, 2011 Motion).

> ¶68 "I told Brooke Mom is going through a rough time right now."
>
> ¶97 Conversation with Brooke reminding her of all the times Vivian was going to be gone, discussing his "concerns" with what Vivian has done in the past.
>
> ¶116 "Brooke told me tonight that Vivian talked to her about she and Rylee going to Ireland this summer. . . I told Brooke that she could go for a week or two if I went as well."
>
> ¶151 "Later when I was consoling her I asked Brooke how she thought Rylee was dealing with all of this…"
>
> ¶156 "I believe Brooke knows that until very recently I would have quickly dismissed anything at all said that negatively reflected on Vivian. At some point, it is more important that your children have an environment where they feel comfortable speaking openly about things that bother them, than to continue to wrongly protect the image of someone that continues to do harm to your children."
>
> ¶166 "I told Brooke that just like she, Rylee and I had done all year, that we would do the laundry tomorrow."

It appears he planted these same seeds with the older children that he is now using to influence them.

> ¶28 "I would talk to each of the children separately in an effort to solve the then pending problem."
>
> ¶41 "I told Tahnee how bizarre it is for a mother to say such things to and about her own children, let alone even think such things. Tahnee and I both agreed how this highlights just how incredibly insecure Vivian has become and that Vivian feels she is in competition with her own children and feel threatened by them."
>
> ¶50 "I told [Tahnee] that in her mother's condition, if we got a divorce and Vivian had partial custody, I would be fearful for Brooke and Rylee."
>
> ¶53 "I told Tahnee that I had done all I could concerning Vivian, and all I could do was be the best father I could and that all of us needed to do our best in looking out for one another."

> ¶56 "I told Tahnee that Vivian does not really think Chloe is a better dancer than her. Vivian is simply incredibly insecure and needs to tell others that they are not so hot. I told Tahnee about when Vivian last year told me that nobody wants to be with me."
>
> ¶69 "I telephoned Whitney and expressed concern about this to Whitney saying you are going to be on national television with someone who is not dealing with a full deck right now and it could prove very embarrassing."
>
> ¶75 "I told Tahnee that Vivian's need for attention is frightening."
>
> ¶106 "That night Tahnee, Joseph, and I talked about some of the issues with Vivian, including the incident at Brooke's ball game with Bill B. and her meeting a man on the airplane, giving him a ride to his hotel and having drinks with him in a bar, then discovering he was Cam W.'s boss. We also talked about her lack of attention to Brooke and Rylee."

In her affidavit filed with her initial motion, Vivian addressed Kirk's history of alienation of the children. *See* Affidavit of Vivian Harrison, attached to Opposition filed October 27, 2013, paragraphs 78 through 90. (That excerpt is attached hereto as **Exhibit "G"** hereto). In sum, Kirk undermined Vivian's authority, did not support her in disputes with the children, perpetuated falsehoods to them, and openly disparaged her to the children. His actions toward the adult children are now repeated with Brooke and Rylee.

Kirk's behaviors designed to disparage Vivian in the eyes of the children (including the adult children) have taken many forms. Kirk's repeated claim that Vivian "poisoned" Rylee has been a central theme throughout his case. Even after Dr. Dewan indicated that he was more concerned with Rylee's weight as a factor in her early onset of puberty than he was with any alleged exposure to testosterone cream, Kirk continued to raise alarms with Rylee and all the other children (and anyone who would hear his complaint) that because of Vivian her growth would be stunted, she would suffer ill effects of an implant, etc. In her Opposition to Kirk's Motion, Vivian provided sound medical data that evidenced in recent years more children were entering early pubescent development, and that the trigger was identified as everything from excess weight, to the use of anti-bacterial soaps. Nevertheless, Kirk rode his

bandwagon that Vivian "poisoned" Rylee to the point that Dr. Dewan wrote a letter stating that he did not make any finding that Rylee's puberty was caused by exposure to testosterone. *See* Letter of Dr. Dewan dated July 6, 2013, attached hereto as **Exhibit "H"**. In his most recent statement, dated October 14, 2013, and attached hereto as **Exhibit "I,"** Dr. Dewan confirms that he projects that Rylee will reach her normal height of approximately five-foot ten.

Even the way Kirk reacted to this news was manipulative. The alternative that Dr. Dewan proposed was that Rylee would be from 5'4" to 5'7", normal heights by any standard. When Dr. Dewan advised the parties of his findings regarding Rylee's height, Kirk acted as if he had just won the lottery. Rylee barely reacted, other than a puzzled look on her face. Kirk seems unable to comprehend that the message he was giving to a young girl who is naturally concerned with other's perception of her body is that she is okay when she is 5'10", but less than okay if she is shorter. This is particularly important in light of the height of her adult sisters (5'11" and 5'8).

2) *Kirk's Constant Assertion that Children are Lying*: No person – coach, teacher, friend's parent – who knows the girls will suggest they are dishonest sneaks or manipulators as Kirk suggests in his motion. The evidence will show they are honest, intelligent and forthright girls. But, Kirk suggests Brooke is lying about things he states Vivian said about him, claims that Brooke is lying about her cramps, advises both Brooke and Rylee that they are lying when they do not agree that he has purchased dance clothing and shoes for them, and with his proposition that he raised them "since [Brooke] was 7." Kirk's assertion that the children are lying places significant unnecessary pressure on them, and appears to the children as disapproval and a lack of caring. The emotional conflict caused by Kirk demanding that they re-write their history together is debilitating. It is this kind of behavior by Kirk that Vivian sought to address through a therapist and PC, but Kirk has undermined that process. Brooke is now suffering under Kirk's constant barrage of criticism and disapproval.

3) *Kirk's Use of Guilt to Manipulate the Children*: Brooke states that in her email that Kirk, after he suggested she was lying, turned to Rylee and stated, "if he died today [Brooke] wouldn't shed a tear and how [Brooke doesn't] want to be with him anymore and why [Brooke hates] him." Any experience as a parent or sibling permits us to understand how incredibly manipulative and damaging this type of statement is to a child, and to that child's relationship with her sibling. Rylee reacted in a way that can be expected; she turned away from Brooke when Brooke tried to hug her. Kirk manipulated Rylee into believing that Brooke was uncaring, and insensitive.

Indeed, one of the core forms of manipulation that Kirk has used to discourage Brooke from spending time with Vivian, or living with Vivian as she desires, is that she would be "abandoning" her sister. Kirk repeatedly tells her, and has solicited the parties' adult daughters to advise her, that she is being selfish and uncaring toward her sister by wanting to engage in activities away from her. The irony in this is that because Brooke and Rylee attend different schools (Brooke is in high school, Rylee in elementary school), are in different dance programs, and engage in different activities, they spend little time together under the current schedule. This is not unusual – siblings of different ages, particularly when the older sibling becomes a teenager, have different interests. In approximately a year Brooke will be driving. She will soon be dating, and have more interest in her peers than her parents or siblings. Again, this is part of the natural developmental stage that Brooke is in. Kirk's insistence that she must feel guilty about seeking her own independence is damaging to her.

Kirk also outlines in his motion how he uses name-calling to prevent Brooke from spending time with Vivian. Kirk states that Brooke takes too much time to retrieve items left at Vivian's home. Kirk then greets Brooke on her return to the car with allegations that she is rude, inconsiderate and selfish. (Motion, page 8). When she reasonably suggests that he leave her there (the parties' homes are minutes apart) and return, or have Vivian drive her back, he refuses. This situation is caused by the constant back

and forth from the parties' homes caused by the current schedule, but more important, Kirk should not be attempting to manipulate Brooke in this manner.

The above are only samples of various events, words and actions that has led to Brooke's now adamant desire to live with Vivian. Kirk is responsible for the breakdown in his relationship with Brooke, not Vivian. When negotiating the parenting plan, Brooke insisted that did not want to live with Vivian. Vivian could have sought primary custody, but believed that resolution, therapy and a Parenting Coordinator was the best way to allow Kirk to address his problems through the process, and was in the best interest of the children. Remarkably, Kirk has tactically undermined that process, and now seeks to destroy it.

## III.

## THE COURT SHOULD DENY KIRK'S MOTION TO MODIFY, AND CONFIRM THE PARTIES' TEENAGE DISCRETION PROVISION TO BE CONSISTENT WITH NEVADA LAW

A district court retains jurisdiction throughout a child's minority "[a]t any time to modify or vacate its order" pertaining to custody. NRS 125.510(1). Either party, or the Court, may seek to modify or terminate joint custody of a child if it is shown the modification is in the best interest of the minor child. NRS 125.510(2).

The standards for a change of custody apply to a request to modify visitation. *Wallace v. Wallace,* 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996)("A court decision regarding visitation is a custody determination.") *See also, Rennels v. Rennels,* 127 Nev. Adv.Op. 49, 257 P.3d 396 (2011)(once initial visitation order entered, standard for parent to modify grandmother's visitation is the *Ellis*[8] standard).

A district court must give deference to the agreements entered by the parties when presented a motion to modify custody. In *Rivero v. Rivero,* 125 Nev. 410, 216 P.3d 213 (2009), the Court said:

[8] *Ellis v. Carucci,* 123 Nev. 145, 161 P.3d 239 (2007)

> We conclude that the terms of the parties' custody agreement will control except when the parties move the court to modify the custody arrangement. In custody modification cases, the court must use the terms and definitions provided under Nevada law.
>
> Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy. Therefore, parties are free to agree to child custody arrangements and those agreements are enforceable if they are not unconscionable, illegal, or in violation of public policy. However, when modifying child custody, the district courts must apply Nevada child custody law, including Therefore, once parties move the court to modify an existing child custody agreement, the court must use the terms and definitions provided under Nevada law, and the parties' definitions no longer control. In this case, Ms. Rivero moved the district court to modify the decree. Therefore, the district court properly disregarded the parties' definition of joint physical custody.

Kirk seems to argue that the Court should consider terms of the parties' agreement when a party seeks to enforce it, but that the Court may modify the agreement freely provided such modification meets the statutory or case law standards for modification. (Motion, page 13, lines 19-28). This ignores the plain language of the *Rivero* decision. Under *Rivero,* a district should give *deference* to a parenting agreement *except* where the parties have used "terms and definitions" that are contrary to Nevada law. In *Rivero,* 125 Nev. 410, 2 the court ignored the definition of physical custody in the parties agreement because it was contrary to the law's new definition in the *Rivero* case.

Here the parties have not placed any new terms or definitions into their agreement. Instead, their experienced counsel negotiated, and the parties agreed upon, a provision designed to meet the needs of the children. The Court should give deference to that agreement.

The deference to parents' custody agreements arises from the fundamental notion parents act in the best interests of their children. *Troxel v. Granville,* 530 U.S. 57, 68, 120 S.Ct. 2054 (2009) . Nevada law adopts this notion in NRS 125.490 by its presumption, affecting the burden of proof, "that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody[.]"

Kirk suggests even if the deference to parents' custody agreements outlined in *Rivero* applies here, the "teenage discretion" provision in the parties' agreement violates public policy. He cites NRS 125.460:

> The legislature declares that it is the policy of this state:
>
> 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and,
>
> 2. To encourage such parents to share the rights and responsibilities of child rearing.

Kirk argues that giving a child discretion undermines the policy of "frequent associations and a continuing relationship" for that child--a denigration of the statute (NRS 125.480) that a mature child's opinion *must* be heard. Where the parties have joint physical custody, the district Court ***must*** render findings under the factors in NRS 125.480 when modifying a custody order. As referenced above, those factors include "the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody" and the "physical, developmental and emotional needs of the child." The analysis of those issues cannot be accomplished unless the Court recognizes the age of a child, and the effect of a child's desire to spend more time with one parent on the child's emotional well being. The Legislature commands the spontaneous choices of an intelligent child must be given weight, and the scale on which that weight is measured is her emotional and developmental well-being.

The recognition of the importance of giving teenage children a voice in their custody is universal. Virtually every state's law recognizes a teenager's discretion as a factor in custody matters.[9]

Granting a voice to teenagers in the desires of a teenage child has strong support in studies and guides addressing the custody of teenage children. In 2008, the American Bar Association published the

[9] Attached is an analysis of factors under each states law published in the *Family Law Quarterly,* Volume 46, Number 4, Winter 2013, pages 525-527. The analysis demonstrates that every state except Massachusetts recognize the "child's wishes" as a factor in determining custody.

second edition of, "A Judge's Guide: Making Child-Centered Decisions in Custody Cases."[10] That guideline constitutes a comprehensive overview of literature underlying issues surrounding the judicial administration and review of child custody cases. The guide is structured by separate analyses of the developmental ages of children. One of the developmental periods in the guide is adolescents between the ages of 14 and 18. That section addresses the importance of permitting the adolescent to be part of the process of determining custody.

The parties' teenage discretion provision is a model for provisions of its kind. It permits the child certain discretion that promotes a healthy sense of independence without modifying custody, protects the child by providing a third party that can assess whether the child is exercising that discretion for good reason, and provides an alternative dispute mechanism, through discussion of a PC, for the child. The provision is not unconstitutional, is consistent with Nevada law and nearly all other states, and promotes, not undermines, each parent's frequent associations with children.

## IV.

## THE COURT SHOULD DIRECT AN INTERVIEW OF THE MINOR CHILDREN, AND RESERVE A DATE FOR EVIDENTIARY HEARING ON THE ISSUE OF CUSTODY

As the basis of his motion, Kirk has quoted the children without corroboration, and has suggested that the children should have no voice in their custodial care. Kirk has described and admitted the breakdown in his relationship with Brooke. Brooke has repeatedly stated her preference to live with Vivian, and her disputes with her father are degenerating and escalating. Kirk has undermined the process defined by the parties to shore up his relationship.

The children are of sufficient age and maturity to form and intelligent preference as to their custody. They are model children. They receive exceptionally good grades in school, and no coach,

[10] The guideline is a joint project of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law. Relevant excerpts from the guide are attached hereto as Exhibit "J". The Guide is found at http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf and is 299 pages.

teacher, counselor, instructor, minister or other person who comes in contact with the girls would state they are other than "good kids and model citizens." Both children are engaged in dance, and Rylee is involved in sports.

The children have an extremely strong bond with Vivian – *in part* due to gender, and in part from her history of being the one parent who, throughout all their lives, gave them the type of care they wanted. Now, the activities they want to share with or in which they want to be overseen-by Vivian are the essence of their developmental stages of puberty and adolescence: A doctor's appointment addressing first period, the hip-hop dance demonstration, the purchase of dance clothing, advanced dance classes, the preparation (make up) for first Homecoming dance. Time with Vivian avoids placing the children in a position where they are pressured, and feel guilty or embarrassed.

Sadly, Kirk now undermines Vivian's general role as a parent, and her special role as the female parent, at this time of the girls' lives:

A. He purposely uses guilt as a method of punishing Brooke's need for an independent choice;

B. He solicited phone calls from adult children to Brooke to guilt her into staying in Kirk's care, and embarrassed her in front of the adult children;

C. He refuses to allow, or undermines, additional contact or time with Vivian.

D. He suggests to Rylee her sister is abandoning her, a false claim the serves no purpose but to cause anguish in Brooke and Rylee;

E. He interferes with the children's contact with Vivian; and,

F. He suggested repeatedly to Brooke that Vivian is doing something wrong.

The parties' parenting agreement provides the children an independent third party to discuss their thoughts, emotions and desires regarding any change, and to deal with the behavior of both parents in this

high-conflict divorce. But, Kirk tactically undermined that goal when he repeatedly refused to allow the children to be interviewed, avoided the publication of the results of that interview, and failed for fourteen months to name a therapist.

Kirk knows the children will tell the therapist they want to live with their mother because that is where they feel they will be most comfortable and happy. As in any totalitarian regime, a third party to whom the truth can be told is a threat--no free press is allowed. If there is a neutral third party to whom the children can speak, then Kirk's behavior will be addressed and his control eroded. And, as in such regimes, the creation of an external threat is necessary to justify strict controls. In this case the false external threat Kirk created is, sadly, the girl's mother.

Is the fact the girls want to spend more time with Vivian coincidence or conspiracy? Are there facts, e.g., age, gender, history of care and demeanor, which *in themselves* reasonably make the girls want to spent time with one parent more than the other, or is there a scheme by Vivian to alienate the girls from Kirk due to her perception of parenting as "competition" as Kirk contends? Vivian asks the Court FMC determine if the girls' wishes are genuine or artificial, spontaneous or coached, and start them on the road to peace in their family.

Vivian moves first for an interview of Brooke and Rylee to ferret out Kirk's factual assertions underlying his motion. Brooke has continuously and adamantly stated she wants to reside primarily with Vivian, and Kirk has defeated his own goals because he failed to give the therapist/coordinator system to which he agreed any chance for dialogue, counseling and compromise with his daughters. Vivian asserts that the facts set forth herein constitute adequate cause for hearing on the custody of the children.[11] Vivian requests that the Court find adequate cause for hearing, and review the status or necessity of an

[11] In *Rooney v. Rooney*, 109 Nev. 540; 853 P.2d 123 (1993) the court held that a district court may deny a motion to modify custody where the moving party failed to show "adequate cause." Adequate cause exists where the facts alleged in the affidavits are relevant to the grounds for modification, and the evidence is not merely cumulative or impeaching.

evidentiary hearing on custody after the return of the children's interviews through the Family Mediation Center.

## V.

## KIRK HAS AGAIN UNNECESSARILY MULTIPLIED THE PROCEEDINGS IN THIS CASE

Though styled as a motion to modify the "teenage discretion" provision only, Kirk raised issues and sought relief that have nothing to do with the underlying motion. That has been his consistent behavior throughout this litigation.

At page 14 of his Motiom, Kirk lists alleged wrongs committed by Vivian that he claims are violations of Court orders or failure to "do the right thing by her own children." He does not appear to be seeking any specific relief, but appears to address these issues as part of his contention that Vivian has no regard for the rights or needs of the children. Vivian responds, in brief:

a. Kirk's contention that Vivian "took" days from him is false. Vivian's calendaring of dates was consistent with the Stipulated Parenting Plan;

b. Whitney owes money to Vivian for credit card use, not the alternative;

c. Vivian does not have Tahnee or Whitney's original birth certificates, and those certificates can be easily procured from the Dept. of Health and Human Services.

d. Vivian has not wrongfully withheld memorabilia owned by Tahnee or Whitney, and this allegation has nothing to do with the present motion;

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

e. The exchange of information from school would fall under the joint legal custody provisions, and arguably Kirk would be entitled to a copy of the GATE Book. Vivian has not withheld any copy Kirk ordered. She is attempting to find out what happened to the books Kirk indicates he ordered;

f. There is no violation of any Court order associated with any litigation in which Vivian is involved. Whatever litigation Vivian has initiated through separate, experienced and respected counsel cannot reasonably be seen to effect the children. This is yet another example of Kirk using irrelevant claims to disparage Vivian.

g. If the old Stairmaster was Kirk's by oral agreement at a hearing, he entitled to it. Vivian hopes to exchange that property with the mass of items he wrongfully removed from the home at the time he vacated. Again, this has nothing to do with the present motion.

What is relevant to the present motion is that Kirk continues to attempt to alienate the adult daughters by promoting this fantasy that Vivian has committed some wrong against them. Kirk's willingness to engage in this type of behavior bodes poorly for his divisive actions affecting the relationship of Brooke and Rylee.

## VI.

## CONCLUSION

Kirk's Motion is how he must now manage conflict in his home--he thwarted the therapist and PC. He takes no responsibility for the conflict; he blames Vivian. No law and a few tortured facts, *if any*, support Kirk's Motion. After the way that he conducted himself in this action, his claim that Vivian sees this case as a "competition," is his sad testimony he cannot see the effect his own behavior, and an admission he may lack any reasonable sum of self-awareness. He, not Vivian, leveled vile personal claims against the other parent, repeated the claims to the adult children, and then recruited them in a war

agaisnt their mother. He, not Vivian, sought supervised visitation. He-attacked every individual who had the felt need and decency to support Vivian and the children in defense of his all-out assault.

What was Vivian's course? During a year of litigation she steadily and consistently sought the same negotiated resolution: joint physical custody. She put her concerns regarding Kirk aside, and developed a system of "teenage discretion" that would allow him an opportunity to work with the girls. She gave him access to the girls, a therapist, and a PC for a year before Brooke turned 14, hoping to avoid conflict and permit the girls and their dad to mend and improve their relationship.

Kirk's response? Tactics, manipulation, litigation, rancor and bitterness.

Vivian now must request the *Court* address Kirk's poor relationship with Brooke, and the damage he causes when he demeans and manipulates Brooke and Rylee to eliminate Brooke's voice for the increased independence she must have as part of her natural development.

Kirk turned his back on peace in the family; instead, he fomented conflict. Now, to resolve the conflict Vivian must request the Court:

1. Deny Kirk's motion in its entirety;
2. Direct an interview of the children through the Family Mediation Center;
3. Find adequate cause for hearing on the issue of custody;
4. Award attorney's fees to Vivian under EDCR 7.60, and the factors set forth in *Brunzell.*

Dated this 17 day of October, 2013

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
*Attorney for Defendant*

## CERTIFICATE OF MAILING

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

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

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

on this 17 day of October, 2013, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

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

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

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

An employee of Radford J. Smith, Chartered



A.App. 1111

# EXHIBIT "A"

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

SMITH & TAYLOR
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TELEPHONE: (702) 990-6448
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RSMITH@RADFORDSMITH.COM

February 4, 2012

**VIA FACSIMILE**
Edward Kainen, Esq.

*Re: Harrison v. Harrison*

Dear Ed:

I find it remarkable that you have time to write a long, detailed letter, but you cannot provide responses to basic discovery that you promised me weeks ago. You have not offered any explanation as to why you have not responded to the discovery. I can only assume that you do not want to provide the information because it could be damaging to your client's position.

Further, I requested in my letter of February 2 that you provide me a copy of the phone records your client received yesterday. Those records were requested as part of our discovery. Please let me know whether your client is willing to provide those records.

Moreover, you have not responded to my letter of January 27 seeking your explanation regarding your intent to reveal Vivian's confidential medical records to lay witnesses, including Ms. Roberts. If I do not hear from you, I will be forced to seek a protective order. I cannot understand why you refuse to address this matter. Your only explanation to me at this point is that the use of the records is some sort of "set up." That does not provide adequate explanation for revealing confidential information.

In addition, I have not received a copy of the records from Marvyn Gawryn that you received on the date of his scheduled deposition. Since I do not have the records, it is difficult for me to comment on your claims, other than I think your theory that Gawryn coached her regarding tests is nonesense. It seems to me that the person in the best position to address your allegations would be Mr. Gawryn, so I do not understand why you cancelled his deposition. Before you make allegations about his interactions with Vivian, you should give him the opportunity to address those allegations.

I wanted to confirm that your deposition of Dr. Margolis is a COR deposition. I presume that you do not intend to have her appear for the deposition. I note that the deposition is set at a time that I could not be present, but again I am assuming that your notice is intended to seek records, not take the deposition of Dr. Margolis. I trust you will contact my office first before setting depositions that I have to attend, and I will give you the same courtesy.

In regard to the allegations contained in the letter, I note again that Vivian made special efforts to preserve your client's phone number, which, of course, is contrary to your client's contention that she intended to cancel his number. Please explain to me why she would go to the trouble of contacting me to write a letter to you telling you how your client could preserve his number if she intended to cancel it.

In regard to your allegations regarding the production of billing statements, at the mediation with Mr. Jimmerson both Gary and I provided Jim with redacted billing statements and it is our understanding that those were provided to you. In any event, I am willing to exchange redacted statements with you if you are willing to provide all of Kirk's redacted statements.

I disagree with your statement that the Court did not expect you to provide billings, and in any event you already agreed to provide them to me by January 23 (approximately two weeks after they were due under the document requests served on your office). In our case, I believe the Court indicated that I could provide the information this week, but that he wanted the brief filed by close of business on Friday. Again, if you would like to exchange those documents, let me know.

In regard to Kirk's allegations regarding Vivian's behavior, your recitation of allegations in the letter, with the corresponding threat to show the letter to the judge, suggests to me that you have prepared the letter for that purpose - to show it to the judge. Such a submission would be a violation of our rules. It appears that Kirk is simply looking for a way to get more allegations before the Court. Vivian does not agree with your client's recitation of the events, and indicates to me that he has mistated the facts. In any event, we can all agree that either party showing disrespect to the other in front of any of the children, either your or old, is damaging to this family. I wholeheartedly disagree with your assessment of Kirk's statements and actions outlined on pages 45 through 47 of Vivian's Opposition and Countermotion. I do not believe the quotes were taken out of context, and I believe they demonstrated Kirk's willingness to belittle and marginalize Vivian to the children.

Vivian indicates that both Kirk and Vivian were present when the current video system was involved, and that she has done nothing with the equipment since it was installed. She was not in charge of the system, and she hoped and believed that the system had caught the events of October 14 on video.

In regard to your request that we now have a fifth psychologist or psychiatrist get involved in this matter, it is absolutely unnecessary and will not resolve anything. We have tried in good faith to demonstrate to your client that Vivian is not suffering from any psychological disorder, and some of the best minds in the world have agreed. We have hired what we believe are the finest experts in the this area to address Kirk's claim, and we gave them all of Kirk's allegations so that he could understand that they were considering his positions. So you are clear, I am sending under separate cover the letters verifying that all of the pleadings and all of Vivian's medical records were provided to Dr. Applebaum and Dr. Ronningstam. The doctors reviewed the pleadings and the records and found that Vivian had no personality disorder of any kind. Let me suggest to you the obvious - the reason they did not find one is because none exists.

I am at a loss to understand why you do not proceed with an analysis by Dr. Roitman. I am curious whether you have provided him the pleadings that have been filed in this case, or the medical records, and I have no idea why you have not had Dr. Roitman interview Vivian.

The argument challenging our experts reports appears to be based upon your claim that the information provided to them by Vivian was inaccurate. I would be in a better position to know

how to respond to your requests if you would provide me an outline of that information contained in their reports that Kirk believes is false or incorrect.

In regard to your claim that Vivian has taken the children to the Atkinson's home for some nefarious reason, please allow for the possibility that the children simply want to spend time with her, and that your client has made it increasingly uncomfortable for her to be in the home. He has locked doors, gotten into her email, kept a running diary

Kirk's allegations all speak to the care of Brooke and Rylee, and address facts that the girls themselves can clear up. I suggest we have them interviewed immediately by Dr. Paglini so the results of that interview are available for the Court on the 10th. This might be the best way to resolve some of the outstanding issues.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc. Vivian Harrison (via email)
Mary Anne Decaria, Esq.
Thomas Standish, Esq.

# Send Result Report

MFP

TASKalfa 500ci

Firmware Version 2H7_2F00.012.012 2011.07.14

06/01/2012 15:47
[2H7_1000.023.001] [2H7_1100.002.003] [2H7_7000.012.012]

Job No.: 030960 Total Time: 0°00'52" Page: 003

# Complete

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RADFORD J. SMITH, CHARTERED

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|---|---|
| Thomas Standish, Esq. | Jolene<br>For Radford J. Smith, Esq. |
| COMPANY: | DATE: |
| Jolley, Urga, Wirth, Woodbury & | JUNE 1, 2012 |

| No. | Date and Time | Destination | Times | Type | Result | Resolution/ECM |
|---|---|---|---|---|---|---|
| 001 | 06/01/12 15:47 | 6997555 | 0°00'52" | FAX | OK | 200x100 Normal/On |

# EXHIBIT "B"

RADFORD J. SMITH, CHARTERED
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## FACSIMILE TRANSMITTAL SHEET

| | |
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| TO: Thomas Standish, Esq. | FROM: Jolene For Radford J. Smith, Esq. |
| COMPANY: Jolley, Urga, Wirth, Woodbury & Standish | DATE: JUNE 1, 2012 |
| PHONE NUMBER: 699-7500 | FAX NUMBER: 699-7555 |
| RE: *Harrison v. Harrison* | CASE NUMBER: D-11-443611-D |
| | TOTAL NO. OF PAGES INCLUDING COVER: 3 |

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

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

64 NORTH PECOS ROAD-SUITE 700 • HENDERSON, NEVADA 89074
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June 1, 2012

VIA FACSIMILE
Thomas Standish, Esq.

*Re: Harrison v. Harrison*

Dear Tom:

Thank you for your letter of May 31, 2012. I have had an opportunity to review the letter with Vivian. As I understand Kirk's position, he is requesting three modifications to the proposed MSA I forwarded to you on Friday, May 25, 2012:

1) He seeks to eliminate the "teenage discretion" language set forth in paragraph 6 of the draft parenting plan;

2) He seeks an additional 10 day period of care during the summer vacation months; and,

3) He seeks to change his time to have the girls in his care from Monday and Tuesday to Wednesday and Thursday of each week.

Let me address each of those requests individually:

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

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

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

2) *Summer vacation:* The girls have attended sewing camp with Vivian in the past. Brooke has gone to the camp for four years since she was eight years old, and Rylee attended last year at eight years old. It is an activity both girls enjoy, and sewing is considered a life skill. In order for the children to go to this camp, Vivian must accompany them, and she must enroll in the program. The camp is filled with days of instruction and sewing. Kirk is welcome to attend the camp. If the children do not want to attend the camp in the future, this issue is moot. Vivian does not feel it is in the best interest of the children at this time to expand the summer visitation periods, particularly in light of Brooke's current difficulty in her relationship with Kirk.

3) *Days of the Week:* Vivian too desires to have the children on Wednesday and Thursday of each week. She permitted Kirk to choose between an alternating week schedule and a five/two - two/five schedule, and she feels she should be able to choose which weekdays she has the children. Moreover, it is not our experience that mediations occur more often on Monday and Tuesday, and because there are so few there does not appear to be a substantial need to change the proposed plan. Vivian would be willing to work with Kirk to arrange exchanges in those instances that Kirk has a mediation that is going to last into the evening after the children are out of school.

Please call with questions.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc: Gary Silverman, Esq.
Vivian Harrison

# EXHIBIT "C"

**VIVIAN'S ACTIVITIES WITH THE CHILDREN SINCE THE ENTRY OF THE PARENTING PLAN**

Activities – (signed up scheduled & purchased equipment & provided necessary supplies)

Rylee and Brooke:

- Intensive Dance classes (ballet, Pointe, jazz, Character, Tap, Lyrical, Irish, Hip Hop, Musical theatre, Choreography) – private lessons as needed
- Piano Lessons – Rylee (scheduled during Vivian's visitation days)
- Voice Lessons – Rylee (scheduled during Vivian's visitation days)

Rylee only:

- Activity Days LDS Church (weekly) – Mondays (for Rylee's age group)
- Gymnastics – Rylee (scheduled during Vivian's visitation days)
- Sports
    - Basketball
    - Softball

MEDICAL

Make all Doctor appointments and try to schedule during Vivian's days

- Dr. Dewan Pediatric endocrinologist – every 3 months (5 since January)
- Dr. Malliner optometrist – every year (Brooke contracts)
- Lab draws – Rylee every 6 months
- Dr. Noorda orthodontist – 5 appointments since February
- Dr. Bybee dentist – every 6 months (3 since January)
- Dr. Gaal – Ortolarnyngology – Brooke – 1 apt
- Dr. McKnight – (7 appointments since November 2012 allergist)
- Dr. Smith GP – as needed[1]
- Dr. Jonathan Camp (2 apts – pediatric orthopedic surgeon)
- Dr. Rosemary Hyun (Pediatrician – 1 apt)
- Dr. Handler (dermatologist) – Rylee
- Dr. Christine Covetti (dermatologist) – Brooke
- Yearly flu shots
- Brooke-Contact lenses

SCHOOL

- Brooke signed up for Summer BYU Health Class for High School Credit
- Rylee- Nevada Citizenship – 3 countries, diagrams and projects

[1] Kirk's first appointment with Dr. Smith was a few days prior to filing the current Opposition and Countermotion.

- Great American Recital – Vivian and Rylee practiced daily for 2 months during summer (the Great American Recital includes – Reciting from memory, Gettysburg Address, Star Spangled Banner, List of Presidents first and Last names in order, US States & Capitals in alphabetical order, Preamble of the US Constitution, write pledge of allegiance.)
    - Because Vivian and Rylee practiced the above throughout the summer, Rylee was able to recite from memory all of the above in the 1st day of the school.
- Monthly book reports and 4 projects associated with that report (teacher ask Rylee if she could use hers as sample)
- Brooke –assisted in at least 6 different school projects last school year – provided Math Tutor (the projects included writing essays, preparing reports, etc.)
- Attended ALL Open Houses alone (girls were not in attendance with their Dad) and Parent teacher Conferences
- Bought backpacks & majority of back to school supplies

MISC

- Homecoming dress & shoes
- 8th Grade Graduation Dress & Shoes
- All hair appointments
- Nail appointments (holiday & special events – at least 7 times per year)
- Help Brooke & Rylee with hair and make-up ALL dance recitals, music & voice recitals, homecoming, graduation, etc.
- Set up Photography Session for head shots for Dance Resume and provided props (6 hour shoot at residence)
- Helped girls complete mandatory dance resume for Dance School
- Broadway Season Ticket Holders – Smith Center
- Family Disney Cruise & Disney World Vacation
- Beach Spring Brea
- Ski Trip planned Winter Break
- Week sewing Camp
- Taught Brooke to ride a bike
- Surfing

VOLUNTEER

- Rylee Classroom Parent – every other week
- Volunteer at School every week
- Parent Advisory Committee
- Field Trip Chaperone
- Dance Recital & Meeting
- Assisted at softball practice when needed

# EXHIBIT "D"

## LIST OF THINGS VIVIAN HELPED THE CHILDREN WITH

- She taught all of the children to read, and she has read extensively with and to all of the children. All of the children have reading awards for number of pages or minutes read during a specific school year. Before the children could read independently, Vivian read all of those pages with the children;

- The children have received mountains of awards based on academics. She was the parent who helped the children with the vast bulk of their homework, but she certainly agrees the children worked very hard at their schoolwork. Kirk may not understand, however, that children do not always run naturally toward schoolwork after school, and there were many times where Vivian had to push all five children to study and complete their assignments and projects;

- Vivian supplemented the children's education by tutoring them during the summers utilizing the Abeka program;

- All of the children have taken swimming lessons. Some started with the "Mommy and Me" program at six months old, but all of them took Red Cross swimming lessons or private swim lessons. (Vivian's mother did not know how to swim, and Vivian was afraid of the children drowning);

- All five children have played soccer, and Vivian coached Joseph's soccer team;

- All five children have played on softball/baseball teams;

- The four oldest children have all played organized basketball;

- The older three children were "every sport, every season" (golf, basketball, volleyball, swim, baseball / softball), and all of them lettered in sports in high school;

- All the children have taken dance lessons (Joseph was the first boy in his dance school);

- Vivian sat through almost all of the full practices of all of the children. Even when they were in high school, Vivian sat through many of the practices, sometimes as the only parent in the stands (with Brooke in a baby seat);

- The older children were in karate when they were five, and Tahnee and Whitney achieved their junior black belts. Vivian believes that Joseph may have also, or was very close to it;

- All five children have taken piano lessons, while Brooke and Rylee have also taken violin, guitar and drums;

- The older children have received art instruction through the Parks and Recreation Department;

- Vivian took the children on many vacations to Disneyland alone (at least once per year and sometimes twice). Kirk and Vivian once took a vacation without the children to Paris, but Vivian asked Kirk if they could come back early because she couldn't stand to be away from the children and was worried about them. That is the only time she can ever recall being away from the older girls or Joseph during their childhood;

- Joseph played baseball for approximately six years when he was younger.

- All the children have taken golf lessons, and Joseph is pursuing a career in professional golf.

- All the children have been good students. Some have had different struggles and different strengths. Tahnee and Whitney are graduates of the prestigious and difficult International Baccalaureate program at Green Valley High School. Joseph struggled a little, but he was an excellent math student and an incredible golfer. Brooke and Rylee are both excellent students.

- There were days that Vivian was in the car driving the children to places 5 or 6 hours. The parties used to joke that Brooke grew up in a car seat.

- Tahnee and Whitney were both in the Miss Teen Nevada pageant and others. Tahnee was Miss Teen Nevada.

*See* Vivian's Opposition to Kirk's Motion for Joint Legal and Primary Physical Custody, et al. filed on October 27, 2011, pages 22-24

# EXHIBIT "E"

| Paragraph Number | Tahnee's Affidavit |
|---|---|
| 1 | Daughter of Kirk and Vivian |
| 2 | Affidavit is based upon my personal knowledge |
| | Graduated from college end of fall 2008, lived at home since January 2011. Prior to that lived at home each summer, |
| 3 | Thanksgiving, Christmas and Spring Break |
| 4 | Summer of 2005, Vivian took Brooke and Rylee somewhere for several weeks |
| 5 | After Summer of 2005 Vivian started to act differently |
| 6 | 2006, Kirk retires, Vivian started to withdraw |
| 7 | June 2008 - car ride - Vivian started belitting Whitney's intelligence and criticizing her weight |
| | January 30, 2009 - Vivian wanted to invite some other girl for a dinner with Harrisons and another family. Kirk said it won't |
| 8 | be appropriate, Vivian said she was leaving him |
| 9 | February 27, 2009 - Vivian threw coffee mug at Kirk |
| 10 | March 12, 2009 - Vivian said Kirk did not cook enough. Tahnee says that's not true |
| 11 | March 16, 2009 - Joseph's birthday party |
| 12 | When Kindles first came out, Vivian got one and became more isolated |
| 13 | August 29, 2009 - Tahnee saw Brooke on internet at an Ashley Tisdale fan chat room |
| 14 | September 2009 - Vivian told Tahnee she wanted to spend three to four months in Europe |
| 15 | September 12, 2009 - Vivian invited five or six 16 year old girls over to watch a movie in the home theater |
| 16 | Vivian's fixation with the show "Tudors" (around October 7, 2009) |
| 17 | october 12, 2009 - Jonathon Rhys-Meyers |
| 18 | October 13, 2009 - Justin Timberlake |
| | October 16, 2009 - about how Vivian talks in front of Brooke and Rylee about divorcing Kirk, Tahnee mentions how she |
| 19 | believes Vivian has deterioated in the past one year due to her Phentermine use, |
| 20 | October 20, 2009 - Kirk is trying to build an apartment at the ranch for Brooke and Rylee |
| 21 | November 13, 2009 - Vivian googled Jonathan Rhys-Meyers and expressed displeasure regarding his girlfriend |
| 22 | In New York - Whitney's fiancee's mother stayed in the same hotel room |
| 23 | December 4, 2009 - psychic |
| 24 | December 13, 2009 - Vivian got a procedure done on her face |
| | December 13, 2009 - during dinner with Kirk, Tahnee mentions that Jonathan Rhys-Meyers is involved in organization in |
| 25 | Ireland and the organization does philanthropic work in India |


A.App. 1128

December 23, 2009 - Vivian spent $875 on jacket and $500 each on two pairs of jeans
December 25, 2009 - Vivian bought a pair of books for $800
December 31, 2009 - Vivian got upset because Kirk took brooke and Rylee to see the movie "Avatar"
February 3, 2010 - Vivian buys Christian Louboutin shoes and a dress $1,395
Vivian goes to a basketball game in high heals and a leather coat
March 1, 2010 - Vivian talked about having fat injected into her butt, Tahnee talks about reading books regarding narcissistic mothers
March 8, 2009 - Vivian started sleeping with Brooke and Rylee again
April 5, 2010 - Salt Lake City, Utah to attend a Muse concert
April 16, 2010 - Driving home from Salt Lake, stopped at Mexican restaurant, Vivian gets upset with Witney
August 25, 2010 - While Kirk is recovering from a bicycle accident, Vivian was on phone with the psychic and could not take Brooke to her orthodontist appointment, later she was busy on facebook
October 3, 2010 - Vivian's relationship status on facebook is "single"
March 19, 2011 - Vivian removed Tahnee from her facebook
Tahnee says Vivian is self-absorbed, has uncontrolled fits of rage, etc.
Tahnee says that Kirk takes good care of Brooke and Rylee on a daily basis
Kirk should have primary custody


A.App. 1129

| Paragraph Number | Whitney's Affidavit |
|---|---|
| 1 | Daughter of Kirk and Vivian |
| 2 | Affidavit is based upon my personal knowledge |
| 3 | Graduated from college in spring 2009, lived at home after graduation until September 2010, spent summer during the college at hoem and come home for Thanksgiving and Christmas |
| 4 | 2005 - Vivian abruptly took Brooke and Rylee somewhere for several weeks |
| 5 | during this time, Vivian started acting differently |
| 6 | After Kirk retired in 2006, Vivian started withdrawing from other members |
| 7 | June 2008 - Car incident - belitting Whitney's intelligence, attacked Tahnee |
| 8 | Summer and Fall of 2008 - in Australia, Kirk's roommate and Kirk came down. When Whitney called Vivian, she said Kirk did not tell her "where the money is" and "to make sure the sharks can do their job" |
| 9 | July 31, 2009 - Drove Kirk's car to St. George to see a play - Vivian read Kindle |
| 10 | Middle of September 2009 - Vivian read all the time |
| 11 | October 2009 - Kirk spent 4 days at Ranch, Brooke and Rylee did not eat dinner until 10:00 p.m. |
| 12 | October 16, 2009 Tahnee and Whitney's discussion with Kirk re: Vivian talking about divorcing him, her adversarial behavior etc. |
| 13 | Summer of 2009 - Vivian said she's going to Europe |
| 14 | Summer of 2009 - Vivian's facination with Jonathan Rhys-Myers |
| 15 | November 2009 - Whitney's fiancee comes for Thanksgiving Dinner |
| 16 | October/November 2009 - Vivian starts having numerous treatments on her face, and started spending more and more time in her office reading |
| 17 | December 13, 2010 - Dinner with Kirk and Tahnee - Vivian wants to go to India because of Jonathan Rhys Meyers |
| 18 | Vivian sleeps with Brooke and Rylee |
| 19 | December 2009 - Vivian buys a pair of books $800 |
| 20 | January6, 2010 - Kirk said Vivian wanted Whitney to change her wedding date due to Vivian's elective plastic surgery |
| 21 | January 24, 2010 - Rylee's 7th Birthday - Vivian did not help in preparing for the party |
| 22 | Vivian went to California to have plastic surgery |
| 23 | April 5, 2010 - Salt lake City, Utah Muse concert |
| 24 | April 2009 -Vivian told Whitney that she is going to divorce Kirk |
| 25 | March 2011 - Vivian said Whitney has gained weight |
| 26 | Vivian most of her time in home office with door closed |
| 27 | Kirk should be granted total custody |


A.App. 1130

# EXHIBIT "F"

Sent from my iPhone

Begin forwarded message:

**From:** emmabharrison@aol.com
**Date:** August 5, 2013, 2:08:53 PM PDT
**To:** vivianlharrison@aol.com
**Subject: Dad**

Dear mom,

Dad took my phone away and he is being so mean to me. There is no other way to contact you except email. I'm sorry Rylee is next to me in one bed watching her iPad and dad comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to stay in the hotel room because apparently we're staying here for another 8 days. He rips my phone out of my hands takes off the charger and headphones and he asks me why i'm listening to people who are telling me that he is a bad person (he is referring to you) I tell him there isn't and he says its not good to lie. Then he states that I am lying about being hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts going on about he raised me since I was 7 and how he took me to school. Then he asked why I don't love him and I said he doesnt respect privacy, he barges in, doesn't support me in anything I do, Then he asks what he doesn't support me in, and I say dance and he says he drives me to and from and he pays tuition. Then, I say that he doesn't support me in Makeup Artistry and then he says that he's bought me makeup and that what else can he do to support me. And then I say that he always says he'd rather me be a lawyer or a doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show is done and she closes her iPad because dad stated earlier that she MUST stop after that episode. So she turns it off and dad not respecting Rylee starts saying how if he died today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate him. Then he starts calling me selfish and how I don't want to do anything with the family and I say we aren't a family. Then I start to ignore him while he starts blaming everything on "the person that is telling me all about the bad stuff isn't doing the right thing and how its affecting our relationship. He walks back to his bed and says that he is sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm around her and turns away from me. Then I ask dad for my phone because I want to talk to you and he says no and then I say he is not letting me talk to you. Thats all that happened. I miss you mommy. I want to come home and be with you and Rylee without her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

Love,

Brookie

# EXHIBIT "G"

**Harrison v. Harrison**

**Excerpt from the Affidavit of Vivian Harrison, Filed October 27, 2011**

78. Kirk claims that I have taken credit for the accomplishments of the children. Frankly, is absurd and ridiculous. I'm not sure from his explanation how he thinks that I took such credit. I certainly never said, "I earned that trophy", or "I'm Miss Teen Nevada", or "I hit that home run," "I won that State Championship," or "That Jr. Black Belt is mine", or "I took that math exam," etc. Did I see to it that they were signed up, had the proper equipment, and went to practice on a consistent basis? Yes, but their achievements are their own. I have been proud of my children's accomplishments like all parents, and if Kirk and others have heard me speak about my children's accomplishments, it's because in that area there is a lot I can talk about.

79. There have been times when I have discussed my role in the children's accomplishments with them. Our daughter Tahnee has a temper, and when angry can make very hurtful comments. For example, she has said, "I'm smarter than you," "have more talent than you", "am more athletic than you", "I went to a better college than you," "I'm going to be more successful than you," "You do nothing, you don't even work", "Its dad's money", etc. (all themes that I believe have been kept alive by Kirk since they are mentioned throughout his motion). I had conversations with Tahnee when she was in high school, after she said something along the lines of the foregoing quotes, reiterating the fact to Tahnee that she was able to achieve so much was because I supported her efforts. Tahnee would then allege I was trying to take credit. The problem wasn't that I wanted to take credit, the problem was that Tahnee was of the belief that she did not need to show any gratitude, and even worse, she could taunt me by telling me that I had no role in her achievements. Do I think she was grateful? Yes, I do. Do I

think she said things in the heat of arguments that suggested she wasn't grateful? Yes, I do. Rather than assuring her that I played any role in her success, it is clear (indeed, he even admits it) that Kirk instead fostered the notion, and continues to foster the notion, that I only did anything for Tahnee (or any of the other children for that matter) because I wanted to take credit for it.

80. One of the consistent problems in our marriage has been Kirk's lack of respect for me when dealing with the children. There are numerous times in his affidavits that he demonstrates this. When I would attempt to discipline the children by loss of privileges, he often undermined it. Kirk has on many occasions referred to me as a "freeloader" and he told me in front of the children "you don't work." He has even convinced the older children that I don't deserve "his money," a theme the two oldest girls have seemed to latched onto based upon their continual reference to things I buy (of course neither of them has ever suggested to me that I've spent too much on them). So the Court can see that Kirk's suggestion that I only buy things for myself is plain wrong, I have attached as Exhibit A-3 a list of purchases I have made on behalf of the children in the period from 2005 to 2011.

81. There are other themes besides the "your freeloading mother is spending too much of my money" and "she has stolen credit for all your achievements" mantra that he has used to try to alienate the children. Kirk's most recent invention is that I have favored Tahnee while growing up. I have never "favored" any child and I love them all immeasurably. Each child had his or her own individual needs and talents and interests, which I did my best to address. Whitney spent more time with her friends, because Whitney's personality is very gregarious and social. She loves to be around people; she is very social and has lots of friends. Tahnee's personality is quite different. She is much more introverted and enjoys spending time

alone. Tahnee loves to stay at home and read, draw and work on the computer. Being around people is exhausting for Tahnee and she has described herself as having social anxiety. I supported Whitney's decision to participate in extra-curricular activities and attend the LDS church. I supported all of the children in everything they did. Sibling rivalry and relationships are always complicated, and I did my best to help all of them.

82. Kirk makes much of the notion that Whitney, at age 13, expressed that she wanted to live with friends (she never actually did live with anyone else). Whitney had good friends who were LDS, and she wanted to go to church regularly. She looked at LDS families and compared them to Kirk and me, and she thought we fell short of her ideal. Again, she was 13 years old. Whitney remained in our home, and was very involved in church activities, student body office, and other leadership positions at school. Rather than allowing this to just die, Kirk brings this issue up over and over again. At no time do I recall every expressing to Whitney that she should move out of our house.

83. Kirk's repetition of problems that occurred while the children were in high school is on full display in his motion. He repeats again the incident where I smacked Tahnee and told her to get out of the house. Kirk, of course, has selectively used or distorted facts. First, he claims Tahnee was sixteen. In reality she was almost 18, and in her senior year of high school After arguing for a significant period in which Tahnee continued to belittle my parenting of our younger children, she punctuated her argument with a "F__k you," and I smacked her mouth. I am not proud of that fact, but it was a single incident. Contrary to Kirk's contention, that is the only time I ever recall smacking Tahnee in the mouth. I fully understand teenagers need to become independent and thus separate themselves from their parents. I also understand that this struggle for independence may lead to disagreements. I do not believe, however, that a

teenager's desire to gain independence grants them license to be rude, defiant and ignore their responsibilities

84. Both Kirk and Tahnee have failed to tell the whole story underlying that incident, and by doing so, have misrepresented it. Tahnee and I began having difficulties when she started high school. Our family was forced out of our Boulder City home because of a lawsuit Kirk was in with our neighbor, and we were renting a home in Green Valley. Tahnee and Whitney transferred to Green Valley High School and were accepted into the International Baccalaureate Program. Both girls made the golf team and Whitney also made the basketball team and served as an officer in the student government. During Tahnee's junior year she inexplicably appeared to be shutting down and exhibiting signs of depression. She became more isolated, quit her dance and piano classes, refused to practice golf, study for her prepatory ACT Kaplan practice exams and received multiple failing notices. *See* Exhibit A-4, attached hereto. She had also began to talk back and became openly defiant in front of Brooke who then was only three years old. I took Tahnee to Sue Beglinger, a family counselor, and then to a psychiatrist, Dr. Elizabeth Tully to prescribe medication. I was seriously concerned about Tahnee's failing notices, and I wanted to help her overcome her problem. Kirk's only input to this process was to criticize me for trying to "control" Tahnee. I was extremely thankful when the psychiatrist provided a medical note that allowed Tahnee additional time to turn in all late assignments, and Tahnee was eventually able to pull up her grades. Nevertheless, this was a very stressful time for the family.

85. We finally moved into a new home in Boulder City, and our fifth child Rylee was born in January 2003. My conflicts with Tahnee became more frequent and started to escalate. I asked Kirk to assist me in parenting the older children for months, but Kirk replied that I had "messed up the kids", and now I wanted him to "fix it." Instead of Kirk becoming supportive, he

began to undermine my authority by belittling me openly in front of the children. He started saying things like, "You know how your Mom is" and, "just walk away and wait until I get home." After a while, whenever I asked Tahnee to do anything she did not want to do she said, "No, I'll talk to Dad."

86. The day that I asked her to leave, we had been arguing for hours. When I went into a different room with the little girls, then three and a baby, she would follow and say more. The conversation became heated. I was tired, and I was angry that she continued to come after me even with the little girls there. I said things that I shouldn't have – the worst of which was mentioning the problems she had undergone earlier that school year. I know that hurt Tahnee, and she felt like I was abandoning her by telling her to leave. I simply wanted to stop the arguments, and I did not truly think she would be gone for any length of time. It was wrong, and I regret it, but what truly made it an incident that continues to be brought up over and over again is the way Kirk reacted.

87. Tahnee did leave the house that day, but I knew where she would go, her friend Heather's house. Tahnee had a place to go and was not in any danger or living on the street. I was hoping for two things, 1) Kirk would realize the severity of the situation and step up and help parent; and, 2) Tahnee would realize how good she had it and make a commitment to change and participate with her family in a positive nature. Instead, Kirk retrieved Tahnee from Heather's (exactly where I suspected she would go) and brought her home. In front of the children he said "this house belongs to the children" and that it was going to "always be their home no matter what they say or do." In other words, the children need not show me any respect, were free to do whatever they wanted or did not want to do at the home, and there was not going to be any consequence. Kirk expresses his view in his motion that the children's only

"fault" was to want some independence from me, or to dare to question a decision I made concerning them.

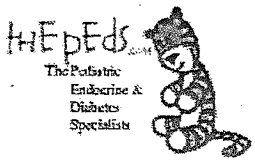
88. I note that in his motion he presents his theme that I could not accept the independence of the children in a way that makes no sense. Strangely, while saying on the one hand that I was too involved in the older children's lives (and thus could not accept their independence), he also states that after giving birth to Rylee and having a toddler, Brooke, I became more focused on the two youngest children, while I became less tolerant of the oldest three children's attempts to be more independent. (Kirk's aff. p. 7) That statement is contradictory and illogical. It stands to reason that if I was more focused on the younger children that I would be less focused on the older three and any of their attempts to be more independent would be aided by my focus on the younger children.

89. Kirk, however, was wrong about what was going on. The person that best expressed what happened that day was Tahnee. In a letter that she wrote, she outlined how she felt about the incident. A true and correct copy of that letter is attached hereto as Exhibit A-5. For me, the incident is over, and I love Tahnee and always will. She should, and I believe does, know that I will be there for her whenever she needs me for as long as I live.

90. While Kirk is quick to blame me for every ill that has ever occurred in our family, he fails to mention any of his own confrontations with Whitney and Tahnee. When they were defiant with him the story had a different ending. He chased Tahnee down the street yelling. My recollection is that he couldn't catch her and came back empty handed, and it was a while later when Tahnee mustered enough courage to come home. He also chased Whitney with a hairbrush in our home and caught her upstairs and spanked her with the brush in hand. He also chased Tahnee while playing golf at the golf course and she fell down in a hazard and cut her leg. He

grabbed her and brought her back to the golf cart. All of these instances occurred during the same timeframe, and during all the above instances Kirk used profanity. Kirk did these things only on a few occasions when the girls were defiant with him, and they stopped being defiant. With me, however, that never happened. I couldn't threaten them with physical punishment. Tahnee is six feet tall and Whitney is five foot eight and they both are junior black belts. The girls were bigger, stronger, and faster than me. At five foot three and often with a toddler and infant in my arms, I posed no real threat to them. With Kirks constant undermining and non-supportive nature, I could not discipline them in anyway.

# EXHIBIT "H"




6 July 2013

To Whom It May Concern:

I am writing this letter in regards to Rylee Harrison. She was first seen by us in April 2011 after mother had become suspicious that the testosterone medication that she had been prescribed by her physician might be causing changes in her daughter. She had been applying the cream in the areas recommended by the FDA and the drug manufacturer. She sought out medical opinion, and it was suspected that the medication that she was using might have been giving some secondary transference to her child and causing changes in her body. At the time of the prescription, there was no warning to the consumer or physician that such a transference of testosterone cream to fomites and then other household members could occur. Now such a black box warning does exist, but in 2011 it did not.

Upon learning that the cream may be the cause for her daughters development of pubic hair, she stopped the cream and switched to injections. This is safe, and would allow continued co-bedding with the children in a safe manner.

It was discussed that the testosterone exposure may of advanced her bone age, and when she went into puberty, we may consider a surgical implant of Supprelin to suppress puberty and maximize her height. The need for the implant is totally voluntary, and in no way is required for her to have a healthy life. The implant secretes a hormone that her body normally would make, and in itself has no side effects that could harm her.

Estimation of height is exactly that. An estimate. The closer you get to the final adult height, which typically is at age 14-15 in a female, the more accurate the estimation. Estimations done at age 2 are not very accurate, and there are general formulas and ways to estimate final adult height, but many factors in the course of ones life can come into play and alter this- things such as subclinical ovarian cysts that advance bone age. Our estimation, based upon the fathers height and the mothers height that the midparental height , or genetic expectation was to be 68 inches in height. This differs from the pediatricians estimation of 6 feet tall, but is considered to be more accurate. We felt that Rylee was on track to having a final adult height of 64 inches. This was based upon an advanced bone age that she had done. This is still with 2 standard deviations from the midparental height, and still is

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considered to be within the normal range for her genetic potential, just on the lower end of of it. Many children can have advanced bone age without exposure to testosterone. Ovarian cysts can advance it, obesity can advance it, and there are factors that we don't understand. To say that Rylee's predicted height and advanced bone age is solely secondary to the testosterone exposure would be wrong. It did contribute, there is no doubt, but to be solely responsible we cannot say.

Rylee's mother has been to every single appointment. She has called into the office, followed up on lab results, xray results, and has always asked very appropriate and intelligent questions. She has never missed an appointment, missed a lab draw, and has researched on her own to educate herself on options that she may have. Upon learning that the cream could be harming the family, she immediately stopped, and switched to a non contaminating formulation.

I am of the opinion that Rylee's mother has shown nothing but genuine interest in Rylee's health as any mother would. She appears to be the main caregiver and liason for her health.

As Rylees stature is going right now, she is in the lower range of normal for her genetic potential. Use of the implant is a consideration, but not an absolute, and may even possibly not be needed. Depends how things play out. Her weight can contribute to advanced bone age, and it is not uncommon for preadolescent females to have ovarian cysts that wax and wane and effect the bone age. To say that the testosterone cream and exposure are solely responsible would be very wrong. Mother became suspicious and initiated the workups that led to the diagnosis. She was vigilant, and correct in her suspicions. We feel the mother has been very involved in Rylees health beyond the testosterone, and only has Rylees best intentions at heart.

Respectfully,

Asheesh Dewan, MD
Endocrinology

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# EXHIBIT "I"

The Pediatric Endocrine & Diabetes Specialists

14 October 2013

DECLARATION EXECUTED IN THE STATE OF NEVADA (NRS 53.045)

1. My name is Dr. Asheesh Dewan.

2. I am an adult.

3. I make this declaration of my personal knowledge unless stated otherwise.

4. I am a physician licensed in the State of Nevada. I specialize in pediatric endocrinology. Rylee Harrison has been my patient since April 2011, when her parents brought her to me for possible precocious puberty.

5. Since that time I have seen Rylee on regularly scheduled appointments. Most recently, I examined her on October 7, 2013, after she had drawn blood samples and a bone age x-ray to determine her growth pattern.

6. I reviewed the results of her tests with her parents during that appointment. At that time I informed them of my conclusions:

A. Rylee, who will be age 11 in January has entered puberty which is normal for her age. Rylee is currently 63.22" inches tall. Rylee's bone age x-ray matches her current chronological age of 11 and displays bone age and growth patterns which are normal for her age and genetic potential. The Mid parental height growth potential is estimated at 68 inches given her parents adult height. Rylee does not not have advanced bone age and no medical intervention of any kind is warranted.

B. Given her current height and bone age Rylee is estimated to be at the high end of her genetic potential with an predicted adult height of around 5'10" tall.

C. In my opinion, she is healthy and doing well; she does not need further blood draws or tests.

D. I would like to examine her again in six months, only to monitor her weight.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date 14-October 2013, in Las Vegas

Asheesh Dewan, MD
Endocrinology

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Office: (702) 851-7287 Fax: (702) 851-7286

# EXHIBIT "J"

**Chart 2:** *Custody Criteria**

| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Alabama**<br>ALA. CODE § 30-3-131<br>ALA. CODE § 30-3-152 | X | X[1] | X | X[2] | X | X | |
| **Alaska**<br>ALASKA STAT. § 25.20.060<br>ALASKA STAT. § 25.24.150 | X | X | X | | X | X | X |
| **Arizona**<br>ARIZ. REV. STAT. § 25-321<br>ARIZ. REV. STAT. § 25-403 | X | X | X | X | X | X | X |
| **Arkansas**<br>ARK. CODE ANN. § 9-13-101 | | X | X | | | X | X |
| **California**<br>CAL. FAM. CODE § 3010<br>CAL. FAM. CODE § 3011<br>CAL. FAM. CODE § 3020<br>CAL. FAM. CODE § 3027<br>CAL. FAM. CODE § 3027.5<br>CAL. FAM. CODE § 3028<br>CAL. FAM. CODE § 3030.5<br>CAL. FAM. CODE § 3031<br>CAL. FAM. CODE § 3040<br>CAL. FAM. CODE § 3041<br>CAL. FAM. CODE § 3041.5<br>CAL. FAM. CODE § 3042<br>CAL. FAM. CODE § 3044<br>CAL. FAM. CODE § 3046<br>CAL. FAM. CODE § 3047<br>CAL. FAM. CODE § 3048<br>CAL. FAM. CODE § 3064<br>CAL. FAM. CODE § 3080<br>CAL. FAM. CODE § 3081<br>CAL. FAM. CODE § 3085<br>CAL. FAM. CODE § 3120<br>CAL. FAM. CODE § 3150<br>CAL. FAM. CODE § 6323 | X | X | X | X[2] | X | X | X |
| **Colorado**<br>COLO. REV. STAT. § 14-10-124 | X | X | X[3] | | X | X | X |
| **Connecticut**<br>CONN. GEN. STAT. § 46B-54<br>CONN. GEN. STAT. § 46B-56 | X | X | X | X[2] | X | X | X |
| **Delaware**<br>DEL. CODE ANN. TIT. 13 § 721<br>DEL. CODE ANN. TIT. 13 § 722 | X | X | X | | X | X | X |
| **District of Columbia**<br>D.C. CODE § 16-914 | X | X | X | | X | X | X |
| **Florida**<br>FLA. STAT. § 61.13<br>FLA. STAT. § 61.401 | X | X | X | X[4] | X | X | X |
| **Georgia**<br>GA. CODE ANN. § 19-9-3 | X | X | X | | | X | X |
| **Hawaii**<br>HAW. REV. STAT. § 571-46 | X | X | X | | | X | X |
| **Idaho**<br>IDAHO CODE ANN. § 32-704<br>IDAHO CODE ANN. § 32-717<br>IDAHO CODE ANN. § 32-717B | X | X | X | X | | X | X |
| **Illinois**<br>750 ILL. COMP. STAT. 5/601<br>750 ILL. COMP. STAT. 5/602<br>750 ILL. COMP. STAT. 5/602.1 | X | X | X | | X | X | X |



| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Indiana**<br>IND. CODE § 31-17-2-8<br>IND. CODE § 31-17-2-15<br>IND. CODE § 31-17-6-1 | X | X | X | | | X | X |
| **Iowa**<br>IOWA CODE § 598.12<br>IOWA CODE § 598.41 | X | X | X | | X | X | X |
| **Kansas**<br>KAN. STAT. ANN. § 23-2219<br>KAN. STAT. ANN. § 23-3203<br>KAN. STAT. ANN. § 23-3206 | X | X | X | | X | X | X |
| **Kentucky**<br>KY, REV. STAT. ANN. § 403.270 | X | X | X | | | X | |
| **Louisiana**<br>LA. CIV. CODE ANN. ART. 131<br>LA. CIV. CODE ANN. ART. 132<br>LA. CIV. CODE ANN. ART. 134<br>LA. REV. STAT. ANN. 9:345<br>LA. REV. STAT. ANN. 9:364 | X | X | X | X | | X | X |
| **Maine**<br>ME. REV. STAT. TIT. 19-A § 1507<br>ME. REV. STAT. TIT. 19-A § 1653 | X | X | X[3] | | X | X | X |
| **Maryland**<br>MD. CODE ANN. FAM. LAW § 9-101.1<br>MD. CODE ANN. FAM. LAW § 1-202<br>MD. CODE ANN. FAM. LAW § 5-203 | | X[6] | X | | | X | X |
| **Massachusetts**<br>MASS. GEN. LAWS CH. 208 § 28<br>MASS. GEN. LAWS CH. 208 § 31<br>MASS. GEN. LAWS CH. 208 § 31A<br>MASS. GEN. LAWS CH. 209C § 10<br>MASS. GEN. LAWS CH. 215 § 56A | | | X | | | X | X |
| **Michigan**<br>MICH. COMP. LAWS § 722.23<br>MICH. COMP. LAWS § 722.24<br>MICH. COMP. LAWS § 722.26A | X | X | X | | X | X | X |
| **Minnesota**<br>MINN. STAT. § 518.17<br>MINN. STAT. § 518.165 | X | X | X | X[2] | X | X | X |
| **Mississippi**<br>MISS. CODE ANN. § 93-5-23<br>MISS. CODE ANN. § 93-5-24 | | X[7] | X | X[2] | | X | X |
| **Missouri**<br>MO. REV. STAT. § 452.375<br>MO. REV. STAT. § 452.385<br>MO. REV. STAT. § 452.410<br>MO. REV. STAT. § 452.423 | X | X | X[8] | | X | X | X |
| **Montana**[9]<br>MONT. CODE ANN. § 40-4-205<br>MONT. CODE ANN. § 40-4-212 | X | X | X | | | X | X |

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**Chart 2:** *Custody Criteria* (continued)*

| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Nebraska**<br>NEB. REV. STAT. § 42-358<br>NEB. REV. STAT. § 42-364<br>NEB. REV. STAT. § 43-2923 | X | X | X | | | X | X |
| **Nevada**<br>NEV. REV. STAT. § 125.480 | X | X[9.5] | X | X | X | X | |
| **New Hampshire**<br>N.H. REV. STAT. ANN. § 461-A:6 | X[3] | X | X | | X | X | X |
| **New Jersey**<br>N.J. STAT. ANN. § 9:2-4 | X | X | X | | X | X | X |
| **New Mexico**<br>N.M. STAT. ANN. § 40-4-8<br>N.M. STAT. ANN. § 40-4-9<br>N.M. STAT. ANN. § 40-4-9.1 | X | X | X | X | X | X | X |
| **New York**<br>N.Y. DOM. REL. LAW § 240 | | X[10] | | | | X | X |
| **North Carolina**<br>N.C. GEN. STAT. § 50-13.1<br>N.C. GEN. STAT. § 50-13.2 | | X[11] | X | | | X | |
| **North Dakota**<br>N.D. CENT. CODE § 14-09-06.2<br>N.D. CENT. CODE § 14-09-06.4 | X | X | X | | X | X | X |
| **Ohio**<br>OHIO REV. CODE ANN. § 3109.04 | X[3] | X | X[12] | | X | X | X |
| **Oklahoma**<br>OKLA. STAT. TIT. 43 § 109<br>OKLA. STAT. TIT. 43 § 112 | | X | X[12] | | X | X | X |
| **Oregon**<br>OR. REV. STAT. § 107.137 | X | X[13] | X[14] | | X | X | |
| **Pennsylvania**<br>23 PA. CONS. STAT. ANN. § 5328<br>23 PA. CONS. STAT. ANN. § 5334 | X | X | X | | X | X | X |
| **Rhode Island**<br>R.I. GEN. LAWS § 15-5-16<br>R.I. GEN. LAWS § 15-5-16.2 | | X[15] | X | | X[15] | X | X |
| **South Carolina**<br>S.C. CODE ANN. § 63-3-530<br>S.C. CODE ANN. § 63-3-810<br>S.C. CODE ANN. § 63-15-30<br>S.C. CODE ANN. § 63-15-40 | | X | X | | | X | X |
| **South Dakota**<br>S.D. CODIFIED LAWS § 25-4-45 | | X[16] | X | | | X | X |
| **Tennessee**<br>TENN. CODE ANN. § 36-4-132<br>TENN. CODE ANN. § 36-6-101<br>TENN. CODE ANN. § 36-6-106 | X | X | X | X[12] | X | X | X |
| **Texas**<br>TEX. FAM. CODE ANN. § 107.002<br>TEX. FAM. CODE ANN. § 153 | | X[18] | X[19] | X | | X | X |
| **Utah**<br>UTAH CODE ANN. § 30-3-10<br>UTAH CODE ANN. § 30-3-10.02<br>UTAH CODE ANN. § 30-3-10.10<br>UTAH CODE ANN. § 30-3-11.2 | X | X | X | | X | X | X |



| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Vermont**<br>VT. STAT. ANN. TIT. 15 § 594; 665; 665A | X | X[20] | X | | X | X | X |
| **Virginia**<br>VA. CODE ANN. § 20-124.2; 20-124.3 | X | X | X | | X | X | X[21] |
| **Washington**<br>WASH. REV. CODE § 26.09.013<br>WASH. REV. CODE § 26.09.187<br>WASH. REV. CODE § 26.09.220 | X | X | X | | X | X | X |
| **West Virginia**<br>W. VA. CODE § 48-6-206<br>W. VA. CODE § 48-9-209<br>W. VA. CODE § 48-9-302 | X | X | X | | X | X | X |
| **Wisconsin**<br>WIS. STAT. § 767.41<br>WIS. STAT. § 767.407 | X | X | X | X | X | X | X |
| **Wyoming**<br>WYO. STAT. ANN. § 20-2-201 | X | X[22] | X | | X | X | |

* The chart looks at child custody determinations during a divorce or separation. The statutes cited do not necessarily affect child custody decisions in other situations.

** Although there is a statutory list of factors, the court may in its discretion consider other factors under the particular circumstances of the case.

*** The jurisdiction has enacted a statute permitting the consideration of domestic violence in conjunction with child custody. The statutes vary from making domestic violence a factor in custody determinations, to imposing presumptions against custody in batterers or imposing special procedural considerations in cases involving domestic violence.

**** This column indicates whether a state has statutory authority for appointment of a guardian *ad litem* or attorney for a child specifically in child custody cases.

1. By case law. *See, e.g.,* Naudit v. Haddock, 882 So. 2d 364 (Ala. Civ. App. 2003).
2. There is a presumption that joint custody is in the best interest of the child if both parents request joint custody.
3. Does not use the term "child custody," but instead uses the terminology, such as "parental responsibilities and rights," "legal custodian," or other similar terminology.
4. Fla. Stat. § 61.13(2)(c)(2)—"The court shall order the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child."
5. Domestic violence is not addressed in the statute but has been considered by courts as a factor in case law.
6. By case law. *See, e.g.,* Hild v. Hild, 157 A.2d 442 (Md. 1960); Wagner v. Wagner, 674 A.2d 1 (Md. Ct. Spec. App. 1996); Montgomery Cnty. Dep't of Soc. Services v. Sanders, 381 A.2d 1154 (Md. Ct. Spec. App. 1977).
7. Factors considered in custody decisions are listed in case law. *See* Albright v. Albright, 437 So. 2d 1003, 1005 (Miss. 1983).
8. Public policy encourages participation of both parents in decisions and statute directs that "the court shall determine the custody arrangement which will best assure both parents participate in such decisions . . . so long as it is in the best interests of the child." This statute, however, does not create a presumption in favor of joint custody. *In re* Marriage of Kroeger-Eberhart v. Eberhart, 254 S.W.3d 38, 2007 Mo. App. LEXIS 1661 (Mo. Ct. App. 2007).
9. In Montana, the words "custody," "joint," "primary parent," or "visitation" are not used when referring to child custody. Parents are considered to have identical rights as to the child, but their parenting times may differ.
9.5. Nevada will consider a child's wishes, among other factors, if the child is of sufficient age and capacity to form an intelligent preference as to custody.
10. By case law. *See* Gant v. Higgins, 203 A.D.2d 23 (N.Y. App. Div. 1994).
11. By case law. *See, e.g.,* Harris v. Harris, 115 N.C. 587 (1894); Brooks v. Brooks, 184 S.E.2d 417 (N.C. Ct. App. 1971).
12. Uses the term "shared parenting."
13. By case law. *See In re* Marriage of Tuttle, 660 P.2d 196 (Or. Ct. App. 1983).
14. The court may only order joint custody if both agree to joint custody. The court may not order joint custody over the objection of either parent.
15. By case law. *See, e.g.,* Africano v. Castelli, 837 A.2d 721 (R.I. 2003); Pettinato v. Pettinato, 582 A.2d 909 (R.I. 1990).
16. *See* Price v. Price, 611N.W.2d 425 (S.D. 2000).
17. It is presumed that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or agree to joint custody in open court.
18. By case law. *See* Vazquez v. Vazquez, 292 S.W.3d 80 (Tex. App. 2007).
19. Texas uses the language "sole or joint managing conservator" rather than "sole or joint custody."
20. By case law. The court is not required or forbidden to consider the preference of the child. *See* Cameron v. Cameron, 398 A.2d 294 (Vt. 1979).
21. Discussed further in Verrocchio v. Verrocchio, 429 S.E.2d 482 (Va. Ct. App. 1993).
22. By case law. *See* JRS v. GMS, 90 P.3d 718 (Wyo. 2004).

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0001

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

DEFENDANT'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT CHILD ISSUES [TO DELETE "TEENAGE DISCRETION" PROVISION] AND OTHER EQUITABLE RELIEF;
DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND ATTORNEY'S FEES AND SANCTIONS

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

***NOTICE:***

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 17nd day of October, 2013

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer



A.App. 1149

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

KIRK ROSS HARRISON, NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

_____/

# CHILD CUSTODY FAST TRACK STATEMENT

# APPENDIX – VOLUME 9


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*ATTORNEYS FOR APPELLANT*


Docket 72880 Document 2017-36597

## CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX


| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 1. | Complaint for Divorce | 03/18/11 | 1 | 1-7 |
| 2. | Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence | 09/14/11 | 1<br>2 | 8-220<br>221-361 |
| 3. | Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees | 10/31/11 | 2<br>3 | 362-418<br>419-652 |
| 4. | Answer to Complaint for Divorce and Counterclaim for Divorce | 11/22/11 | 3 | 653-659 |
| 5. | Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees | 01/04/12 | 4<br>5 | 660-907<br>908-929 |
| 6. | Court Minutes [All Pending Motions] | 02/24/12 | 5 | 930-933 |
| 7. | Stipulation and Order Resolving Parent/Child Issues | 07/11/12 | 5 | 934-950 |
| 8. | Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees | 05/10/13 | 5 | 951-984 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 9. | Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 985-994 |
| 10. | Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 995-1009 |
| 11. | Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees | 07/19/13 | 5 | 1010-1044 |
| 12. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees | 09/09/13 | 5 | 1045-1053 |
| 13. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to | 09/11/13 | 5 | 1054-1059 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief | | | |
| 14. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 10/01/13 | 5 | 1060-1080 |
| 15. | Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/17/13 | 5 | 1081-1149 |
| 16. | Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief | 10/21/13 | 6 | 1150-1171 |
| 17. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/23/13 | 6 | 1172-1223 |
| 18. | Order for Appointment of Parenting Coordinator | 10/29/13 | 6 | 1224-1232 |
| 19. | Notice of Entry of Decree of Divorce | 10/31/13 | 6 | 1233-1264 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 20. | Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits) | 11/14/13 | 6 | 1265-1281 |
| 21. | Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision | 11/18/13 | 6 | 1282-1316 |
| 22. | Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees | 12/06/13 | 6 | 1317-1339 |
| 23. | Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees | 12/13/13 | 6 | 1340-1354 |
| 24. | Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions] | 12/17/13 | 6 | 1355-1356 |
| 25. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 04/21/14 | 6<br>7 | 1357-1388<br>1389-1431 |
| 26. | Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions | 05/09/14 | 7 | 1432-1458 |
| 27. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions | 05/14/14 | 7 | 1459-1472 |

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| 28. | Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions | 05/20/14 | 7 | 1473-1518 |
| 29. | Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/13/14 | 7 | 1519-1524 |
| 30. | Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/16/14 | 7 | 1525-1532 |
| 31. | Notice of Appeal | 07/17/14 | 7 | 1533-1593 |
| 32. | Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1594-1601 |
| 33. | Notice of Entry of Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1602-1611 |
| 34. | Amended or Supplemental Notice of Appeal | 10/16/14 | 7 | 1612-1622 |
| 35. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 | 08/21/15 | 8 | 1623-1673 |
| 36. | Order to Appear and Show Cause | 09/01/15 | 8 | 1674-1675 |
| 37. | Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor | 09/14/15 | 8 | 1676-1692 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| | Child, Emma Brooke Harrison ("Brooke") | | | |
| 38. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") | 09/18/15 | 8 | 1693-1738 |
| 39. | Notice of Entry of Order from Hearing | 10/01/15 | 8 | 1739-1743 |
| 40. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 10/12/15 | 8 | 1744-1758 |
| 41. | Order to Appear and Show Cause | 10/14/15 | 8 | 1759-1760 |
| 42. | Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing | 10/15/15 | 8 | 1761-1851 |
| 43. | Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing | 11/02/15 | 9 | 1852-1879 |
| 44. | Dr. Paglini Letter to Court | 11/23/15 | 9 | 1880-1881 |
| 45. | Notice of Entry of Order from Domestic Court Minutes | 12/02/15 | 9 | 1882-1886 |
| 46. | Supplement to Plaintiff's Motion for an Order to Show Cause Why | 12/10/15 | 9 | 1887-1903 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| | Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | | | |
| 47. | Reply to Opposition to Motion for Clarification; Motion to Amend Findings | 12/10/15 | 9 | 1904-1920 |
| 48. | Court Minutes [All Pending Motions] | 12/14/15 | 9 | 1921-1922 |
| 49. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 12/16/15 | 9 | 1923-1942 |
| 50. | Notice of Entry of Order from Domestic Court Minutes | 12/17/15 | 9 | 1943-1947 |
| 51. | Court Minutes [All Pending Motions] | 01/26/16 | 9 | 1948-1949 |
| 52. | Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing | 05/25/16 | 9 | 1950-1958 |
| 53. | Letter from John Paglini, Psy.D. to Court | 05/31/16 | 9 | 1959-1961 |
| 54. | Notice of Entry of Order re John Paglini, Psy.D. Letter | 06/21/16 | 9 | 1962-1963 |
| 55. | Notice of Appeal | 06/27/16 | 9 | 1964-1975 |
| 56. | Plaintiff's Motion for Reunification Therapy for Minor Children and Father | 07/26/16 | 9 | 1976-2076 |
| 57. | Notice of Entry of Order re: August 24, 2016 Hearing | 08/19/16 | 9 | 2077-2079 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| 58. | Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order | 08/30/16 | 9 | 2080-2095 |
| 59. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 08/30/16 | 10 | 2096-2196 |
| 60. | Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order | 09/23/16 | 10 | 2197-2206 |
| 61. | Plaintiff's Motion for an Order to Nullify and Void Expert Report | 09/28/16 | 10 | 2207-2292 |
| 62. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 09/30/16 | 10 | 2293-2316 |
| 63. | Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for | 09/30/16 | 10 | 2317-2321 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| | Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13 | | | |
| 64. | Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report | 10/18/16 | 10 | 2322-2337 |
| 65. | Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016 | 10/19/16 | 11 | 2338-2358 |
| 66. | Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report | 11/02/16 | 11 | 2359-2381 |
| 67. | Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit | 11/04/16 | 11 | 2382-2423 |
| 68. | Court Minutes [All Pending Motions] | 11/07/16 | 11 | 2424-2426 |
| 69. | Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 12/29/16 | 11 | 2427-2440 |
| 70. | Plaintiff's Pre-Trial Memorandum | 01/17/17 | 11 | 2441-2457 |
| 71. | Prehearing Memorandum | 01/17/17 | 11 | 2458-2477 |
| 72. | Court Minutes [Evidentiary Hearing] | 01/18/17 | 11 | 2478-2479 |


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| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| 73. | Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 01/31/17 | 11 | 2480-2489 |
| 74. | Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2490-2507 |
| 75. | Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2508-2512 |
| 76. | Court Minutes [All Pending Motions] | 02/01/17 | 11 | 2513-2514 |
| 77. | Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 02/13/17 | 11 | 2515-2537 |
| 78. | Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 02/13/17 | 11 | 2538-2556 |
| 79. | Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 02/15/17 | 11 | 2557-2563 |
| 80. | Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions | 02/17/17 | 12 | 2564-2595 |

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| 81. | Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 03/06/17 | 12 | 2596-2602 |
| 82. | Defendant's Opposition to Motion to Strike; Countermotion for Sanctions | 03/13/17 | 12 | 2603-2608 |
| 83. | Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/15/17 | 12 | 2609-2617 |
| 84. | Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/16/17 | 12 | 2618-2627 |
| 85. | Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017 | 03/28/17 | 12 | 2628-2634 |
| 86. | Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017 | 04/10/17 | 12 | 2635-2638 |
| 87. | Notice of Appeal | 04/14/17 | 12 | 2639-2649 |
| **TRANSCRIPTS** | | | | |
| 88. | Transcript re: All Pending Motions | 10/30/13 | 12 | 2650-2688 |
| 89. | Transcript re: All Pending Motions | 05/21/14 | 12 | 2689-2744 |
| 90. | Transcript re: All Pending Motions | 09/22/15 | 13 | 2745-2823 |
| 91. | Transcript re: All Pending Motions | 12/14/15 | 13 | 2824-2886 |
| 92. | Transcript re: All Pending Motions | 01/26/16 | 13 | 2887-2928 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 93. | Transcript re: All Pending Motions | 11/07/16 | 14 | 2929-3040 |
| 94. | Transcript re: Evidentiary Hearing - Vol.1 | 01/18/17 | 14 | 3041-3152 |
| 95. | Transcript re: Evidentiary Hearing - Vol. 2 | 01/18/17 | 14<br>15 | 3153-3178<br>3179-3315 |
| | Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [*Confidential*] SEALED | | 15 | 3316-3375 |
| | Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016 | | 15 | 3376-3377 |
| | Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016 | | 15 | 3378-3380 |
| | Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016 | | 15 | 3381-3384 |
| | Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [*Confidential*] SEALED | | 15 | 3385-3387 |
| | Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016 | | 15 | 3388-3389 |
| | Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015 | | 15 | 3390-3392 |
| | Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule | | 15 | 3393-3394 |
| | Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016 | | 15 | 3395-3416 |
| | Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016 | | 15 | 3417-3426 |
| 96. | Transcript re: All Pending Motions | 02/01/17 | 16 | 3427-3640 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| **ADDITIONAL DOCUMENTS[1]** | | | | |
| 97. | Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 | 07/24/17 | 16 | 3641-3647 |
| 98. | Plaintiff's Supplemental Filing | 08/24/17 | 16 | 3648-3666 |
| 99. | Supplemental Notice of Appeal | 08/24/17 | 17 | 3667-3676 |
| 100. | Notice of Entry of Order re: Expert Designation | 10/06/15 | 17 | 3677-3682 |
| 101. | Notice of Entry of Order re: Pending Motions | 01/04/17 | 17 | 3683-3693 |


[1]These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

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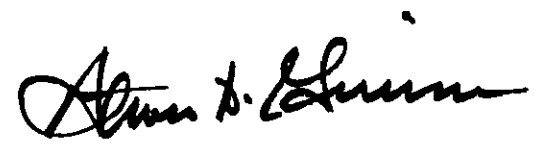

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-15-443611-D
DEPT NO. Q

Date of Hearing:
Time of Hearing:

**ORAL ARGUMENT REQUESTED:**
**YES _XX_ NO ____**

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS, and; PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EX PARTE MOTION FOR EXPEDITED HEARING**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby opposes Defendant's Motion for Clarification and Motion to Amend Findings, and submits his Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing.

. . .

. . .

This Opposition and Reply are made and based upon the papers and pleadings on file herein, the Affidavit of Plaintiff attached hereto, the Points and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

DATED this 20 day of November, 2015.

KAINEN LAW GROUP, PLC

By: _____
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Absent from Vivian's motion is any reference to the fact that Vivian incited Brooke to do precisely what she is doing! Vivian wrote, "Kirk just can't quite understand why he should have to pay any part of his daughters medical bills" as she enmeshed Brooke in dealing with the health insurance company under the clearly erroneous belief that she had to protect Vivian from being victimized by Kirk, save Vivian's credit rating, and obtain reimbursement.[1] An evidentiary hearing was unnecessary for the Court to make the **factual finding** of contemptuous conduct, as it was based upon Vivian's own writings.

In spite of the known facts, Vivian falsely asserts that, "Brooke's notions of what she wants to do regarding her custodial timeshare have nothing to do with my prompting her." Vivian Declaration, ¶2. Contrary to Vivian's sworn assertions, there is no question that Vivian encouraged Brooke to not go to Kirk's house.

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[1] The fact that a mother would intentionally and unnecessarily place this kind of stress upon a child – to be responsible for protecting her mother from being victimized by her father and saving her mother's credit rating – to incite and motivate a child to leave her own father, must be a matter of considerable concern for this Court. In truth, Vivian was not being victimized by Kirk in any way and Kirk was doing everything he could to investigate and rectify a problem, which was a problem of Vivian's creation.

There is an undeniable pattern of Vivian manipulating Brooke to live with Vivian full time. As the Court is well aware, Vivian's prompting and encouragement of Brooke to live with Vivian full time did not just start with the recent health insurance fiasco that was caused by Vivian's failure to give sufficient health insurance information to the medical providers. After spending three weeks with Vivian during the summer of 2013, on the very day of her return to Kirk, Brooke announced to Kirk and her older sister, Whitney, that "*since I am now 14 years old, I am independent, and can decide where I live*." Then after spending another two weeks with Vivian, Brooke announced she was going to live full time with Vivian stating, "*Girls are supposed to live with their mommies*." Common sense indicates that these thoughts did not originate with a 14 year old child. Vivian continues to make material representations, which are patently false.

Kirk and Brooke developed a close relationship and bond based upon Kirk's daily diligent and attentive parenting of Brooke and Rylee from February of 2006 until the Motion for Temporary Custody was filed on September 14, 2011. Nothing occurred during that entire time period that undermined that close relationship and bond. After that point in time, Kirk did not change his parenting of Brooke and Rylee in any way. Common sense and logic indicate there was no reason for the relationship between Kirk and Brooke and Rylee to begin to deteriorate. Kirk was the same parent after the filing of the Motion for Temporary Custody, as he was before. As noted, almost two years ago:

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

Reply re Motion to Modify Order, filed 10.23.13, p. 11, l. 3-8.

What changed was Vivian's motivation to alienate Kirk from Brooke and Rylee. Soon after the filing of the Motion for Temporary Custody, with the aid of Heather Atkinson, Vivian began minimizing Kirk's time with Brooke and Rylee as much as she could. Very importantly, Vivian also began to denigrate Kirk to Brooke and Rylee in an effort to alienate Kirk from them. Heather Atkinson assisted Vivian in severely denigrating Kirk to Brooke.

. . .

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Vivian knows full well that the "negative relationship" between Kirk and Brooke that exists today was caused by Vivian's alienation of Kirk. Vivian's efforts to alienate Kirk from Brooke and Rylee started over four years ago and continue to this day.

## II. ARGUMENT

### B. Despite the Court Clearly DEFERRING the Contempt Issues Until the Next Hearing, Vivian has Chosen to Attack the Court's Order on the Erroneous Premise the Court Held Vivian in Contempt, When the Court Clearly Did Not

The Court's finding was unmistakably an effort by the Court to send a message to Vivian that she must fix the problem she has created and she must insure that Brooke adheres to the Custody Order agreed to by her parents and ordered by the Court. The relevant portion of the Court's Order, filed October 1, 2015, provides, "Although the Court has made a Finding that contempt has been committed as it relates to Plaintiff's missed time, the contempt issues shall be DEFERRED to the next hearing." The Court made a factual finding of contemptuous conduct. The Court **did not** hold Vivian in contempt. Rather than appreciate and honor the purpose of the Court's factual finding, which clearly contemplates, if necessary, an evidentiary hearing pursuant to NRS 22.030, Vivian has chosen, instead, a continuing pattern to not honor the Court's order and to attack the Court upon an erroneous premise.

The difference between a factual finding of contemptuous conduct and the Court holding a person in contempt was lost upon Vivian. The authority erroneously relied upon by Vivian is readily distinguished upon this basis. In *Awad v. Wright*, 106 Nev. 407, 794 P.2d 713 (1990), the trial court held Mr. Awad in contempt without an affidavit being submitted in support of the order to show cause and without an evidentiary hearing. The Nevada Supreme Court found it was error for the trial court to **hold** Mr. Awad **in contempt** without an affidavit and without an evidentiary hearing. *Awad*, as well as the other cases cited by Vivian for the same proposition, namely, a person may not be held in contempt for conduct that is not in the immediate view and presence of the court without an evidentiary hearing, are inapplicable. This Court has not held Vivian in contempt. In addition, Vivian has cited no authority for the proposition the Court erred in any way by simply making a factual finding based upon the affidavits and documents submitted by both parties. Vivian's Motion for Clarification and Motion to Amend Findings should therefore be denied.

. . .

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The language in this Court's Order Re: Expert Designation, filed October 6, 2015, was also apparently lost upon Vivian. More specifically, the Court noted: "However, the salutary goal of this process is to rebuild and strengthen the joint parenting arrangement to which Plaintiff and Defendant mutually agreed was in Brooke's best interest. Each party's good faith participation in this process is essential." The Court is clearly trying to do what is in Brooke's best interest, which is for her to have significant contact with both parents and to save her from a horrible fate that Vivian's alienation will otherwise cause.[2] Vivian's unwillingness to exercise the influence she obviously has over Brooke, which she has used in the past to convince Brooke to comply with the Custody Order, and Vivian's decision to baselessly attack this Court's order are clear indications Vivian has no intention of participating in the process in good faith, despite the Court's statement that such good faith participation is essential.

**B. Vivian Has the Ability and Power to Solve This Entire Problem Now and Prospectively, By Simply Telling Brooke and Rylee the Truth!**

The inordinate influence and control that Vivian has over Brooke has been well documented. Although Brooke was crying and emotionally distraught at the prospect, Vivian cruelly convinced Brooke just weeks after her 14th birthday to leave her 10 year old sister for one-half the time and to leave her Dad all of the time to live with Vivian full-time. There is little doubt that if Vivian truly made it clear to Brooke that she had to comply with the Custody Order, which would mean she would be back with her little sister full time, she would certainly do so. Brooke and Rylee, thankfully, are still very close.

Vivian has instilled in Brooke an unjustified hatred of Kirk. Vivian caused Brooke to stop honoring the Custody Order. It is incumbent upon Vivian to remedy the problem that she has created. Vivian, who gave both the car and the cell phone to Brooke, should take both of them away until Brooke is fully complying with the Custody Order.

In Vivian's Declaration, which is attached to her motion, Vivian sets forth what she has allegedly

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[2] The damage Vivian is doing to Brooke is incalculable and will likely be permanent if not stopped as soon as possible.

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done to encourage Brooke to comply with the Custody Order and also claims she has asked Kirk what she should do, referencing an email to Kirk attached as Exhibit "B-1." *See* ¶8 of Declaration. All of this is contrived solely for the purpose of the motion. Vivian's motion was filed at 4:45 p.m. on October 15, 2015. The email to Kirk, Exhibit "B-1," upon which Vivian's Declaration is based, was not emailed by Vivian until 11:16 a.m. on October 15, 2015 – just a few short hours prior to filing the motion. Suffice it to say, Exhibit B-1 was not sent to sincerely ask for any suggestions from Kirk, but rather, was created for the sole purpose of creating a false record to support Vivian's motion.

In Exhibit "B-1," Vivian asks Kirk for, "Any suggestions?" In light of the timing of the email, it is apparent Vivian really does not want any suggestions from Kirk. However, it is evident what Vivian can do to motivate Brooke to comply with the Custody Order – Vivian can tell Brooke the truth.

**1. It is Respectfully Suggested that Vivian Simply Tells Brooke the Truth**

Vivian's denigration of Kirk to Brooke and Rylee and her campaign to alienate Kirk from Brooke and Rylee started soon after the filing of the Motion for Temporary Custody and has been extensively documented.[3] If Vivian truly wants to do what is indisputably in Brooke's and Rylee's best interests, she will tell Brooke and Rylee the truth.

*Alienation Lie*: **Vivian has told Brooke that the divorce is Kirk's fault and for Brooke to blame Kirk for the divorce as Vivian was a victim of Kirk's actions.**

Vivian has told Brooke that Kirk is solely responsible for the divorce and the break up of the family, and the only reason for the divorce is that Kirk did not like Vivian caring for the street children in India.[4] Motion to Modify Custody Order, filed 10.1.13, p. 5, l. 21-23. This is not the first time

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[3] Although Brooke has been the primary focus of Vivian's alienation efforts, it is also very evident that Vivian has been attempting to alienate Kirk from Rylee as well.

[4] Brooke does not know the truth. Brooke does not know of Vivian's prolonged prescription drug abuse (confirmed by Vivian's own medical records); the constant adversarial behavior towards everyone and seemingly endless criticisms, conflicts, threats, and arguments; extensive violence upon Brooke's older siblings, i.e., throwing Tahnee to the ground and kicking her in the abdomen again and again; wanting to physically fight Kirk in front of Brooke and Rylee; rejection of and emotional and physical abandonment of Brooke and Rylee for years, sequestering herself behind a closed door for most of the time when she was in the house, choosing to spend many months out of the country and away from Brooke and Rylee, etc. Kirk has never told Brooke about the reasons for the divorce. Kirk has consistently told Brooke and Rylee that they should always respect their

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Vivian told Brooke that the divorce was Kirk's fault. In front of Brooke, Vivian told Kirk she was filing for divorce. When Kirk responded that Vivian should do what she thinks she should do, Vivian turned to Brooke and said, "You heard him, he gave me permission to file for divorce. **It is his fault**." Motion for Custody, filed 9.14.11, Exh. 1, ¶118 (emphasis added). Vivian has falsely portrayed herself to Brooke as an innocent victim of Kirk's unreasonable actions and continues to do so, as amply demonstrated in connection with the recent medical billing issue. *See* Reply re Order to Show Cause, filed 9.18.2015, p. 10.

The single fact that Vivian has denigrated Kirk to Brooke by blaming Kirk for the divorce is a sufficient basis to alienate Kirk from Brooke and create significant distorted perceptions of Kirk by Brooke. RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 29-30. Unfortunately for Brooke and Rylee, Vivian has done so much more.

*Alienation Lie:* **Vivian told Rylee that Kirk struck her, when, in truth, Vivian struck Kirk.**

Vivian struck Kirk in the face in front of Rylee on October 14, 2011. However, Vivian told Rylee that Kirk had struck her. Vivian similarly tried to mislead the police by pricking her finger and rubbing blood on her face in her failed attempt to convince the police that Kirk had struck her. The police wiped the blood off of Vivian's face and saw there was not injury on her face from where the blood would have come. The police found that Vivian struck Kirk and that Kirk did not strike Vivian. *See* Reply re Custody, filed 1.4.12, p. 32 & 34.

*Alienation Lie:* **Vivian told Brooke and Rylee that Kirk is a liar and the neighbors had submitted affidavits that Kirk is a liar.**

On November 20, 2011, Vivian screamed again and again in front of Brooke and Rylee that Kirk is a liar and that neighbors had submitted affidavits that Kirk is a liar. In truth, Tahnee, Whitney, a neighbor, who lived across the street, a school crossing guard, and another eye witness all submitted detailed factual affidavits regarding Kirk's day to day involvement with Brooke and Rylee over the course of a number of years and Vivian's lack of involvement with Brooke and Rylee during the same

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mother. Contrary to Vivian's allegations, Kirk does not demean Vivian to Brooke. Kirk has also advised each of the adult children, who do know the history, not to discuss the reasons for the divorce with Brooke and Rylee.

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time period. Vivian, together with her two closest friends – Heather Atkinson (who received a new house and other remuneration from Vivian) and Michele Walker (who received a Mediterranean cruise, clothes, and $10,000.00 for her daughter's education from Vivian) all perjured themselves. *See* Reply re Custody, filed 1.4.12, p. 41-44, 49-57, 67-75.

*Alienation Lie:* **Vivian has manipulated Brooke and Rylee to avoid physical contact with Kirk.**

During the afternoon of January 27, 2012, Kirk asked Rylee to sit with him on the couch and snuggle with him. Rylee responded, "I'm not supposed to snuggle you anymore dad." *See* Letter from Ed Kainen to Radford Smith (pages 2-4), dated February 3, 2012, which is attached as Exhibit 2 to Motion to Modify Order, filed 10.1.13. As a consequence of Vivian's cruel dictum to Brooke and Rylee, since sometime in February of 2012, when Brooke was just 12 years old, Brooke began to reduce her physical touch with Kirk. Beginning shortly before her 14th birthday, Brooke stopped kissing Kirk on the cheek, and stopped wanting Kirk to hug her or give her a kiss on the forehead when she left to go to Vivian's house.

Teenagers have an emotional need for love. Physical touch from a parent is an important way to communicate that emotional love. It is recommended that a parent, "Hug and kiss your teenager every day when they leave for school for as long as they will let you, but be sensitive to their resistance, especially in public." *See* GARY CHAPMAN, THE 5 LOVE LANGUAGES OF TEENAGERS – THE SECRET TO LOVING TEENS EFFECTIVELY (Northfield Publishing 2010 ed.), p. 72. Vivian's cold-hearted manipulation of Brooke has prevented Kirk from communicating his emotional love for Brooke in this way.

*Alienation Lie:* **Vivian has convinced Brooke that Kirk never purchased dance clothes for Brooke and Rylee**

Vivian has manipulated Brooke and Rylee to such an extent that they believe that the shared experiences they had with Kirk in purchasing dance clothes and dance shoes never occurred. As a result of Vivian's insidious campaign, Vivian has changed the children's reality and has convinced Brooke and Rylee that Kirk has never bought them dance clothes and dance shoes. This is despite the fact Brooke and Rylee were with Kirk every time he made those purchases. The fact that Vivian has

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been able to successfully convince them that these shared experiences with Kirk *never occurred* gives insight as to the extent of Vivian's extreme manipulation of these girls.

Kirk has taken Brooke and Rylee to buy them dance shoes, leotards, tights, and dance clothes for dance classes. Kirk was able to provide actual documentary proof of his purchase of dance clothes and dance shoes. *See* Reply re Motion to Modify Order, filed 10.23.15, p. 12-14.

*Alienation Lie:* **The only reason Kirk took Brooke and Rylee to the movies all those years was so he could write it down.**

As many parents involved in a divorce are, undoubtedly, also advised to do, Kirk was advised to write down what he did with and for Brooke and Rylee on a daily basis. Sometime early in 2012, Brooke saw Kirk write down that Brooke, Rylee and he had gone to see a movie. This was when Vivian, Kirk, Brooke and Rylee were still living together in the same house. During this time period Vivian was taking Brooke and Rylee away from Kirk at every opportunity by taking them to stay at Heather Atkinson's house. *See* Reply re Custody, filed 1.4.12, p. 40, l. 1-2; Reply re Motion to Modify Order, filed 10.23.13, p. 6, l. 8-23 ("it is apparent Vivian has been working Brooke and Rylee a lot. Kirk has noticed significant changes in Brooke's attitude towards him during the last several months."). Vivian did this several times when Kirk was home and Vivian was out of town. Brooke, then 12 years old, told Heather Atkinson that she had seen Kirk write down the fact that she, Rylee and her Dad had gone to the movies. Heather Atkinson told Brooke, "The only reason he has taken you to the movies all these years was so he could write it down." What an incredibly cruel lie to tell a 12 year old child. When Kirk told Brooke it was a horrible thing for Heather Atkinson to say such a thing to Brooke, Brooke responded that Kirk should not say anything bad about Heather Atkinson. As a foreseeable consequence of this horrendous lie, Brooke has refused to go to the movies with Kirk the vast majority of the time ever since! It is unthinkable that an adult would knowingly manipulate someone else's 12 year old child in this way to intentionally alienate that child from their own parent. However, as the Court is well aware, Heather Atkinson has been more than willing to do some of Vivian's dirty work in the past and has been financially rewarded for doing so. *See* Reply re Custody, filed 1.4.12, p. 67-70.

The Court may recall that Dr. Dewan, was the pediatric endocrinologist who Dr. Schroeder referred to Kirk to treat Vivian's testosterone poisoning of Rylee. Dr. Dewan said that Rylee's

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cholesterol was too high. *See* Motion re Custody, filed 9.14.11, Exh. 1, Kirk Aff. ¶224. On January 22, 2013, Dr. Dewan advised to write down everything Rylee eats. While the parties were still together, Kirk prepared the vast majority of the meals for Brooke and Rylee. Tahnee Aff. ¶41. Vivian rarely would cook a meal for Brooke and Rylee – many times going months without cooking them a meal. Kirk Aff. ¶116, 123. When Kirk was out of town, Vivian would often relegate Brooke and Rylee to not eating at all or only eating cereal for breakfast, lunch and dinner. Whitney Aff. ¶11, 26; Kirk Aff.¶57, 88, 146. If Vivian did make any effort to get them food, it would be fast food. Kirk Aff. ¶67. However, Vivian's lack of involvement in preparing healthy meals for Brooke and Rylee, did not stop her from blaming Kirk for Rylee's high cholesterol, claiming it was because of the meals that Kirk prepared for Rylee. *See* Vivian's Opposition re Custody, filed 10.27.11, Vivian Aff. ¶110. As a consequence of Vivian's baseless accusations and Dr. Dewan's instructions, Kirk writes down all of the meals he prepares for Brooke and Rylee so there is an indisputable record of what they are eating while with Kirk.

The only reason Kirk wrote down what he did and continues to write down such information, is because of the initial and continuing custody disputes with Vivian. It was anticipated that Vivian would make false factual allegations regarding Kirk's involvement with Brooke and Rylee on a day to day basis, which she did. Vivian also made false allegations regarding the meals Kirk was preparing for Brooke and Rylee. Kirk would have taken Brooke and Rylee to the same movies, whether he later wrote it down or not. Kirk would have taken them to and from school all those years, to and from dance lessons, to and from sporting activities, trips to the ranch, prepared the same meals for them, etc. because he is their father, who loves them dearly – not because he might later write it down. It is unfortunate that the adversarial divorce system compels parents to memorialize such things, but it is often necessary for the best interests of the children and to protect a loving parent's relationship and continuing involvement with their children.

*Alienation Lie*: **Vivian and Heather Atkinson have told Brooke that, "Girls are supposed to be with their mommies."**

The overwhelming messaging Brooke receives from Vivian is that, "Girls are supposed to be with their mommies." This fact is especially important because when used in combination with Vivian's denigration of Kirk and alienation of Kirk from Brooke, it is the motivation for Brooke to be

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with Vivian "full time." In the past, Brooke has told Kirk that three of her girl friends only see their fathers every other weekend, and then, only if they want to see them. Brooke's paradigm, therefore, is the ideal is for her to spend "full time" with Vivian and anything less than that is less than ideal. It is not difficult to see how Brooke's belief in this "ideal" will adversely affect Brooke in her future relationships. Vivian would not have been able to instill this paradigm in Brooke without first alienating Kirk from Brooke so that Brooke would not have the emotional bond and love with Kirk that would inhibit a desire to be with Vivian full time. *See* Motion for Order to Show Cause, filed 10.12.15, p. 7, l. 1-13.

*Alienation Lie:* **Soon after Brooke turned 14 years old, Vivian convinced her that she should live with Vivian full time, which would mean leaving her 10 year old little sister for one half the time and her father all of the time**

As noted previously, after spending three weeks with Vivian during the summer of 2013, on the very day of her return to Kirk, Brooke announced to Kirk and her older sister, Whitney, that "*since I am now 14 years old, I am independent, and can decide where I live.*" Then after spending another two weeks with Vivian, Brooke announced she was going to live full time with Vivian stating, "*Girls are supposed to live with their mommies.*" Common sense indicates that these thoughts did not originate with a 14 year old child. *See* Motion to Modify Order, filed 10.1.13, p. 4-5.

*Alienation Act:* **In the custody calendar Vivian distributes to Brooke and Rylee, Vivian is referred to as "mom" or "mommy," while Kirk is not referred to as "dad," but simply "Kirk."**

In the past, Kirk has overheard Vivian speaking to Brooke and referring to Kirk as simply "Kirk" rather than "dad" or "father." In the custody calendar Vivian prepares and gives to Brooke and Rylee, Vivian is referred to as "mom" or "mommy," while Kirk is not referred to as "dad," but simply as "Kirk." The labeling of Kirk by Vivian to the children by his first name as "Kirk" rather than as "Dad," minimizes his role in their relationship with him. *See* DIVORCE POISON, p. 149-151. Vivian has convinced Brooke and Rylee that their family consists of Vivian, Brooke, Rylee, Heather Atkinson, and perhaps Joseph. Vivian has convinced Brooke and Rylee by her actions that Kirk, their father, is not part of their family. *See* Motion for Order to Show Cause, filed 10.12.15, p. 9.

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*Alienation Act*: **When Kirk takes Brooke and Rylee to Vivian's house to get their things when custody is transferred, Vivian continues to keep Kirk waiting in the car for 15 to 40 minutes while she visits with Brooke and Rylee.**

It is necessary each Wednesday afternoon after school for Kirk to drive Brooke and Rylee to Vivian's house to get their make up bags, Brooke's computer and/or dance bags. Since January of 2013, Vivian has a practice of keeping Kirk waiting in the car for between 15 and 40 minutes while Vivian visits with Brooke and Rylee, despite the fact that Brooke and Rylee have been with Vivian for the prior five or two days. Vivian only waits in her car for 2 to 5 minutes when Brooke and Rylee get the identical items from Kirk's house after school on Monday afternoons. Kirk is obviously upset being made to wait in a car, many times when its over 100 degrees, for 15 to 40 minutes while Vivian visits with Brooke and Rylee in her home after they have been with Vivian for the prior two or five days. Vivian is teaching Brooke and Rylee that it is acceptable to be disrespectful, discourteous, and inconsiderate of Kirk. Although Kirk is not angry with Brooke and Rylee when they get in the car, he is, understandably, not happy about the situation. Kirk realizes intellectually and emotionally that Vivian is causing this problem – not Brooke and Rylee.

*Alienation Lie*: **Vivian has told Brooke and Rylee that they do not have to do anything they do not want to do when they are with Kirk and Kirk is powerless to do anything about it.**

There have been numerous times when Kirk has suggested that Brooke, Rylee and he do something together. Many times Brooke will simply refuse to participate. It is obvious that Vivian has told Brooke, and probably Rylee as well, that she does not have to do anything with Kirk she does not want to do. Vivian is clearly interfering in Kirk's relationship with Brooke and Rylee by actively undermining Kirk's parental authority. Kirk is in the unenviable position that if he insists upon doing something, Brooke will interpret this conduct by Kirk as bullying her, based upon what she has been told by Vivian. Kirk complained to Vivian about this untenable situation in an email on December 25, 2015:

> Brooke, however, is being told that she is empowered to make all the decisions in her life at the present time and her parents do not have the right to make decisions they feel are in her best interest. Brooke presently believes she has the power to veto any family plans. This is flat out wrong. Responsible parenting does not mean empowering your children to make all decisions involving them and your family. I am very concerned about Brooke's future.

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> Brooke's relationship with you and I is secondary to what is best for her. Brooke and Rylee both deserve a co-parenting environment that is best for them now and in the future. Responsible parenting includes making decisions affecting your children that are in their best interests, but not necessarily popular at the time.
>
> I ask you, implore you, and beg you to responsibly parent in the best interests of Brooke and Rylee. It is unquestionably in their best interests to be taught to be respectful and considerate of both their parents.

Kirk's pleas to Vivian have gone unanswered. *See* Reply re Motion for Order to Show Cause, filed 9.18.15, p. 18.

*Alienation Lie:* **Vivian has convinced Brooke that Kirk has terribly wronged Brooke by not adequately consulting Brooke in planning vacations and other trips.**

After being with Vivian for an extended period of time, on August 3, 2013, crying and emotionally distraught, Brooke announced to Kirk that she was going to live with Vivian full time. The very next day, Kirk drove Brooke and Rylee to Layton, Utah for their annual Lagoon trip. During dinner that night they talked about going to Lagoon the next morning and both Brooke and Rylee were excited. However, Brooke exchanged texts with Vivian that night, and the next morning Brooke refused to go to Lagoon. Rylee was upset and wanted to go. The three of them stayed in the hotel room that day. That evening Kirk told Brooke he was taking Rylee to Lagoon the next day and he hoped Brooke wanted to go, but, if not, she could stay in the hotel room while Rylee and Kirk were at Lagoon. Brooke decided to go and they all had a great time at Lagoon and the rest of the trip. *See* Reply re Motion to Modify Custody Order, filed 10.23.13, p. 25-28. However, later during this trip, following a telephone conversation with Vivian, Brooke asked Kirk if they could cut the planned family vacation to California short or not go altogether. Kirk asked Brooke what she wanted to do if they stayed home during that time. Brooke said spend an evening or lunch with Vivian. *See* Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, filed 10.1.15, p. 5-6.

Unfortunately, since that trip, Brooke has developed a distorted view and has complained to Kirk that he plans trips without first talking to her. Since that time Kirk has attempted to get Brooke's input for any trip and has repeatedly told Brooke that he is happy for Brooke to choose where she wants to go and Kirk will take she and Rylee.

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There came a time when Whitney and her husband, Sean, needed to move from Phoenix to Austin, Texas, and had little time to load their belongings. Whitney telephoned Kirk and asked if Kirk, Brooke and Rylee could come help. Kirk explained the situation to Brooke and Rylee. The only hesitation expressed by Brooke and Rylee was they did not want to miss a New Year's Eve party, although they had no current plans. Whitney agreed to not leave until New Year's Day. Kirk, Brooke and Rylee drove to Phoenix on January 1, 2015 and helped them move. They all pitched in and went to dinner at several places of Brooke's choosing, based upon Whitney's recommendations. During the drive home on January 3, 2015, Brooke acknowledged she was glad they helped Whitney and Sean, and that she also had a good time. However, later, Brooke pointed to this trip in her discussions with Kirk, as Kirk making trip plans without adequately consulting Brooke. *See* Kirk's Reply re Motion for Order to Show Cause, filed 9.18.15, p. 11-12.

*Alienation Lie:* **Vivian has convinced Brooke that Kirk bullies her and calls her names.**

As just noted, as soon as Whitney asked for help, Kirk talked to Brooke and Rylee about it. The date of departure was changed because of Brooke's and Rylee's desire to be in town New Year's Eve. Despite this, Brooke later told Kirk she did not want to go because she should decide what trips she goes on. In that conversation, Brooke accused Kirk of bullying her into going and calling her names. Kirk asked Brooke what names she thought he called her. She said that Kirk had said she was selfish and inconsiderate. Kirk told her that when he thought she was being selfish and inconsiderate, he told her so in an effort for her to correct her misbehavior.

This scenario illustrates the insidiousness of Vivian's alienation of Kirk from Brooke and Rylee. Brooke views Kirk not as her father, but merely as "Kirk," who is powerless to make decisions on her behalf. Vivian has created a perspective in Brooke that she does not have to do anything she does not want to do while with "Kirk." Predictably, when Kirk acts as a responsible father, who makes decisions in the best interest of all of his children, Brooke views that decision as a violation of her power and therefore views Kirk as a mean bully, who she hates. It is for the same reason that when her father tells Brooke that she is behaving selfishly and is being inconsiderate of others, Brooke interprets such comments as "name calling" by Kirk.

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*Alienation Lie:* **Vivian has convinced Brooke that Kirk is being mean to Brooke when he does not take her to Target to buy items whenever she wants and under the conditions Brooke imposes.**

Brooke's favorite store for many years is Target. Kirk has taken Brooke to Target to buy various items numerous times during the last several years. Brooke particularly likes to buy cosmetic products and toiletries at Target. Brooke much prefers to go to the Target store on Stephanie Street in Henderson, which is located about 17 miles from their home in Boulder City. In the past, since it is about a 34 mile round trip, Kirk, Brooke and Rylee would always run their other errands such as going to Barnes & Noble (also for Brooke), Costco, dinner, a movie, etc., when the primary reason they were driving into Henderson was to take Brooke to Target. It was never a problem as each person got to do what they wanted or needed to do.

However, there were three or four occasions this year when Brooke wanted to go to Target and Kirk did not take her. On each of those occasions, Rylee wanted to go to a different store, Rylee and Kirk wanted to go to dinner, Kirk needed to pick up some items at Costco, or Rylee and Kirk wanted to go to a movie in Henderson. On each of those occasions, Brooke was adamant that she would not go to Henderson unless they only went to Target to get what she wanted and then drive directly home. On each of those occasions, Kirk was clear that he was happy to take Brooke to Target and buy her the items she wanted, but that she needed to be considerate of what Rylee and Kirk wanted to do as well. On each of those occasions, Kirk explained with the price of gas it did not make any sense to drive that far and then drive that far again the next day to run other errands when everything could be done at once. On each of those occasions, Brooke dug in her heels and refused to go. As a consequence, no one went anywhere or Kirk and Rylee went without Brooke.

Each time this occurred, Brooke called Vivian on the telephone and each time Brooke would be on the telephone crying uncontrollably by the end of the call. When Kirk would try to talk to Brooke after each telephone call, Brooke told him he is mean and she hates him. Notably, Brooke was not crying until after she spoke to Vivian. On each of these occasions, after being told what occurred, Vivian should have said that Kirk was being reasonable and that Brooke should be willing to compromise, as Rylee and Kirk have things they need or want to do as well. Instead, each telephone call with Vivian resulted in Brooke crying severely and telling Kirk he is mean and she hates him.

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*Alienation Lie:* **Vivian has convinced Brooke that Kirk should not attend her dance classes with the other fathers and mothers during parent observation**

Dance Etc. is the dance studio in Boulder City where all of the Harrison children have taken dance classes. Dance Etc. has a parent observation period where the parents of the dance students are invited to attend their children's dance classes. Both fathers and mothers of the dance students attend. There are a good number of fathers, who regularly attend during parent observation. Kirk has been one of those fathers. *See* Motion re Custody, filed 9.14.11, Exh. 1, Kirk Aff. ¶165, 217. Prior to the filing of the Motion for Custody, Brooke never complained about Kirk's attendance during parent observation and, in fact, thanked him for making the effort to support her. However, prior to the filing of the Motion for Custody, attending Brooke's and Rylee's dance classes during parent observation was not always a priority for Vivian and, at different times, both Brooke and Rylee complained about Vivian's lack of attendance . Kirk Aff. ¶70, 217.

Despite this history, on January 28, 2013, after speaking with Vivian at the beginning of one of the dance classes, Brooke asked Kirk to leave the parent observation class. Several weeks later, Kirk broached the subject of parent observation with Brooke. Kirk noted that he had always attended and that Brooke had been appreciative of his consistent support for her. Kirk also noted that a number of other fathers attend parent observation. Brooke said that she was tired of meeting Kirk's expectations. On February 11, 2015, Kirk was attending Brooke's dance classes as part of parent observation. Again, after speaking with Vivian at the beginning of her tap class, Brooke told Kirk she did not want him there.

*Alienation Lie:* **Vivian is saying or doing something to cause Brooke to be distant when she first returns to Kirk's custody.**

When Kirk obtains custody, Brooke goes into her bedroom, shuts the door, and spends time using her telephone. When Brooke first returns to Kirk's custody, she is distant. *See* Reply re Motion to Modify Order, filed 10.23.13, p. 11, l. 14-20. Until recently, after a day or two, Brooke usually warms up and their relationship is very pleasant. Vivian is obviously saying something to Brooke which is negative about Kirk or negative about Brooke being with Kirk. Although Kirk is not privy to what Vivian is saying to Brooke, history shows that Vivian is not above saying something to the effect, "I am

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so sorry you have to go to Kirk's house. It must be horrible for you."

*Alienation Lie:* **Vivian was victimized by Kirk when he insisted Brooke be named Emma Brooke, rather than Brooke Marie.**

Sometime within the last six or seven months, Brooke told Kirk that when she is eighteen years old, she is going to change her name to Brooke Marie Harrison. When Brooke made this announcement to Kirk, her demeanor was that of making a very meaningful statement to Kirk and that Brooke was correcting a terrible wrong and making it right. Brooke's personality is not to get in someone's face. However, Brooke, obviously thought this gesture had deep significance. The only logical conclusion which can be drawn from this is that Vivian has told Brooke that she wanted to name Brooke as "Brooke Marie," but Kirk would not allow her to do so. This never happened.

Although Vivian generally must be in control and have the power in her relationships, for reasons unknown to Kirk, Vivian has never felt that strongly about naming the children. Prior to Tahnee being born, Kirk suggested that they give each child a somewhat different name and also a family name. By doing so, when the child became an adult, they could go by their somewhat different name or the more common family name. Vivian and Kirk saw the name Tahnee in a book and both liked that name. Kirk suggested that Tahnee's middle name be Vivian's maiden name of "Lee."

When it came time to name Brooke, Kirk has a relative, through marriage, by the name of Brooke Morrison. Vivian had collected some art work by Brooke Morrison. He said he liked the sound of that name and Brooke Harrison sounded similar. Vivian agreed. Vivian suggested Brooke be named Brooke Marie (something Brooke could not have known unless shared by Vivian). Vivian's middle name is Marie. Kirk did not like the sound of Brooke Marie and suggested the name Emma Brooke. Emma was the name of a great aunt who was an amazing woman and very close to Kirk. Vivian also liked the name Emma Brooke and did not feel strongly either way.

If Vivian would have felt the least bit strongly about it, Brooke would have been named Brooke Marie. However, Vivian said she also like Emma Brooke and the issue was resolved. Evidence of the truth of this fact is what occurred when Rylee was born. Whitney suggested the name of "Riley." Both Kirk and Vivian liked the sound of that name, but Kirk did not want a spelling that was commonly used for both boys and girls. Kirk did some research and found that "Rylee" means a small brook. Kirk and

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Vivian both liked that spelling. Kirk suggested Rylee's middle name be Marie. Vivian also liked the sound of Rylee Marie.

Brooke and Rylee had a special relationship with Kirk's Aunt Virginia. Vivian also liked Aunt Virginia very much. Aunt Virginia gave Brooke all of the photographs she had of Aunt Em (Emma). Both Kirk and Aunt Virginia told Brooke what an amazing woman Aunt Em was and told Brooke about Aunt Em's incredible personality and accomplishments. Brooke was very happy to have been named after Aunt Em.

How Vivian could twist all of this as her being victimized by Kirk in the naming of Brooke and Brooke now has to shoulder the responsibility of fixing this terrible wrong that Kirk allegedly perpetrated upon Vivian is beyond all reason.

*Alienation Lie:* **Kirk does not care enough about Brooke to pay her medical bills, will do nothing to help Vivian save her credit rating, will do nothing to obtain reimbursement for the payment of medical bills for Vivian, and will do nothing to compel Kirk's insurance company, who is at fault, to fix the problem. Therefore, Brooke must deal directly with the insurance company to protect Vivian from being victimized by Kirk, save Vivian's credit rating, and obtain reimbursement.**

Vivian's embroilment of Brook in the medical billing issue is inexcusable and was used to foment Brooke's hatred of Kirk. Vivian convinced Brooke that Kirk does not care enough about Brooke to pay her medical bills, Kirk will do nothing to help Vivian save her credit rating, Kirk will do nothing to obtain reimbursement for Vivian, and Kirk will do nothing to compel Kirk's insurance company, who is at fault, to fix the problem. Therefore, having just turned 16 years old, according to Vivian, Brooke needed to become involved with the insurance company to save Vivian from the inevitable harm that will befall her as a consequence of Kirk's actions and refusal to help. *See* Motion for Order to Show Cause, filed 8.21.15, p. 6-10.

Under the false pretense that Kirk did not want to pay his own daughter's (Brooke's) medical bills and Kirk was unwilling to do anything to rectify the situation, Vivian wrongfully and unnecessarily involved Brooke in speaking with and "**working directly with**" the insurance company "for reimbursement."

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*Alienation Act:* **Vivian is debriefing Brooke every time Brooke meets with Dr. Ali.**

There came a point when Brooke refused to honor appointments that Kirk made for her with Dr. Ali. Brooke told Kirk she does not like Dr. Ali and does not want to see him anymore. Kirk has never questioned Brooke or discussed with Brooke what she has said to Dr. Ali. However, during the hearing before the Court on September 22, 2015, it became very apparent that Vivian is debriefing Brooke after each session with Dr. Ali. Vivian represented to the Court:

> THE DEFENDANT: Brooke – I took Brooke to see Dr. Ali about a month ago and then she's supposed to see him again next Friday. But she's been – she saw Dr. Ali before this insurance incident and **has consistently talked to him,** telling her that – **telling him that she's wanted to change custody**. And if you would speak to Dr. Ali, that he would –

Hearing Transcript, 9.22.15, p. 30, l. 4-9 (emphasis added).

It is apparent that Vivian had a plan to effectuate a change in custody whereby Brooke will live with Vivian full-time. Vivian is making sure that Brooke is consistently telling Dr. Ali that she wants to change custody. Vivian intended for there to be an evidentiary hearing where Brooke would testify as to her "wishes" and Dr. Ali, as Brooke's therapist, would have developed empathy for Brooke's feelings and align himself with her feelings and "wishes." *See* Hearing Transcript, 9.22.15, p. 38, l. 1-5. As previously noted in Kirk's Reply re Motion for Order to Show Cause, filed 9.18.2015, on page 24:

> Alienated children suffer from distorted perceptions and images of their targeted parent. These distortions cause them to feel hatred and animosity towards the target. Their hatred and animosity, though unfounded, are genuinely held. As a result, **exploring their feelings will likely not dissipate the hatred and animosity and, more likely, will only amplify and exacerbate them**. It is only by identifying, unraveling and then finally challenging the distortions and beliefs that underlie their feelings, that the children can begin to open their hearts and minds to the possibility of a relationship with the target. Requiring them to spend large quantities of time with the parent then enables them to see him as the caring, loving parent he often is.

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 10 (emphasis added).

Vivian's influence upon Brooke and "her" decision to change custody are undeniable. The evidence of Vivian's plan for Brooke to live with Vivian "full-time" began soon after the filing of the Motion for Custody. The Court will recall that Vivian tried to lead the Court to believe that Brooke's announcement that she would live with Vivian full-time almost immediately after her fourteenth birthday was also Brooke's plan or idea. Now, two years later, according to Vivian, it is Brooke's plan

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to live with Vivian once again. This is intellectually insulting to everyone involved with this case.

*Alienation Act:* **Vivian is involving Brooke in Vivian's schemes to violate the Custody Order.**

The teenage discretion provision, by its terms, only applies to the "weekly schedule." For obvious reasons, it does not apply during vacation periods. Despite this fact, on two occasions Vivian has involved Brooke in spending time with Vivian during Kirk's vacation time with Brooke and Rylee.

Kirk's winter break vacation time with Brooke and Rylee for 2014 was from "December 25th at noon, and ending at 7:00 p.m. the day before school commences." On Christmas afternoon, Brooke tells Kirk she is going with Vivian the next morning to take her driver's examination. Kirk sent an email to Vivian, which provides in part:

> As you are aware my Winter Break **holiday** began with Brooke and Rylee at noon today and continues until 7:00 p.m. on Sunday, January 4, 2015. This afternoon, Brooke **told** me that you are picking her up at 7:30 a.m. tomorrow morning to take her to get her learner's permit.
>
> This is in blatant violation of our custody agreement. Even your divorce attorneys will agree that you and Brooke, you, or Brooke cannot unilaterally decide to take time this way during a **holiday**. Although I remain adamantly opposed to the notion that a child can unilaterally make any adjustments to the custody schedule at any time, even under your own attorneys' interpretation, infrequent minor adjustments can only be made during the "**weekly schedule**" set forth in Section 5 of the Stipulation and Order. Section 6.1 is expressly limited to "adjustments to their **weekly schedule**."
>
> Brooke said that you have been helping her to study for the driver's examination and she would like you to take her. Although it will necessitate a change in our plans, I am agreeable to you taking her in the morning, provided you return her as soon as the examination is completed, and so long as it is with the understanding this will not happen again.
>
> Unfortunately, Vivian refused to agree not to do it again. Kirk, therefore, opposed Brooke

going with Vivian during his vacation time with Brooke. Despite this opposition, Vivian drove to Kirk's house the next morning, Brooke got in Vivian's car, and they drove away.

During Kirk's summer vacation time with Brooke and Rylee, on June 10, 2015, when Kirk picked up Brooke from class in Henderson, she said she needed to go to the dance studio for a lesson she needed to attend. Brooke told Kirk that she wanted to be dropped off at the front of the dance studio. When they got to the dance studio, Kirk told Brooke that he had to go in to give them a check for a dvd of the "Time to Shine" performance. Brooke said she would take it in. Kirk responded that it was no problem for him to take it in. Kirk had an issue in the past where he paid

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for a dvd of one of the girls' performances and Vivian ended up with the dvd, so he wanted to see the person to whom he was giving the check. The front door was locked. Brooke said just give me the check and I will walk around the back. Kirk responded that he would drive around the back and walk it in. Brooke then said, "I hate you." Kirk drove around back. As Kirk got out of his car, he saw Vivian in the driver's seat of a car with Utah license plates that was parked in front of her house the day before. When Kirk walked in the dance studio, Mr. Jim, a former dance instructor at the studio, was in a room giving a private lesson. Those were the only people in the dance studio. As Kirk was putting the check in the appropriate bowl at the counter, Vivian walked in and went into the room where the private lesson was being given. Kirk then looked at Brooke and said, "Your mother just walked behind you into the lesson you are attending." Brooke responded, "I hate you." Kirk left telling Brooke to call him when she was done and he would pick her up.

This is indicative of the extent Vivian will involve the children in deceitful inappropriate behavior. Vivian has seduced Brooke into a highly inappropriate conspiratorial course of action and is teaching Brooke to be deceitful. This also clearly shows that Vivian has no problem surreptitiously violating the Custody Order. Brooke was following Vivian's plan to drop Brooke off in front of the dance studio, while Vivian was sneaking in the back door. When Kirk said he would simply drive around to the back, Brooke knew that Vivian's plan would be discovered and Brooke reacted by telling Kirk, "I hate you." No one should wonder about the source of Brooke's hatred of Kirk. Vivian has created this untenable situation for Brooke and Rylee.

*Alienation Act:* **Vivian has been talking to Brooke for months about Brooke's plan to change custody.**

What was most shocking from the hearing on September 22, 2015, was Vivian's statements that she has been talking to Brooke for months about Brooke's plan to change custody. This obviously begs the question as to why, when Brooke allegedly first told Vivian of "her" plan to change custody, Vivian did not simply tell Brooke there is a Court Order that insures custody until Brooke is 18 years old and Brook does not have the authority to change that Court Order. At that time, Vivian had the "responsibility to facilitate the VISITATION" as the Court reconfirmed in the Court's Order of October 1, 2015. Instead, according to Vivian, she simply went along with

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"Brooke's plan." The reason Vivian never said anything to Brooke is Vivian was instrumental in Brooke "making" that decision. Just like she did when Brooke turned fourteen years old, Vivian falsely empowered Brooke to make a decision, which she does not have the authority to make. The only real difference now is that Vivian has given Brooke a car so Brooke has the ability to come and go as she pleases.

The fact that Vivian caused this problem cannot be seriously denied. Vivian denigrated Kirk to Brooke and alienated Kirk from Brooke. Vivian instilled in Brooke a hatred of Kirk and Brooke's paradigm that "Girls are supposed to live with their mommies." The last time Brooke broached the subject of custody with Kirk was when she told him that *after she turned 18 years old*, she wanted to live with Vivian full time. *See* Hearing Transcript, 9.22.15, p. 34, l. 1-4. However, Vivian's unprepared statements clearly reveal a parent who feels no responsibility whatsoever to comply with the Custody Order to which she agreed and this Court issued:

> THE DEFENDANT: But she said that at the beginning of Au - - beginning of June that she was going to plan to make a move at the end when she started school, when she started going to college classes. She told him that way very back then.

Hearing Transcript, 9.22.15, p. 30, l. 15-19.

> THE DEFENDANT: In fact, she wanted to do it before June and I told her to wait –
> * * * *
> THE DEFENDANT: – until after the summer.

Hearing Transcript, 9.22.15, p. 33, l. 19-23.

Instead of telling Brooke to wait until after the summer, Vivian was required to tell Brooke that Brooke must abide by the Court's Order and wait until she is 18 years old. By her own statements, Vivian played a major role in creating this problem. However, as set forth previously herein, Vivian's role in causing this to happen was actually much greater than suggested by her statements.

**2. Vivian's Denigration of Kirk to Brooke and Rylee Should not be a Surprise to Anyone in Light of Vivian's Documented History of Blaming and Criticizing Kirk and Other Members of the Family**

Vivian began a campaign to criticize Kirk to Brooke and Rylee, and blaming Kirk for the divorce to Brooke and Rylee shortly after the filing of the Motion for Temporary Custody. It should

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be no surprise to anyone involved with this litigation that Vivian has been denigrating Kirk to Brooke and Rylee to alienate him from them. A large component of Vivian's behavior prior to the divorce was to criticize and point fingers at everyone around her. Tahnee swore in her affidavit, "[Vivian] will say anything in front of Brooke and Rylee without any thought as to the harm it is doing them, will manipulate Brooke and Rylee for her own selfish purposes (including saying negative false statements about their father). . ." *See* Motion re Custody, filed 9.14.11, Exh. 2,Tahnee Aff., ¶39. Whitney swore in her affidavit, "My Mother also told me, in front of Brooke and Rylee, "be sure and cut your Dad before he gets into the water, to make sure the sharks can do their job." *See* Motion re ¶Custody, filed 9.14.11, Exh.3, Whitney Harrison Aff., ¶8. *See also* Motion re Custody, filed 9.14.11, Exh. 1, Kirk Aff. ¶19 "Vivian assumed the role of being in charge of blame in our family"; When there is a problem, Vivian immediately assesses blame to someone else; ¶20 "At every opportunity, she will criticize or demean my friends and make fun of my friendships"; ¶21 Vivian criticized Kirk for not working hard enough; ¶28 Vivian, unjustifiably, criticized the older children; ¶35 A dominant personality trait of Vivian is to criticize others; ¶41 Vivian criticized Whitney for her weight; ¶45 Vivian criticized Tahnee as being "that selfish bitch"; ¶49 Vivian criticized Kirk's planning; ¶59 Vivian criticized Tahnee for being jealous of her for getting all of the attention; ¶61 Vivian talked about divorcing Kirk in front of then 6 year old Rylee; ¶74 Vivian criticized Kirk for buying Rylee a warm winter coat; ¶78 Vivian belittled Tahnee in front of Brooke and Rylee; ¶80 Vivian criticized Whitney for encouraging Rylee to sleep by herself; ¶81 Vivian was screaming obscenities at Kirk; ¶85 Vivian screamed at Kirk about going to a movie and calling him a liar in front of Rylee, and the older children; ¶89 Vivian made Rylee afraid to answer the telephone when Kirk called home; ¶90 Vivian's constant finger pointing at everyone in the family began to take an emotional toll on Brooke; Vivian criticizes everyone and assesses blame to everyone, except herself; ¶96 Vivian's constant criticisms of others makes her the center of attention; ¶104 Vivian criticized Whitney for not changing her wedding date to accommodate Vivian's elective plastic surgeries; ¶107 Vivian explodes in front of Brooke and Rylee saying she will continue to sleep with Brooke and Rylee; ¶115 Vivian criticized Kirk in front of Brooke and Rylee for not taking them to the ranch when there was still six inches of snow on the ground and no

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running water; ¶117 Vivian verbally attacked Whitney for suggesting that Brooke and Rylee play sports calling Whitney a liar; ¶118 After she was gone for two months, Vivian criticized Kirk for not picking things up better; Vivian told Brooke and Rylee the divorce was Kirk's fault; Vivian told Brooke and Rylee that Kirk was trying to have her stop sleeping with them; ¶135 Vivian criticized Kirk to Brooke and Rylee because he could not fly to Ireland and then turn around and fly right back to Las Vegas; ¶147 Vivian criticized Kirk for cancelling a dance lesson for Brooke when Brooke's feet hurt so badly she could hardly walk; ¶169 Vivian belittled Kirk's successes to their children; ¶170 Vivian criticized Kirk in front of Brooke regarding one of Brooke's math assignments, while Kirk was helping Brooke with her math and English; ¶172 Vivian frequently lets out a scream when she walks in a room with other people; ¶183 Vivian criticized Joseph for being upset about Vivian giving his computer to Brooke without talking to him; ¶192 Vivian criticized Kirk for driving to San Diego to help Joseph, because Vivian had a second colonic appointment; ¶201 Vivian criticized Kirk in front of Brooke, Rylee and Joseph for celebrating Joseph's birthday with a party and dinner;¶210 Vivian verbally attacks Kirk in front of Brooke and Rylee for Kirk telling Brooke he did not want her staying overnight three weekends in a row at someone's house where there was a 12 year old boy; Vivian said Kirk was a bad person to Brooke and Rylee; Vivian tells Kirk she is filing for divorce in front of Brooke and Rylee; Vivian tried to pick a physical fight with Kirk in front of Brooke and Rylee; ¶211 Vivian told Brooke that the argument and all of the problems were Kirk's fault; ¶219 Vivian will say negative things about Kirk to Brooke and Rylee to manipulate them; ¶239 When Whitney was a senior in high school, Vivian told her she was too fat; ¶256 Vivian accused Kirk of bullying Rylee in front of Rylee.

## III. CONCLUSION

This Court did not hold Vivian in contempt. Vivian's Motion for Clarification and Motion to Amend Findings are therefore without merit and should be denied.

Prior to the filing of the Motion re Custody on September 14, 2011, an undeniable personality trait of Vivian was to criticize every other member of the family and to assess blame whenever Vivian perceived any problem. Vivian has an undeniable history of criticizing Kirk and blaming Kirk in front of their minor children. This practice did not stop with the filing of the

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Motion re Custody on September 14, 2011. Unfortunately, Vivian was then highly motivated to alienate Kirk from Brooke and Rylee. Consistent with her prior behavior and unable to see the serious harm that she is doing to them, Vivian has continued to denigrate Kirk to Brooke and Rylee.

Vivian has denigrated Kirk to Brooke in so many ways over a long period of time that Vivian has successfully alienated Kirk from Brooke. Brooke now has a perceived hatred of Kirk and has an extremely distorted perception of Kirk. Brooke's feelings regarding the planing of trips and Kirk's attendance, along with all of the other fathers and mothers, at dance classes during parent observation are grossly disproportionate to the circumstances.

When Brooke was just fourteen years old, after having been empowered by Vivian, Brooke announced she was going to live with Vivian full time. Vivian falsely swore to the Court at that time, she had nothing to do with Brooke's decision.

Two more years have passed and Vivian has once again empowered Brooke to believe, at sixteen years old, Brooke has the authority to decide to live with Vivian full time. Once again, Vivian is swearing to the Court that this is all Brooke's decision and Vivian had nothing to do with it. Vivian is, obviously, not telling the truth again.

It would be untenable for Brooke to get the message at just 16 years old that she can knowingly violate a Court Order and it is acceptable. Vivian erroneously believes that so long as Vivian does not admit to her obvious orchestration of what is occurring and continues to deny, under oath, any involvement, then there is no "evidence" of what is truly happening. Vivian is wrong. The circumstantial evidence and direct evidence of Vivian's insidious and prolonged campaign to denigrate Kirk to Brooke and Rylee, to alienate Kirk from Brooke and Rylee, and to have Brooke live with Vivian full time is overwhelming and undeniable.

DATED this 2nd day of November, 2015.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Plaintiff's Opposition to Defendant's Motion for Clarification and Motion to Amend Findings, and submits his Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 2nd day of November, 2015.

NOTARY PUBLIC in and for said County and State

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. May 17, 2016

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A.App. 1877

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2nd day of November, 2015, I caused to be served the ***Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, And; Plaintiff's Reply to Defendant's Opposition to ex Parte Motion for Expedited Hearing*** to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

_X_ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Ksmith@radfordsmith.com
Gvarshney@radfordsmith.com
Jhoeft@radfordsmith.com

An Employee of
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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON
Plaintiff/Petitioner

v.

VIVIAN HARRISON
Defendant/Respondent

Case No. D-443611

Dept. Q

**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) _____.

**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: KIRK ROSS HARRISON Date 11/2/15

Signature of Party or Preparer _____

FAXED
NOV 2 3 2015

*John Paglini, Psy.D.*
**Licensed Clinical Psychologist**
**9163 West Flamingo, Suite 120**
**Las Vegas, Nevada 89147**
**Phone: (702) 869-9188** **Fax: (702) 869-9203**

November 23, 2015

The Honorable Judge Bryce Duckworth
Department Q
Eighth Judicial Court, Family Division
601 North Pecos
Las Vegas, Nevada, 89101

RE: KIRK HARRISON VERSUS VIVIAN HARRISON

To the Honorable Judge Duckworth:

I have already met with the litigants and I am ready to begin interviews of Brooke. I have discussed with the litigants my desire to be able to interview Jim Ali, PhD, who is the psychologist to Brooke. He has seen her for well over two years, and will have historical information pertaining to Brooke's relationship with her parents. As noted, her parents individually agreed for me to talk to him. However, I would like to receive permission from the courts. Once permission is granted, I will have the parents sign releases and then I will contact Dr. Ali.

Respectfully submitted

John Paglini, Psy.D.
Licensed Clinical Psychologist
JPbf: 11/23/2015

cc: Attorney Ed Kainen 702-823-4488
Attorney Tom Standish 702-699-7555
Attorney Radford Smith 702-990-6456

# Fax Cover Sheet

**John Paglini, Psy.D.**
**9163 West Flamingo, Suite 120**
**Las Vegas, NV 89147**

**Phone:** 702 -869-9188
**Fax:** 702- 869-9203

**Date:** 11/23/15

**TO:** Attorneys Ed Hansen, Tom Standish + Radford Smith.

**FROM:** JOHN PAGLINI, PSY.D

**RE:** HARRISON v HARRISON

**FAX NO:** 702-823-4488 / 702-699-7555 / 702-990-6456

**NUMBER OF PAGES:** 2
**(Includes cover sheet)**

**COMMENT:**

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**NOTICE OF ENTRY OF ORDER FROM DOMESTIC COURT MINUTES**

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this **Notice of Entry of Order From Domestic Court Minutes** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
S VEGAS, NEVADA 89101

☒ E-Served pursuant to NEFCR 9 on, or mailed postage prepaid, addressed to, the following attorney:

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

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**ORDER FROM DOMESTIC COURT MINUTES**

Good cause appearing therefor,

IT IS HEREBY ORDERED that the attached copy of the Domestic Court Minutes entered on December 2, 2015 is hereby incorporated herein and will become the Order of this case.

DATED this 2nd day of December, 2015.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

D-11-443611-D

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

**Divorce - Complaint** **COURT MINUTES** December 02, 2015

D-11-443611-D Kirk Ross Harrison, Plaintiff
vs.
Vivian Marie Lee Harrison, Defendant.

**December 02, 2015 3:00 PM** **Minute Order**

**HEARD BY:** Duckworth, Bryce C. **COURTROOM:** Courtroom 01

**COURT CLERK:** Michael A. Padilla

**PARTIES:**

| | |
|---|---|
| Emma Harrison, Subject Minor, not present | |
| Kirk Harrison, Plaintiff, Counter Defendant, not present | Edward Kainen, Attorney, not present |
| Lisa Linning, Other, not present | |
| Rylee Harrison, Subject Minor, not present | |
| Vivian Harrison, Defendant, Counter Claimant, not present | Radford Smith, Attorney, not present |

**JOURNAL ENTRIES**

- This Court received the Letter from John Paglini, Psy.D., Dated November 23, 2015 (Nov. 23. 2015) ("Dr. Paglini's Letter"). Dr. Paglini's Letter requests permission from this Court to interview Jim Ali, PhD., psychologist to Brooke Harrison. Dr. Paglini's Letter indicates that Plaintiff and Defendant have consented to said communication. To facilitate Dr. Paglini's evaluative services, this Court finds that it is in the child's best interest that Dr. Paglini be allowed to interview Dr. Ali. Therefore, to the extent of this Court's jurisdiction pertaining to the issues pending before this Court, it is hereby ORDERED that Dr. Paglini is granted permission to communicate with Dr. Ali.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:** December 14, 2015 9:00 AM Return Hearing
Duckworth, Bryce C.

D-11-443611-D

Courtroom 01

December 14, 2015 9:00 AM Motion
Duckworth, Bryce C.
Courtroom 01

December 14, 2015 9:00 AM Order to Show Cause
Duckworth, Bryce C.
Courtroom 01

December 14, 2015 9:00 AM Motion
Duckworth, Bryce C.
Courtroom 01

December 14, 2015 9:00 AM Opposition
Duckworth, Bryce C.
Courtroom 01

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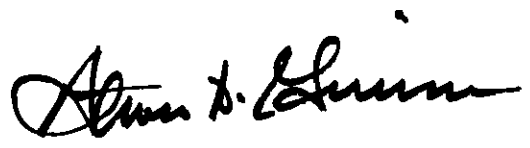

CLERK OF THE COURT

**SUPP**
EDWARD KAINEN, ESQ.
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-15-443611-D
DEPT NO. Q

Date of Hearing: 12/14/2015
Time of Hearing: 9:00 a.m.

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

**SUPPLEMENT TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR CONTINUING TO KNOWINGLY AND INTENTIONALLY VIOLATIONS OF SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 1, 2015**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby files this Supplement to Plaintiff's Motion for an Order to Show Cause why Defendant should not be held in contempt for knowingly and intentionally violating Section 5 of the Stipulation and

. . .

Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's order on October 1, 2015.

DATED this 10th day of December, 2015.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ., #5029
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*Attorneys for Plaintiff*

**MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Vivian is continuing to demonstrate no respect whatsoever for the Orders of this Court. Vivian is continuing to knowingly and intentionally violate Section 5 of the Stipulation and Custody Order of this Court. Vivian believes she can do whatever she wants and there will be no consequence for her intentional and wrongful behavior. Vivian's erroneous belief has caused her to increase the degree to which she has involved Rylee, who is still only 12 years old, in her pattern of knowing and intentional violations of this Court's Orders, much as she has been doing with Brooke over the last many years.

Vivian is now wrongfully involving Rylee in her intentional violations of this Court's Orders. Vivian is also continuing to cause Brooke not to abide by the terms of the Stipulation and Custody Order.

## I. STATEMENT OF FACTS

### A. Vivian Has Continued to Knowingly and Wilfully Violate This Court's Orders

Section 5 of the Stipulation and Custody Order of this Court, dated July 11, 2012, provides:

> 5. *Weekly Division of Time with Minor Child:* The parties shall share joint physical custody of the minor children. VIVIAN shall have the children in her care each Monday from after school, or Monday at 9:00 a.m. when the children are not in school (subject to the provisions of paragraph 7.6), until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. **KIRK shall have the children in his care** from Wednesday

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> after school, or Wednesday at 9:00 a.m. when the children are not in school, **until Friday after school**, or Friday at 9:00 a.m. when the children are not in school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school. (Emphasis added)

Subsection 8.1 of the Stipulation and Custody Order makes a distinction between when school is in session and "when school is not in session." The former time being when the parent to whom the custody of the children is being transferred, picks up the children after school at the school. The latter time being when the parent to whom the custody of the children is being transferred, picks up the children from the other parent's residence.

In accordance with Section 5, when the children have had doctor's appointments in the morning when school is in session in the past, the parent who then has custody until after school, takes the child to the appointment. Also in accordance with Section 5, the same parent has taken the child back to school after the appointment, although there was one prior occasion when Vivian, erroneously, insisted upon taking Brooke back to school, when Brooke was not in her custody.

Unfortunately, Vivian is now emboldened in her belief the Court will not enforce its orders and she is now knowingly and intentionally violating Section 5 regarding Rylee as well.

An appointment was made for Rylee to have two baby teeth pulled. The appointment was made for 10:45 a.m. on Friday, December 4, 2015, when the children were in Kirk's care until after school and school was in session. Despite these undeniable facts and the history of the parents complying with the Court's Order previously under the same circumstances, Vivian made plans with Rylee for her to not attend any classes Friday morning, while in Kirk's custody, for Vivian to pick up Rylee from Kirk's house, take her to the appointment, and for Vivian to then take her to Vivian's house after the appointment. Vivian's text to Kirk on November 30, 2015 at 3:02 p.m. is as follows:

> Rylee has two teeth scheduled to be extracted by Dr. Wong <u>This Friday at 10:45</u> per Dr. Noordas orders. Nothing to eat or drink after midnight since she will be put to sleep. If you have insurance coverage for her please bring info. with you if you're able to make appt otherwise, please call their office & provide. Cost is

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> $855 for procedure and they are expecting pymt in full at time of surgery. Rylee has asked to be able to sleep in & not go to classes that morning since she is unable to eat or drink Etc. She's asked that I pick her up & take her to Dr office at 10.

Shortly thereafter, at 4:09 p.m., Kirk responded, "Please send me contact info for dr Wong. I will take her." However, Vivian is adamant that she is picking up Rylee from Kirk's home when Rylee is in Kirk's care while school is in session and the parties exchanged additional texts.

In one of these texts Vivian erroneously asserted, "For the past 3.5 yrs you have had me take the girls to your house if they were sick & didn't attend school." There is no truth whatsoever to this assertion. Kirk has never had Vivian take the girls to his house if they were sick and did not attend school. Kirk reviewed his texts with Vivian and found there was one occasion when **Vivian** chose to bring Rylee to Kirk's house when Rylee was sick. Kirk assumed Vivian had something else she either wanted or had to do and was happy to take care of Rylee. In an email to Vivian on December 3, 2015, Kirk explained to Vivian what actually occurred:

> This [3.6.13] was a Wednesday when school was in session. My custody did not start until after school that day. However, you brought Rylee over at 9:20 a.m. because she was ill. Contrary to your recent text, you were the one that made this decision. I did not insist that you bring her over in anyway whatsoever. On March 6, 2013, at 8:12 a.m., you sent me the following text: "Rylee has headache, possibly because she had nose spray at bedtime and not use to it. Nevertheless, she feels she can't go to school. **I will take her to ur house at 9.** She does not feel like packing. Another day would probably be better. I notified the school of her absence. Rylee would like you to cancel her activities." You then sent a second text, "R u home to take care of rye?" I responded, "Yes. She did not have a reaction from the nose spray at Dr. McKnight's office. It is either a reaction to getting two doses in one day or something else entirely."

Kirk's email to Vivian 12.3.15.

In this same email, Kirk set forth all of the times the parties had handled the doctor's appointments in compliance with Section 5 and Subsection 8.1. A true and correct copy of this 12.3.15 email and all of the attached texts and email are collectively attached hereto as Exhibit "1" and by this reference incorporated herein.

In an effort to avoid any conflict in front of Rylee and in front of the staff at the doctor's office, Kirk offered to compromise:

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> I will take Rylee to Dr. Wong's office at 10:00 a.m. tomorrow. In the spirit of compromise and to avoid any conflict at Dr. Wong's office in front of Rylee and his staff, I am willing to allow you to drive Rylee to your house after the procedure. As I wrote previously, Rylee will likely not be feeling well after the procedure and it is in Rylee's best interest to not be making custody transfers just hours after the procedure. Hopefully, you will see the wisdom in this proposal and that it is indisputably in Rylee's best interest.
>
> **Under no circumstances are you to come to my home on Friday morning and create an unnecessary conflict in front of Rylee.** I am sure Rylee is already feeling anxious about having two teeth extracted.

Exh. "1" (emphasis already included).

Despite it being clear that all of this was going to take place during Kirk's time to care for Rylee, despite of an unequivocal history of compliance with Section 5 set forth in Kirk's email, and despite Kirk's willingness to compromise for the sake of Rylee, Vivian responded as an emboldened bully:

> At 6:39 p.m. on December 3, 2015, Vivian responded:
>
> I always have and will continue to do what's best for my children. Rylee has asked me to take her to the Drs appt. and has spoken to you expressing the same. I believe making transfer immediately before her schedule surgery will aid Rylee to make the transition after her surgery much easier on her.
> The transfer is made 9 when not in school according to agreement. I've spoken to my atty and sent him your texts emails Etc. He agrees transfer is at 9 if she is not in school. That is what we've always done.
> I've forwarded the attached PDF files you sent me to Radford for his review. I have not read them. If you have any more legal concerns regarding this issue please have your atty contact Radford.
>
> I'll see Rylee at 9. Remember no food or drink & bring your ½ of the pymt for the procedure.

The allegations in Vivian's email are contrary to the requirements of Section 5 and Subsection 8.1. Her factual assertions are false and fly in the face of the actual course of conduct of the parties. Vivian feigns ignorance of the truth by claiming she has not read the attachments to Kirk's email, which sets forth the undeniable history of compliance and adherence to Section 5. Although Vivian undoubtedly read the attachments, Vivian knows the truth. However, Vivian was not going to let the truth interfere with Vivian's current agenda.

. . .

. . .

. . .

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At 7:58 p.m. that same day, Kirk sent the following email to Vivian: "That is not what we have always done. There is no transfer at nine. DO NOT COME TO MY HOUSE DURING MY CUSTODY TIME WITH RYLEE AS YOU ARE INTENTIONALLY INTERFERING WITH MY RELATIONSHIP WITH RYLEE DURING MY TIME WITH HER."

When Kirk picked up Rylee from school the afternoon of Thursday, December 3, 2015, Rylee asked Kirk about her appointment with Dr. Wong. Kirk told Rylee that he would probably take her to the appointment and since she probably would not be feeling well after the appointment and would need to sleep, that her mother would probably take her home after the appointment. Later that evening, Rylee told Kirk that Vivian and she had already planned for Vivian to take her to the appointment and that she was going with Vivian the next morning.

Despite Kirk's emphatic emails to Vivian that she was not to come to his house the next morning while Rylee was still in his care, Vivian showed up. Faced with the specter of an unpleasant fight with Vivian in front of Rylee shortly before Rylee's already stressful operation, having to physically restrain his own twelve year old daughter, or simply letting Rylee go with Vivian, Kirk chose the latter. Kirk later drove to the appointment and waited until after the surgery when Vivian left with Rylee – all during Kirk's time to care for Rylee.

At this point, Vivian is an unrestrained bully, who knowingly, intentionally, and consistently is violating this Court's Orders, without any regard whatsoever of the best interests of Rylee or Brooke.

**B. Vivian Has Continued to Knowingly and Wilfully Violate This Court's Orders Regarding Brooke Since the Filing of the Second Motion for an Order to Show Cause was filed on October 12, 2015**

Despite the Court's unequivocal orders, Vivian has continued to violate the Custody Order, including violating the Court's explicit orders on September 22, 2015, since the filing of the second Motion for an Order to Show Cause was filed on October 12, 2015.

Kirk was to have custody of Brooke for five days, from after school on October 15, 2015 until after school on October 19, 2015. Brooke's older sister, Whitney, was visiting and staying at Kirk's home. Brooke did not come to Kirk's home until after 11:00 p.m. the evening of October 16, 2015 and left the morning of October 19, 2015. The only time Brooke spent with

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Kirk during this entire time period was when Brooke was spending time with Whitney and Kirk was in the same room.

Kirk was to have custody of Brooke for two days, from after school on October 21, 2015 until after school on October 23, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for six days, from after school on October 28, 2015 until the beginning of school on November 3, 2015. Brooke did not come to Kirk's home until after 9:45 p.m. the night of October 28, 2015 and went directly to her bedroom and shut the door. Brooke was gone most of the next day. At about 6:45 p.m., she asked Kirk if she could spend the night at her friend's house. Kirk said that she could. Brooke walked out the door at about 7:00 p.m. and announced she would not see Kirk the rest of the week.

Kirk was to have custody of Brooke for two days, from after school on November 4, 2015 until after school on November 6, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke from 9:00 a.m. on November 11, 2015 until after school on November 16, 2015. Brooke did not come to Kirk's home until almost midnight on November 13, 2015 and went directly to her bedroom and shut the door. Brooke left the morning of November 16, 2015 without spending any time with Kirk, despite his efforts to spend time with her.

Kirk was to have custody of Brooke for two days from after school on November 18, 2015 until after school on November 20, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for two days from after school on December 2, 2015 until after school on December 4, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for five days from after school on December 9, 2015 until after school on December 14, 2015. As of the time of the filing of this motion, Brooke has not come to Kirk's home at any time during this custody period.

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During the brief periods Brooke has been at Kirk's home since October 12, 2015, Kirk has continued to attempt to talk with Brooke. Each attempt was rebuffed by Brooke with a curt "ok" and a request to leave Brooke's bedroom.

Neither Vivian nor Brooke has provided Kirk with Brooke's class schedule, despite Kirk's requests.

## II. ARGUMENT

### A. Vivian is Knowingly and Wilfully Continuing to Violate this Court's Orders

Vivian is now knowingly and wilfully violating this Court's Orders regarding both Brooke and Rylee. This most recent intentional interference with Kirk's time to care for Rylee is inexcusable, but indicative of a bully who has no respect for the Court's Orders, no respect for the other parent's custody time with the children, and no sensitivity whatsoever of what is the best interests of the children.

Vivian is continuing to actively interfere with Kirk's relationship with Brooke by enabling her to come and go as she pleases in the very car Vivian gave to her to do so. She has also given Brooke money so Brooke could buy meals at restaurants, rather than eat her meals with Kirk and Rylee.

### B. It is Critical that Brooke Spend as Much Time as Possible with Kirk As Soon As Possible

All authorities agree that efforts to re-establish the relationship between Brooke and Kirk will be unsuccessful unless the child and the targeted parent spend a significant amount of time together. *See* STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 222; RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 273-275. "As a general rule, we have found that change of the physical environment and increased social contact with the target parent are the major positive ways to deprogramme a child. The more continuous and regular contact the child has with the programmer and brainwasher, the more likely the process is to continue and damage is to increase." CHILDREN HELD HOSTAGE, p. 229.

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The longer Vivian has the opportunity to continue with her wilful non-compliance with the Custody Order and this Court's other orders, the more likely it is that future efforts to repair the damage will fail. The literature makes it clear that the longer we wait to significantly increase the contact, the more likely it is that any remedial effort will fail. Patience and delay are not viable options if Brooke is to be saved from the permanent devastating effects of the alienation and the relationship between Brooke and Kirk is to be salvaged.

The extremeness of Brooke's behavior and attitude towards Kirk is cause for alarm:

> **Mental health professionals agree that to prevent the alienation and its resulting injuries from becoming permanent, swift decisive action by the courts is necessary.** If the alienation is permitted to continue, the "destructive dynamic" becomes "entrench[ed]" and the children's positions solidified. Appropriate contact between the target parent and the child must be reestablished **quickly** because delays only "consolidate and reward the child's phobic or recalcitrant stance." Unfortunately, all too often, courts are reluctant to take the required action until a child has deteriorated to a dangerous level.
>
> Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances **the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.** ¶

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added) (citations omitted).

Kirk respectfully urges the Court to send an unmistakable and resounding message to Vivian that Vivian's disparagement of Kirk to Brooke will not be tolerated, and that any interference with the custody schedule to which Vivian agreed, and which this Court ordered, shall not be tolerated, by once again issuing an order to appear and show cause why Vivian should not be held in contempt. Kirk also respectfully urges the Court to send an unmistakable and resounding message to Vivian that Vivian's knowing and intentional violations of the Custody Order regarding Rylee will also not be tolerated, by issuing an order to appear and

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show cause why Vivian should not be held in contempt.

NRS 22.010(3) provides as follows:

> **Acts or omissions constituting contempt.** The following acts or omissions shall be deemed contempts:
>
> 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

DATED this 6th day of December, 2015.

KAINEN LAW GROUP, PLLC

By: _____

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*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Supplement to Motion for an Order to Show Cause are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me

this 10TH day of December, 2015.

NOTARY PUBLIC in and for said
County and State

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. May 17, 2016

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of December, 2015, I caused to be served the ***Supplement to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not Be Held In Contempt for Continuing to Knowingly and Intentionally Violations of Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 1, 2015*** to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

____ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

____ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

__X__ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Ksmith@radfordsmith.com
Gvarshney@radfordsmith.com
Jhoeft@radfordsmith.com

An Employee of
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**EXHIBIT “1”**

**Texts and Email Regarding Custody of Rylee When School is in Session on Friday, December 4, 2015**

11.30.15 3:02 p.m. (Vivian text to Kirk) Rylee has two teeth scheduled to be extracted by Dr. Wong This Friday at 10:45 per Dr. Noordas orders. Nothing to eat or drink after midnight since she will be put to sleep. If you have insurance coverage for her please bring info. with you if you're able to make appt otherwise, please call their office & provide. Cost is $855 for procedure and they are expecting pymt in full at time of surgery. Rylee has asked to be able to sleep in & not go to classes that morning since she is unable to eat or drink Etc. She's asked that I pick her up & take her to Dr office at 10.

11.30.15 4:09 p.m. (Kirk text to Vivian) Please send me contact info for dr Wong. I will take her

11.30.15 (Vivian text to Kirk) Don't have. . call dr Noorda. Friday is my scheduled day so I will be picking her up at 10

11.30.15 (Kirk text to Vivian) My mistake. I thought it was my scheduled day.

12.1.15 7:55 a.m. (Kirk email to Vivian)
This is a follow up to our texts last night. Since you have had Brooke and Rylee the last two weekends, I erroneously thought last night they were with me this weekend. Although this is your weekend to have the children, Rylee is still in my custody until after school at 2:11 p.m. this Friday. Assuming for a moment that Rylee did not have the appointment this Friday, but woke up too ill to go to school. Because it is a school day, she would remain in my custody until after school at 2:11 p.m. The same is true in connection with her appointment this Friday. The fact that Rylee does not want to go to school before her appointment, does not make it a non-school day. Friday is not your scheduled day until after 2:11 p.m.

I will take Rylee to the appointment at 10:00 a.m. and I will take Rylee home after the appointment. However, if Rylee is groggy and sleepy after the procedure and it is acceptable to you, I will drive her directly to your house. If Rylee is groggy and sleepy after the procedure, which I suspect will be the case, it does not make sense for her to go home with me only to be transferred to your house an hour or two later.

I have provided the insurance information to Dr. Wong's office.

12.1.15 8:15 a.m. (Kirk text to Vivian) Sent email to you this morning regarding this Friday

12.2.15 1:54 p.m. (Vivian text to Kirk) Kirk, yes I had the girls thanksgiving weekend, since you had them last thanksgiving weekend and will have them next thanksgiving weekend, which has nothing to do with the issue of Friday's transfer. Your most recent interpretation of the provision is incorrect and not consistent with these transfers to date. For the past 3.5 yrs you have had me take the girls to your house if they were sick & didn't attend school. Rylee has asked that I take her. I will pick up Rylee at 9;00 (per agreement) on Friday from your house if she isn't in school. This will make her transition easier after her surgery.

December 3, 2015

Vivian,

Rylee asked about this Friday this morning. I told her that you and I were working it out, but that I would probably take her to the appointment and you would probably drive her home, as she may not be feeling well after the procedure. Rylee was fine with my response. Later, Rylee said that you and she exchanged texts, and said since you and she already planned for you to take her, that you should take her. You need to stop this kind of manipulation. It is doing much more harm to Brooke and Rylee than you realize.

The applicable language from the Custody Order provides: "KIRK shall have the children in his care from Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school, **until Friday after school**, or Friday at 9:00 a.m. when the children are not in school." Paragraph 8.1 makes a distinction between when school is in session and "when school is not in session." The latter time being when the parent to whom the custody of the children is being transferred, picks up the children from the other parent's residence.

School is still in session this Friday. This language is clear that my custody continues, when school is in session, until after school. Based upon your strained interpretation, you could schedule a three day vacation with Rylee by simply telling Rylee to miss school on a Friday and picking her up at my house at 9:00 a.m. that Friday morning. That is not how it works during my custody period.

Your recollection of what has transpired during the past three and one-half years is inaccurate. You erroneously assert, "For the past 3.5 yrs you have had me take the girls to your house if they were sick & didn't attend school." This is simply false. The following is what has actually occurred:

11.26.12 You were in Cabo San Lucus. This was the Monday after the Thanksgiving Visitation. I had forgotten about the Sunday 7:00 p.m. provision in Paragraph 7.3 and assumed I took Brooke and Rylee to school that Monday morning as I always do after having them during the weekend. Rylee telephoned me from school saying she was ill and asked that I come get her. I telephoned you to let you know that Rylee was ill and home asleep. You were upset that I did not take Rylee to the Atkinson's house, despite the fact Rylee was ill and you were out of the country. When Rylee woke up shortly before noon, I walked her over to the Atkinson house, despite the fact you were still not there.

You were out of the country (although flying back that day), Rylee was ill, and wanted to be with her dad.

3.6.13 This was a Wednesday when school was in session. My custody did not start until after school that day. However, you brought Rylee over at 9:20 a.m. because she was ill. Contrary to your recent text, you were the one that made this decision. I

did not insist that you bring her over in anyway whatsoever. On March 6, 2013, at 8:12 a.m., you sent me the following text: "Rylee has headache, possibly because she had nose spray at bedtime and not use to it. Nevertheless, she feels she can't go to school. **I will take her to ur house at 9.** She does not feel like packing. Another day would probably be better. I notified the school of her absence. Rylee would like you to cancel her activities." You then sent a second text, "R u home to take care of rye?" I responded, "Yes. She did not have a reaction from the nose spray at Dr. McKnight's office. It is either a reaction to getting two doses in one day or something else entirely."

I was happy to take care of Rylee while she was ill and assumed you had something else you wanted to do.

| | |
|---|---|
| 5.22.13 | This was a Wednesday morning when school was in session. You sent me a text at 8:04 a.m., "Brooke not feeling well. Taking her to see Dr. Smith 9:15 a.m." This was consistent with the applicable provision as school was in session. |
| 10.4.13 | This was a Friday. I took Brooke to an appointment with Dr. Smith to examine her leg. |
| 12.11.13 | This was a Wednesday morning when school was in session. You took Brooke to the orthodontist appointment consistent with the provision. I was also there during the appointment. Rylee's orthodontist appointment was after school the same day, so, consistent with the provision, I took Rylee to her appointment. |
| 3.7.14 | This was a Friday when school was in session. I took Brooke to a follow up appointment with Dr. Bonn. This is the same office as Dr. Wong. |
| 4.21.14 | This was a Monday when school was in session. Consistent with the provision, I took Brooke to an appointment with Dr. Noorda in the morning. You insisted that you take Brooke to school. I told you that according to the Custody Order, you did not get Brooke until after school and that I needed to take Brooke to school. However, you would not relent, and so to avoid a fight in front of Brooke, I told Brooke to go with you. However, later that day I sent you a text at 9:38 a.m., which provided, "Did not want to have a fight in front of Brooke. The Order clearly provides, "VIVIAN shall have the children in her care each Monday from after school. . ." |
| 3.25.15 | This was a Wednesday morning when school was in session. You took Brooke to an appointment with Dr. Noorda, which was in the morning. This was consistent with the provision. I also attended the appointment. Also consistent with the provision, you then took Brooke to school. It is noteworthy that you had a different perspective when you were supposed to take Brooke to school after the appointment. |

4.10.15 This was a Friday when school was in session. Brooke had gone with you to a concert the night before and had gotten home very late. When I tried to get Brooke up for school she said she had a severe headache and was very tired. Brooke did not go to school, but stayed with me until after school was over. This was consistent with the provision.

As you can readily see from the foregoing, I never "had [you] take the girls to [my] house if they were sick & didn't attend school." It is important that both you and I comply with the terms of the Custody Order.

Since you were well aware that Rylee was to be in my custody this Friday until after school at 2:11 p.m., it was inappropriate for you to be deciding with Rylee as to whether she goes to class, whether you are driving her, etc. You were purposefully interfering with my relationship with Rylee during my custody time and are continuing to do so.

I will take Rylee to Dr. Wong's office at 10:00 a.m. tomorrow. In the spirit of compromise and to avoid any conflict at Dr. Wong's office in front of Rylee and his staff, I am willing to allow you to drive Rylee to your house after the procedure. As I wrote previously, Rylee will likely not be feeling well after the procedure and it is in Rylee's best interest to not be making custody transfers just hours after the procedure. Hopefully, you will see the wisdom in this proposal and that it is indisputably in Rylee's best interest.

**Under no circumstances are you to come to my home on Friday morning and create an unnecessary conflict in front of Rylee.** I am sure Rylee is already feeling anxious about having two teeth extracted.

Just so the record is clear, you have an undeniable history of deliberately interfering with my relationship with Brooke and Rylee while they are in my custody. This pattern of intentional interference must stop immediately. Attached are the recent texts and email between us concerning this matter.

Kirk

E-SERVED
DEC 11 2015

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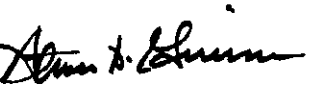
12/10/2015 04:49:39 PM



CLERK OF THE COURT

**RPLY**
RADFORD J. SMITH, ESQ.
RADFORD J. SMITH, CHARTERED
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, NV 89074
T: (702) 990-6448
F: (702) 990-6456
Email: rsmith@radfordsmith.com
Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

**REPLY TO OPPOSITION TO MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS**

DATE OF HEARING: December 14, 2015
TIME OF HEARING: 9:00 a.m.

COMES NOW, Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), through her attorneys, Radford J. Smith, Esq. and Garima Varshney, Esq., of Radford J. Smith, Chartered and submits the following points and authorities in the following points and authorities support of the Reply to Opposition referenced above.

. . .

. . .

. . .

This motion is made and based upon the points and authorities and affidavits attached hereto, and upon all such argument as made by counsel at the time of the hearing.

Dated this 10th day of December, 2015.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant Vivian Harrison*

I.

**VIVIAN'S REQUEST TO AMEND/CLARIFY ORDER ENTERED ON OCTOBER 10, 2015 SHOULD BE GRANTED**

In his Opposition to Motion for Clarification; Motion to Amend Findings ("Opposition"), Kirk acknowledges that in order to find Vivian in contempt, the Court must hold an Evidentiary Hearing. *See* Kirk's Opposition, page 4, lines 21-27. If the Court cannot ***hold*** a party in contempt without an Evidentiary hearing, it necessarily follows that the Court cannot ***find*** a party in contempt without an Evidentiary Hearing. *See Awad v. Wright,* 106 Nev. 407, 411, 794 P.2d 713, 716 (1990).

On October 1, 2015, the Court entered a Notice of Entry of Minute Order from the September 22 hearing. The minute order states, "Although the Court has made a ***Finding that contempt has been committed*** as it relates to Plaintiff's missed time, the contempt issues shall be DEFERRED to the next hearing." [Emphasis added]. By this Motion, Vivian seeks a clarification of that order. Because the Court cannot make a ***finding of contempt without an evidentiary hearing***, Vivian seeks an order amending the October 1, 2015 order.

The remainder of Kirk's Opposition is consistent with his pattern throughout the case to include irrelevant and unsubstantiated allegations to confuse the simple issues before the Court by rehashing the same allegations repeatedly. By an Order entered on September 22, 2015 and Order re: Expert Designation entered on October 6, 2015, the Court indicated that Dr. Paglini may be provided any documents filed with the Court. Vivian submits that Kirk's Opposition in which he again alleges the same unsubstantiated allegations are designed only to influence Dr. Paglini and are not relevant to the present motion. *See Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004) and *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994).

The issue of whether the Court finds Vivian in contempt should be addressed at the Evidentiary Hearing wherein Vivian should be allowed to bring in evidence and witnesses to testify. At the Evidentiary Hearing, Vivian should be permitted to testify regarding the facts set forth in her Affidavit filed with her current motion and her brother, Harold Lee's unsworn Declaration attached hereto as Exhibit "A" that reaffirms Vivian's testimony that she is punishing and admonishing Brooke to ensure Kirk's custodial time with the child.

Also attached hereto as Exhibit "B" is Vivian's calendar showing the days that Brooke was with Kirk for the last 6 months – from June 3 through December 11. As indicated in that calendar, Brooke had exercised teenage discretion on only ***four days*** prior to Kirk filing his Motion for the Issuance of Order to Show Cause that he filed on August 21.[1]

Based upon Dr. Paglini's letter dated December 9, 2015, the undersigned counsel was advised by the Court's law clerk that the hearing on the issue of Order to Show Cause shall be continued. The law clerk advised the undersigned counsel that because Kirk refused to continue the hearing and insisted on proceeding with the hearing on December 14, the matter will go forward on "other issues." The only

[1] August 12, August 13, August 19 and August 20.

other issue before the court is Vivian's current motion for clarification and amend. That issue should also be continued to the next hearing. Yet, as in the past, Kirk continues to multiply the proceedings and cause Vivian to expend unnecessary monies on attorney's fees and costs by refusing to continue a hearing.

The issue of Vivian's Opposition to Kirk's Ex Parte Motion for Order Shortening Time is moot since based upon Dr. Paglini's request, the undersigned counsel has been advised that the hearing on the issue of contempt shall be continued.

## II.

## CONCLUSION

Based on the foregoing, Vivian's Motion for Clarification, Motion to Amend Findings should be granted. The Court should clarify the order entered on October 1, 2015 regarding the Court's finding that Vivian is in contempt as it relates to Kirk's missed time with Brooke, yet ordering that "contempt issues shall be deferred to the next hearing." The Court should amend the Order entered on October 1, 2015 that finds Vivian in contempt without an Evidentiary Hearing on the issue of contempt.

Dated this 10th day of December, 2015.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Radford J. Smith, Chartered ("the Firm"). I am over the age of 18 and not a party to the within action. I served the foregoing document this 10th day of December, 2015, described as "REPLY TO OPPOSITION TO MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS;

☐ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

☒ BY ELECTRONIC SERVICE: I transmitted a copy of the foregoing document this date via the Eighth Judicial District Court's electronic filing system

Tom J. Standish, Esq.
Jolley, Urga, Woodbury, Worth & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
tjs@juww.com
Attorney for Plaintiff

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

An employee of Radford J. Smith, Chartered

# EXHIBIT "A"

**SWORN DECLARATION OF HAROLD LEE**

COUNTY OF CLARK )
) ss:
STATE OF NEVADA )

I, Harold Lee being duly sworn, deposes and says as follows:

1. I make this Declaration based upon facts within my own knowledge, save and except as to matters alleged upon information and belief and, as to those matters, I believe them to be true. I am competent to testify to the facts contained herein.

2. I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

3. I am Vivian's brother and Brooke's Uncle.

4. I am a Police Officer with CCSD.

5. I am currently residing at 1514 Sunrise Circle and have so for the last 10 months anticipating my 30 year retirement in January.

6. In my capacity as a police officer, I have been dispatched during custody disputes between parents.

7. I was present in the room when Brooke Harrison refused to make the transfer to Kirk Harrison's home on Friday, September 18th. Vivian and I were in the living room watching TV. I witnessed Brooke coming home late that evening. Vivian commented to Brooke that she was suppose to be at her Dad's house. Vivian asked Brooke had she gone to her Dad's at all that day and where had she had been. Brooke responded that she went to the football game and that she couldn't get herself to go over to her Dad's. Brooke said it was too hard and stressful and that

said she "couldn't do it anymore". Vivian told her she had to go and had no choice. Brooke replied she wasn't going to go and that she was done going back and forth between houses all the time. She went to her room.

8. I overheard Vivian on at least 4 occasions telling Brooke that she had to go to her Dad's house. I have also heard Vivian telling Brooke that she will have consequences if she didn't go.

9. I have witnessed, when Brooke didn't make the transfer to her Dad's, Vivian placing Brooke on restriction, not allowing here to go anywhere, have friends over, use her cell phone, watch TV, or use Vivian's Toyota with the exception of going to class.

10. I have never been seen or heard Vivian disparage Kirk in front of Brooke & Rylee.

11. I was home Monday, July 20th, when Vivian received the demand letter and that her account was in collections for a non payment of a hospital bill. Vivian said the was concerned that her credit had been damaged as a result of that non payment.

12. I was home July 22nd, when Vivian called the insurance company trying to obtain information regarding the delinquent account and to immediately rectify the situation to eliminate further damage to her credit. At that time Vivian spoke to me about how the insurance company wouldn't give her any information regarding the delinquent account since she wasn't on the policy. I was home when Vivian placed a subsequent call to the insurance company, and went to Brooke's room where Brooke gave permission to the insurance company to speak to her Vivian regarding her account. Although I was not in the room with Vivian and Brooke, I was in the house during that time and Vivian and I spoke about the conversation after the call. Brooke has confirmed with me that the accounts in the room occurred as stated.

13. Brooke has told me that she was unhappy going between houses and that she wanted to live in one home. She has told me that going between houses was very stressful.

14. In my opinion, Brooke is a mature, extremely intelligent, well adjusted, successful, responsible, kind, and loving person.

DATED: DECEMBER 10, 2015

# EXHIBIT "B"

A.App. 1914

# June 2015

Kirk had girls 21 days in June

Vivian vacation/scheduled days

May 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

June 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | | | | |

July 2015

| S | M | T | W | T | F | S |
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| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

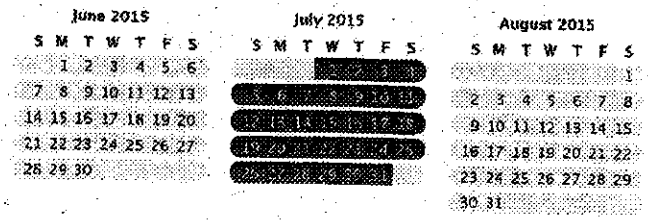
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 Last Day of School | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 10:15 Vivian takes Brooke to Dr Ali | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 Vivian vacation | 27 |
| 28 Vivian vacation | 29 | 30 | | | | |



A.App. 1914

A.App. 1915

# July 2015




US Holidays
Found in Mall

Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday

Vivian Vacation

Recvid Insurance Collection Notice

Called Ins. company on Collection

Vivian Vacation

Vivian Vacation



A.App. 1915

A.App. 1916

A.App. 1916

# August 2015

Brooke - Missed 7 kirks days

Kirk FUS after missing 2 transfers (4 days)

July 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

August 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

September 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | | | |

US Holidays
Found in Mail

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| 26 | 27 | 28 | 29 | 30 | 31 | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

Vivian Vacation

Vivian Vacation

*-Brooke attends UNLV

- First day Brooke didn't tsf.

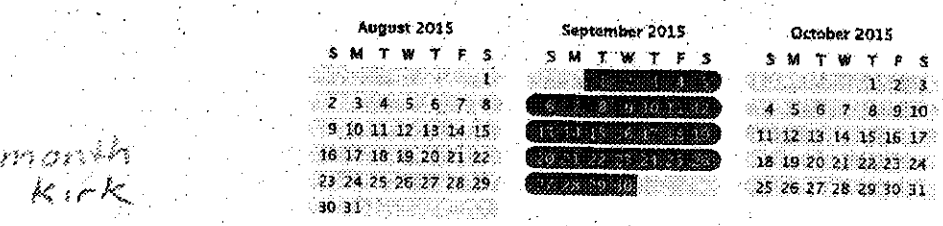
*Kirk Texts-Brooke told him not transferring

Kirk files contempt

3:15 Brooke Or Ali

A.App. 1917

# September 2015




US Holidays
Found in Mail

Brooke -
missed 14 days this month
spent 1 day with Kirk

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 Court - contempt (missed 19 days w/ Kirk) b/c Kirk requests Brookes schedule | 23 Kirks ISP txt asking why Brooke didn't visit. | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | | | |

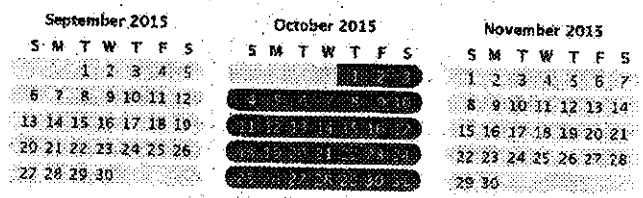


A.App. 1917

A.App. 1918

# October 2015

Brooke missed 11 days
spent with Kirk 6 days




| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 First email from Kirk re: Brooke leaving his house | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 2nd txt from Kirk re: Brooke's non transfer | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 Kirk lets Brooke spend night at friends | 30 | 31 |



A.App. 1918

A.App. 1919

# November 2015

Brooke missed 7 days
X spent with 3 days

October 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

November 2015

| S | M | T | W | T | F | S |
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| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

December 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

US Holidays
Found in Mall

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

Vivian - Thanksgiving holiday



A.App. 1919

A.App. 1920

# December 2015

X - Brooke 2 kicks
missed 4 days
X Spent 3 with kink as of 12/14

US Holidays
Found in Mail

November 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

December 2015

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

January 2016

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 Brooke Dr Paglia | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 Brooke Dr Paglia | 12 |
| 13 | 14 Court Contempt | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |



A.App. 1920

D-11-443611-D

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

**Divorce - Complaint** **COURT MINUTES** December 14, 2015

D-11-443611-D Kirk Ross Harrison, Plaintiff
vs.
Vivian Marie Lee Harrison, Defendant.

**December 14, 2015 9:00 AM** **All Pending Motions**

**HEARD BY:** Duckworth, Bryce C. **COURTROOM:** Courtroom 01

**COURT CLERK:** April Graham

**PARTIES:**

| | |
|---|---|
| Emma Harrison, Subject Minor, not present | |
| Kirk Harrison, Plaintiff, Counter Defendant, present | Edward Kainen, Attorney, present |
| Lisa Linning, Other, not present | |
| Rylee Harrison, Subject Minor, not present | |
| Vivian Harrison, Defendant, Counter Claimant, present | Radford Smith, Attorney, present |

**JOURNAL ENTRIES**

- RETURN HEARING: CHILD EVALUATION...PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF October 1, 2015...ORDER TO SHOW CAUSE...MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS; OPPOSITION TO EXPARTE MOTION FOR EXPEDITED HEARING...PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS AND; PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EX PARTE MOTION FOR EXPEDITED HEARING

Attorney Garima Varshney, Nevada Bar #11878, present with Mr. Smith and Defendant.

Argument and discussion regarding discovery and contempt issues, and whether Defendant is engaging the children in alienating behaviors against Plaintiff, or whether Brooke has legitimate

issues with Plaintiff. Court noted, Dr. Paglini's report will not be ready for another 30 days, and it will not determine if an Evidentiary Hearing is needed on the Order to Show Cause until it has reviewed the report. Mr. Kainen expressed his concern that the issues at hand have also impacted the parties' 12 year old daughter, as well. Court stated, as the parties are Joint Physical Custodians, Brooke does not run the show and she does not dictate how the rules are followed.

COURT ORDERED as follows:

1. Order to Show Cause Hearing is CONTINUED to 1/26/16 at 8:30 AM.

2. The Court is not going to modify CUSTODY at this time.

3. The Court is not going to open Discovery at this time.

4. The Court is STRIKING the Supplement filed by Plaintiff. Plaintiff may re-file it as a Motion and set it for the next hearing date in this matter.

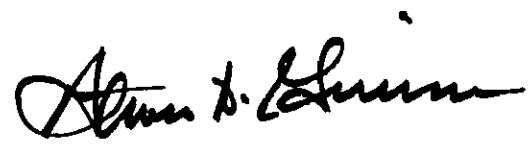
Mr. Kainen shall prepare the Order to Show Cause.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

January 26, 2016 8:30 AM Order to Show Cause
Duckworth, Bryce C.
Courtroom 01

Electronically Filed
12/16/2015 10:21:03 AM



CLERK OF THE COURT

**NTC**
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tjs@standishlaw.com

Co-counsel for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-15-443611-D
DEPT NO. Q

Date of Hearing: January 20, 2016
Time of Hearing: 10:00 AM

**ORAL ARGUMENT REQUESTED:**
**YES_____ NO_____**

**PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR CONTINUING TO KNOWINGLY AND INTENTIONALLY VIOLATE OF SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 1, 2015**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court, pursuant to NRS 22.010(3), for an Order to Show Cause why Defendant should not be held in contempt for knowingly and intentionally violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's order on October 1, 2015.

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

DATED this 16th day of December, 2015.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 20th day of January 2016, ~~2015~~, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 16th day of December, 2015.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
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*Attorneys for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

The points and authorities filed, on October 12, 2015, in support of *Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 1, 2015*; the points and authorities filed, on August 21, 2015, in support of *Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012; this Court's Order of October 30, 2013;* the points and authorities filed, on September 18, 2015, in support of *Plaintiff's Reply in support of Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's Order of October 30, 2013* and the points and authorities filed, on September 18, 2015, in support of *Plaintiff's Opposition to Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")* are hereby incorporated by this reference as though set forth in full herein.

### I. INTRODUCTION

Vivian is continuing to demonstrate no respect whatsoever for the Orders of this Court. Vivian is continuing to knowingly and intentionally violate Section 5 of the Stipulation and Custody Order of this Court. Vivian believes she can do whatever she wants and there will be no consequence for her intentional and wrongful behavior.

Vivian is now wrongfully involving Rylee in her intentional violations of this Court's Orders. Vivian is also continuing to cause Brooke not to abide by the terms of the Stipulation and Custody Order.

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## I. STATEMENT OF FACTS

### A. Vivian Has Continued to Knowingly and Wilfully Violate This Court's Orders

Section 5 of the Stipulation and Custody Order of this Court, dated July 11, 2012, provides:

> 5. *Weekly Division of Time with Minor Child:* The parties shall share joint physical custody of the minor children. VIVIAN shall have the children in her care each Monday from after school, or Monday at 9:00 a.m. when the children are not in school (subject to the provisions of paragraph 7.6), until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. **KIRK shall have the children in his care** from Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school, **until Friday after school**, or Friday at 9:00 a.m. when the children are not in school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school.

(Emphasis added.

Subsection 8.1 of the Stipulation and Custody Order makes a distinction between when school is in session and "when school is not in session." The former time being when the parent to whom the custody of the children is being transferred, picks up the children after school at the school. The latter time being when the parent to whom the custody of the children is being transferred, picks up the children from the other parent's residence.

In accordance with Section 5, when the children have had doctor's appointments in the morning when school is in session in the past, the parent who then has custody until after school, takes the child to the appointment. Also in accordance with Section 5, the same parent has taken the child back to school after the appointment, although there was one prior occasion when Vivian, erroneously, insisted upon taking Brooke back to school, when Brooke was not in her custody.

Vivian's after the fact convenient interpretation flies in the face of the historical conduct of the parties. Vivian's after the fact inconsistent interpretation also would lead to nonsensical consequences. Under Vivian's new interpretation, if it is a Friday and school is in session and

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Brooke goes to school, but Rylee stays home ill, then Vivian would assert that Brooke remains in Kirk's custody until after school, but custody changes for Rylee at 9:00 a.m. What if a family had five children and one became ill. Under Vivian's new interpretation, four children would remain in the same custody and one would change custody. It doesn't make any sense. What if it is a Friday and both Brooke and Rylee go to school, but Rylee gets becomes ill after she goes to school. If she becomes ill before 9:00 a.m., according to Vivian custody would change. If Rylee becomes ill after 9:00 a.m., would custody still change? All of the foregoing, demonstrates the importance of the distinction set forth in Section 8.1 as between when school is in session and when school is not in session. When school is in session the custody changes after school – not at 9:00 a.m. This is true irrespective of whether a child becomes ill or when that child becomes ill.

The Court will readily see below that Vivian's claimed justification for what she did radically changed. Initially, Vivian erroneously claimed that she was going to take Rylee from Kirk's home because , "For the past 3.5 yrs **you have had me** take the girls to your house if they were sick & didn't attend school." (Emphasis added). However, when Kirk clearly showed Vivian that was absolutely not true and the undeniable historical manner the parties have handled such circumstances was diametrically opposite of her position, Vivian's claimed, after the fact, justification for her outrageous conduct became her new interpretation of Section 5.

Unfortunately, Vivian is now emboldened in her belief the Court will not enforce its orders and she is now knowingly and intentionally violating Section 5 regarding Rylee as well.

An appointment was made for Rylee to have two baby teeth pulled. The appointment was made for 10:45 a.m. on Friday, December 4, 2015, when the children were in Kirk's care until after school and school was in session. Despite these undeniable facts and the history of the parents complying with the Court's Order previously under the same circumstances, Vivian made plans with Rylee for her to not attend any classes Friday morning, while in Kirk's custody, for Vivian to pick up Rylee from Kirk's home, for Vivian to take her to the appointment, and for Vivian to then take her to Vivian's house after the appointment. Vivian's text to Kirk on November 30, 2015 at 3:02 p.m. is as follows:

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> Rylee has two teeth scheduled to be extracted by Dr. Wong This Friday at 10:45 per Dr. Noordas orders. Nothing to eat or drink after midnight since she will be put to sleep. If you have insurance coverage for her please bring info. with you if you're able to make appt otherwise, please call their office & provide. Cost is $855 for procedure and they are expecting pymt in full at time of surgery. Rylee has asked to be able to sleep in & not go to classes that morning since she is unable to eat or drink Etc. She's asked that I pick her up & take her to Dr office at 10.

Shortly thereafter, at 4:09 p.m., Kirk responded, "Please send me contact info for dr Wong. I will take her." However, Vivian is adamant that she is picking up Rylee from Kirk's home when Rylee is in Kirk's care while school is in session and the parties exchanged additional texts.

In one of these texts Vivian erroneously asserted, "For the past 3.5 yrs **you have had me** take the girls to your house if they were sick & didn't attend school." (Emphasis added). There is no truth whatsoever to this assertion. Kirk has never had Vivian take the girls to his house if they were sick and did not attend school. Kirk reviewed his texts with Vivian and found there was one occasion when **Vivian** chose to bring Rylee to Kirk's house when Rylee was sick. Kirk assumed Vivian had something else she either wanted or had to do and was happy to take care of Rylee. In an email to Vivian on December 3, 2015, Kirk explained to Vivian what actually occurred:

> This [3.6.13] was a Wednesday when school was in session. My custody did not start until after school that day. However, you brought Rylee over at 9:20 a.m. because she was ill. Contrary to your recent text, you were the one that made this decision. I did not insist that you bring her over in anyway whatsoever. On March 6, 2013, at 8:12 a.m., you sent me the following text: "Rylee has headache, possibly because she had nose spray at bedtime and not use to it. Nevertheless, she feels she can't go to school. **I will take her to ur house at 9.** She does not feel like packing. Another day would probably be better. I notified the school of her absence. Rylee would like you to cancel her activities." You then sent a second text, "R u home to take care of rye?" I responded, "Yes. She did not have a reaction from the nose spray at Dr. McKnight's office. It is either a reaction to getting two doses in one day or something else entirely."

Kirk's email to Vivian 12.3.15.

In this same email, Kirk set forth all of the times the parties had handled the doctor's appointments in compliance with Section 5 and Subsection 8.1. A true and correct copy of this 12.3.15 email and all of the attached texts and email are collectively attached hereto as Exhibit

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"1" and by this reference incorporated herein.

In an effort to avoid any conflict in front of Rylee and in front of the staff at the doctor's office, Kirk offered to compromise:

> I will take Rylee to Dr. Wong's office at 10:00 a.m. tomorrow. **In the spirit of compromise** and to avoid any conflict at Dr. Wong's office in front of Rylee and his staff, I am willing to allow you to drive Rylee to your house after the procedure. As I wrote previously, Rylee will likely not be feeling well after the procedure and it is in Rylee's best interest to not be making custody transfers just hours after the procedure. Hopefully, you will see the wisdom in this proposal and that it is indisputably in Rylee's best interest.
>
> **Under no circumstances are you to come to my home on Friday morning and create an unnecessary conflict in front of Rylee.** I am sure Rylee is already feeling anxious about having two teeth extracted.

Exh. "1" (emphasis already included).

Despite it being clear that all of this was going to take place during Kirk's time to care for Rylee, despite an unequivocal history of compliance with Section 5 set forth in Kirk's email, and despite Kirk's willingness to compromise for the sake of Rylee, Vivian responded as an emboldened bully:

At 6:39 p.m. on December 3, 2015, Vivian responded:

> I always have and will continue to do what's best for my children. Rylee has asked me to take her to the Drs appt. and has spoken to you expressing the same. I believe making transfer immediately before her schedule surgery will aid Rylee to make the transition after her surgery much easier on her.
> The transfer is made 9 when not in school according to agreement. I've spoken to my atty and sent him your texts emails Etc. He agrees transfer is at 9 if she is not in school. That is what we've always done.
> I've forwarded the attached PDF files you sent me to Radford for his review. I have not read them. If you have any more legal concerns regarding this issue please have your atty contact Radford.
>
> I'll see Rylee at 9. Remember no food or drink & bring your ½ of the pymt for the procedure.

The allegations in Vivian's email are contrary to the requirements of Section 5 and Subsection 8.1. Her factual assertions are false and fly in the face of the actual course of conduct of the parties. Vivian feigns ignorance of the truth by claiming she has not read the attachments to Kirk's email, which sets forth the undeniable history of compliance and adherence to Section 5. Although Vivian undoubtedly read the attachments, Vivian knows the truth. However, Vivian was not going to let the truth interfere with Vivian's current agenda.

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At 7:58 p.m. that same day, Kirk sent the following email to Vivian: "That is not what we have always done. There is no transfer at nine. DO NOT COME TO MY HOUSE DURING MY CUSTODY TIME WITH RYLEE AS YOU ARE INTENTIONALLY INTERFERING WITH MY RELATIONSHIP WITH RYLEE DURING MY TIME WITH HER."

When Kirk picked up Rylee from school the afternoon of Thursday, December 3, 2015, Rylee asked Kirk about her appointment with Dr. Wong. Kirk told Rylee that he would probably take her to the appointment and since she probably would not be feeling well after the appointment and would need to sleep, that her mother would probably take her home after the appointment. Later that evening, after communicating with Vivian, Rylee told Kirk that Vivian and she had already planned for Vivian to take her to the appointment and that she was going with Vivian the next morning. In addition, Rylee told Kirk that he had previously made Vivian take her to Kirk's house when she was vomiting and did not want to get into the car. As demonstrated above, it was solely Vivian's decision to take Rylee in the car to Kirk's house when Rylee was ill during Vivian's custody period.

This is yet one more example of Vivian's intentional alienation of Kirk from Brooke and Rylee. Vivian convinced Rylee the reason she was taking her to Kirk's home when Rylee was ill was because Kirk was making her do so. As a foreseeable consequence of Vivian's alienating conduct, Rylee has falsely believed since that time that Kirk did not care about her to such an extent that he made Vivian take her in the car when she was vomiting and did not want to go in the car. But for this most recent incident, Kirk would never have discovered what Vivian did. All he knew was that Vivian had sent him a text telling him that Rylee was ill and Vivian was bringing Rylee to his home to take care of her.

Despite Kirk's emphatic emails to Vivian that she was not to come to his house the next morning while Rylee was still in his care, Vivian showed up. Faced with the specter of an unpleasant fight with Vivian in front of Rylee shortly before Rylee's already stressful operation, having to physically restrain his own twelve year old daughter, or simply letting Rylee go with Vivian, Kirk chose the latter. Kirk later drove to the appointment and waited until after the surgery when Vivian left with Rylee – all during Kirk's time to care for Rylee.

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At this point, Vivian is an unrestrained bully, who knowingly, intentionally, and consistently is violating this Court's Orders, without any regard whatsoever of the best interests of Rylee or Brooke.

### B. Vivian Has Continued to Knowingly and Wilfully Violate This Court's Orders Regarding Brooke Since the Filing of the Second Motion for an Order to Show Cause was filed on October 12, 2015

Despite the Court's unequivocal orders, Vivian has continued to violate the Custody Order, including violating the Court's explicit orders on September 22, 2015, since the filing of the second Motion for an Order to Show Cause was filed on October 12, 2015.

Kirk was to have custody of Brooke for five days, from after school on October 15, 2015 until after school on October 19, 2015. Brooke's older sister, Whitney, was visiting and staying at Kirk's home. Brooke did not come to Kirk's home until after 11:00 p.m. the evening of October 16, 2015 and left the morning of October 19, 2015. The only time Brooke spent with Kirk during this entire time period was when Brooke was spending time with Whitney and Kirk was in the same room.

Kirk was to have custody of Brooke for two days, from after school on October 21, 2015 until after school on October 23, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for six days, from after school on October 28, 2015 until the beginning of school on November 3, 2015. Brooke did not come to Kirk's home until after 9:45 p.m. the night of October 28, 2015 and went directly to her bedroom and shut the door. Brooke was gone most of the next day. At about 6:45 p.m., she asked Kirk if she could spend the night at her friend's house. Kirk said that she could. Brooke walked out the door at about 7:00 p.m. and, while getting into her car, announced she would not see Kirk the rest of the week.

Kirk was to have custody of Brooke for two days, from after school on November 4, 2015 until after school on November 6, 2015. Brooke did not come to Kirk's home at any time during this custody period.

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Kirk was to have custody of Brooke from 9:00 a.m. on November 11, 2015 until after school on November 16, 2015. Brooke did not come to Kirk's home until almost midnight on November 13, 2015 and went directly to her bedroom and shut the door. Brooke left the morning of November 16, 2015 without spending any time with Kirk, despite his efforts to spend time with her.

Kirk was to have custody of Brooke for two days from after school on November 18, 2015 until after school on November 20, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for two days from after school on December 2, 2015 until after school on December 4, 2015. Brooke did not come to Kirk's home at any time during this custody period.

Kirk was to have custody of Brooke for five days from after school on December 9, 2015 until after school on December 14, 2015. Brooke did not come to Kirk's home until shortly before 11:00 p.m. the night of December 11, 2015. Brooke left the morning of December 14, 2015.

During the brief periods Brooke has been at Kirk's home since October 12, 2015, Kirk has continued to attempt to talk with Brooke. Each attempt was rebuffed by Brooke with a curt "ok" and a request to leave Brooke's bedroom. Kirk and Brooke had the best conversations they have had in six months on December 12, 2015. However, the very next day Brooke was back to responding with a curt "ok" and a request to leave Brooke's bedroom.

Neither Vivian nor Brooke has provided Kirk with Brooke's class schedule, despite Kirk's requests.

## II. ARGUMENT

### A. Vivian is Knowingly and Wilfully Continuing to Violate this Court's Orders

Vivian is now knowingly and wilfully violating this Court's Orders regarding both Brooke and Rylee. This most recent intentional interference with Kirk's time to care for Rylee is inexcusable, but indicative of a bully who has no respect for the Court's Orders, no respect for

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the other parent's custody time with the children, and no sensitivity whatsoever of what is the best interests of the children.

Vivian is continuing to actively interfere with Kirk's relationship with Brooke by enabling her to come and go as she pleases in the very car Vivian gave to her to do so. She has also given Brooke money so Brooke could buy meals at restaurants, rather than eat her meals with Kirk and Rylee.

### B. It is Critical that Brooke Spend as Much Time as Possible with Kirk As Soon As Possible

All authorities agree that efforts to re-establish the relationship between Brooke and Kirk will be unsuccessful unless the child and the targeted parent spend a significant amount of time together. *See* STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 222; RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 273-275. "As a general rule, we have found that change of the physical environment and increased social contact with the target parent are the major positive ways to deprogramme a child. The more continuous and regular contact the child has with the programmer and brainwasher, the more likely the process is to continue and damage is to increase." CHILDREN HELD HOSTAGE, p. 229.

The longer Vivian has the opportunity to continue with her wilful non-compliance with the Custody Order and this Court's other orders, the more likely it is that future efforts to repair the damage will fail. The literature makes it clear that the longer we wait to significantly increase the contact, the more likely it is that any remedial effort will fail. Patience and delay are not viable options if Brooke is to be saved from the permanent devastating effects of the alienation and the relationship between Brooke and Kirk is to be salvaged.

The extremeness of Brooke's behavior and attitude towards Kirk is cause for alarm:

> **Mental health professionals agree that to prevent the alienation and its resulting injuries from becoming permanent, swift decisive action by the courts is necessary.** If the alienation is permitted to continue, the "destructive dynamic" becomes "entrench[ed]" and the children's positions solidified. Appropriate contact between the target parent and the child must be reestablished **quickly** because delays only "consolidate and reward the child's phobic or recalcitrant stance." Unfortunately, all too often, courts are reluctant

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> to take the required action until a child has deteriorated to a dangerous level.
>
> Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances **the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.** ¶
>
> Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added) (citations omitted).

Kirk respectfully urges the Court to send an unmistakable and resounding message to Vivian that Vivian's disparagement of Kirk to Brooke will not be tolerated, and that any interference with the custody schedule to which Vivian agreed, and which this Court ordered, shall not be tolerated, by once again issuing an order to appear and show cause why Vivian should not be held in contempt. Kirk also respectfully urges the Court to send an unmistakable and resounding message to Vivian that Vivian's knowing and intentional violations of the Custody Order regarding Rylee will also not be tolerated, by issuing an order to appear and show cause why Vivian should not be held in contempt.

NRS 22.010(3) provides as follows:

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**Acts or omissions constituting contempt.** The following acts or omissions shall be deemed contempts:

3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

DATED this 16th day of December, 2015.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Motion for an Order to Show Cause are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 14TH day of December, 2015.

NOTARY PUBLIC in and for said County and State

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. May 17, 2016

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# EXHIBIT “1”

December 3, 2015

Vivian,

Rylee asked about this Friday this morning. I told her that you and I were working it out, but that I would probably take her to the appointment and you would probably drive her home, as she may not be feeling well after the procedure. Rylee was fine with my response. Later, Rylee said that you and she exchanged texts, and said since you and she already planned for you to take her, that you should take her. You need to stop this kind of manipulation. It is doing much more harm to Brooke and Rylee than you realize.

The applicable language from the Custody Order provides: "KIRK shall have the children in his care from Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school, **until Friday after school**, or Friday at 9:00 a.m. when the children are not in school." Paragraph 8.1 makes a distinction between when school is in session and "when school is not in session." The latter time being when the parent to whom the custody of the children is being transferred, picks up the children from the other parent's residence.

School is still in session this Friday. This language is clear that my custody continues, when school is in session, until after school. Based upon your strained interpretation, you could schedule a three day vacation with Rylee by simply telling Rylee to miss school on a Friday and picking her up at my house at 9:00 a.m. that Friday morning. That is not how it works during my custody period.

Your recollection of what has transpired during the past three and one-half years is inaccurate. You erroneously assert, "For the past 3.5 yrs you have had me take the girls to your house if they were sick & didn't attend school." This is simply false. The following is what has actually occurred:

11.26.12 You were in Cabo San Lucus. This was the Monday after the Thanksgiving Visitation. I had forgotten about the Sunday 7:00 p.m. provision in Paragraph 7.3 and assumed I took Brooke and Rylee to school that Monday morning as I always do after having them during the weekend. Rylee telephoned me from school saying she was ill and asked that I come get her. I telephoned you to let you know that Rylee was ill and home asleep. You were upset that I did not take Rylee to the Atkinson's house, despite the fact Rylee was ill and you were out of the country. When Rylee woke up shortly before noon, I walked her over to the Atkinson house, despite the fact you were still not there.

You were out of the country (although flying back that day), Rylee was ill, and wanted to be with her dad.

3.6.13 This was a Wednesday when school was in session. My custody did not start until after school that day. However, you brought Rylee over at 9:20 a.m. because she was ill. Contrary to your recent text, you were the one that made this decision. I

did not insist that you bring her over in anyway whatsoever. On March 6, 2013, at 8:12 a.m., you sent me the following text: "Rylee has headache, possibly because she had nose spray at bedtime and not use to it. Nevertheless, she feels she can't go to school. **I will take her to ur house at 9.** She does not feel like packing. Another day would probably be better. I notified the school of her absence. Rylee would like you to cancel her activities." You then sent a second text, "R u home to take care of rye?" I responded, "Yes. She did not have a reaction from the nose spray at Dr. McKnight's office. It is either a reaction to getting two doses in one day or something else entirely."

I was happy to take care of Rylee while she was ill and assumed you had something else you wanted to do.

| | |
|---|---|
| 5.22.13 | This was a Wednesday morning when school was in session. You sent me a text at 8:04 a.m., "Brooke not feeling well. Taking her to see Dr. Smith 9:15 a.m." This was consistent with the applicable provision as school was in session. |
| 10.4.13 | This was a Friday. I took Brooke to an appointment with Dr. Smith to examine her leg. |
| 12.11.13 | This was a Wednesday morning when school was in session. You took Brooke to the orthodontist appointment consistent with the provision. I was also there during the appointment. Rylee's orthodontist appointment was after school the same day, so, consistent with the provision, I took Rylee to her appointment. |
| 3.7.14 | This was a Friday when school was in session. I took Brooke to a follow up appointment with Dr. Bonn. This is the same office as Dr. Wong. |
| 4.21.14 | This was a Monday when school was in session. Consistent with the provision, I took Brooke to an appointment with Dr. Noorda in the morning. You insisted that you take Brooke to school. I told you that according to the Custody Order, you did not get Brooke until after school and that I needed to take Brooke to school. However, you would not relent, and so to avoid a fight in front of Brooke, I told Brooke to go with you. However, later that day I sent you a text at 9:38 a.m., which provided, "Did not want to have a fight in front of Brooke. The Order clearly provides, "VIVIAN shall have the children in her care each Monday from after school. . ." |
| 3.25.15 | This was a Wednesday morning when school was in session. You took Brooke to an appointment with Dr. Noorda, which was in the morning. This was consistent with the provision. I also attended the appointment. Also consistent with the provision, you then took Brooke to school. It is noteworthy that you had a different perspective when you were supposed to take Brooke to school after the appointment. |

4.10.15 This was a Friday when school was in session. Brooke had gone with you to a concert the night before and had gotten home very late. When I tried to get Brooke up for school she said she had a severe headache and was very tired. Brooke did not go to school, but stayed with me until after school was over. This was consistent with the provision.

As you can readily see from the foregoing, I never "had [you] take the girls to [my] house if they were sick & didn't attend school." It is important that both you and I comply with the terms of the Custody Order.

Since you were well aware that Rylee was to be in my custody this Friday until after school at 2:11 p.m., it was inappropriate for you to be deciding with Rylee as to whether she goes to class, whether you are driving her, etc. You were purposefully interfering with my relationship with Rylee during my custody time and are continuing to do so.

I will take Rylee to Dr. Wong's office at 10:00 a.m. tomorrow. In the spirit of compromise and to avoid any conflict at Dr. Wong's office in front of Rylee and his staff, I am willing to allow you to drive Rylee to your house after the procedure. As I wrote previously, Rylee will likely not be feeling well after the procedure and it is in Rylee's best interest to not be making custody transfers just hours after the procedure. Hopefully, you will see the wisdom in this proposal and that it is indisputably in Rylee's best interest.

**Under no circumstances are you to come to my home on Friday morning and create an unnecessary conflict in front of Rylee.** I am sure Rylee is already feeling anxious about having two teeth extracted.

Just so the record is clear, you have an undeniable history of deliberately interfering with my relationship with Brooke and Rylee while they are in my custody. This pattern of intentional interference must stop immediately. Attached are the recent texts and email between us concerning this matter.

Kirk

**Texts and Email Regarding Custody of Rylee When School is in Session on Friday, December 4, 2015**

11.30.15 3:02 p.m. (Vivian text to Kirk) Rylee has two teeth scheduled to be extracted by Dr. Wong This Friday at 10:45 per Dr. Noordas orders. Nothing to eat or drink after midnight since she will be put to sleep. If you have insurance coverage for her please bring info. with you if you're able to make appt otherwise, please call their office & provide. Cost is $855 for procedure and they are expecting pymt in full at time of surgery. Rylee has asked to be able to sleep in & not go to classes that morning since she is unable to eat or drink Etc. She's asked that I pick her up & take her to Dr office at 10.

11.30.15 4:09 p.m. (Kirk text to Vivian) Please send me contact info for dr Wong. I will take her

11.30.15 (Vivian text to Kirk) Don't have. . call dr Noorda. Friday is my scheduled day so I will be picking her up at 10

11.30.15 (Kirk text to Vivian) My mistake. I thought it was my scheduled day.

12.1.15 7:55 a.m. (Kirk email to Vivian)
This is a follow up to our texts last night. Since you have had Brooke and Rylee the last two weekends, I erroneously thought last night they were with me this weekend. Although this is your weekend to have the children, Rylee is still in my custody until after school at 2:11 p.m. this Friday. Assuming for a moment that Rylee did not have the appointment this Friday, but woke up too ill to go to school. Because it is a school day, she would remain in my custody until after school at 2:11 p.m. The same is true in connection with her appointment this Friday. The fact that Rylee does not want to go to school before her appointment, does not make it a non-school day. Friday is not your scheduled day until after 2:11 p.m.

I will take Rylee to the appointment at 10:00 a.m. and I will take Rylee home after the appointment. However, if Rylee is groggy and sleepy after the procedure and it is acceptable to you, I will drive her directly to your house. If Rylee is groggy and sleepy after the procedure, which I suspect will be the case, it does not make sense for her to go home with me only to be transferred to your house an hour or two later.

I have provided the insurance information to Dr. Wong's office.

12.1.15 8:15 a.m. (Kirk text to Vivian) Sent email to you this morning regarding this Friday

12.2.15 1:54 p.m. (Vivian text to Kirk) Kirk, yes I had the girls thanksgiving weekend, since you had them last thanksgiving weekend and will have them next thanksgiving weekend, which has nothing to do with the issue of Friday's transfer. Your most recent interpretation of the provision is incorrect and not consistent with these transfers to date. For the past 3.5 yrs you have had me take the girls to your house if they were sick & didn't attend school. Rylee has asked that I take her. I will pick up Rylee at 9;00 (per agreement) on Friday from your house if she isn't in school. This will make her transition easier after her surgery.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON
Plaintiff/Petitioner

v.

VIVIAN MARIE LEE HARRISON
Defendant/Respondent

Case No. D-15-443611-D

Dept. Q

**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) _____.

**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: KIRK ROSS HARRISON Date 12/16/15

Signature of Party or Preparer _____

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|---|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>v.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | ) | CASE NO. D-11-443611-D<br>DEPT NO. Q |

**NOTICE OF ENTRY OF ORDER FROM DOMESTIC COURT MINUTES**

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this **Notice of Entry of Order From Domestic Court Minutes** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE
MILY DIVISION, DEPT. Q
3 VEGAS, NEVADA 89101

☒ E-Served pursuant to NEFCR 9 on, or mailed postage prepaid, addressed to the following attorney:

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

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

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12/17/2015 10:31:31 AM

ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**ORDER FROM DOMESTIC COURT MINUTES**

Good cause appearing therefor,

IT IS HEREBY ORDERED that the attached copy of the Domestic Court Minutes entered on December 17, 2015 is hereby incorporated herein and will become the Order of this case.

DATED this 17th day of December, 2015.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

D-11-443611-D

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

**Divorce - Complaint** **COURT MINUTES** December 17, 2015

D-11-443611-D Kirk Ross Harrison, Plaintiff
vs.
Vivian Marie Lee Harrison, Defendant.

**December 17, 2015 10:00 AM** **Minute Order**

**HEARD BY:** Duckworth, Bryce C. **COURTROOM:** Courtroom 01

**COURT CLERK:** Michael A. Padilla

**PARTIES:**

| | |
|---|---|
| Emma Harrison, Subject Minor, not present | |
| Kirk Harrison, Plaintiff, Counter Defendant, not present | Edward Kainen, Attorney, not present |
| Lisa Linning, Other, not present | |
| Rylee Harrison, Subject Minor, not present | |
| Vivian Harrison, Defendant, Counter Claimant, not present | Radford Smith, Attorney, not present |

**JOURNAL ENTRIES**

- Plaintiff and Defendant appeared before this Court on December 14, 2015 for a return hearing from outsourced evaluative services and on an Order to Show Cause. The matter was continued to January 26, 2016 at 8:30 a.m. Plaintiff thereafter filed his Motion for an Order to Show Cause Why the Defendant Should Not be Held In Contempt of Court for Continuing to Knowingly and Intentionally Violate of [SIC] Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 (Dec. 16, 2015) (Plaintiff's Motion). The hearing on Plaintiff's Motion is scheduled for January 20, 2016 at 10:00 a.m. Based on the discussions at the December 14, 2015 hearing, this Court anticipated the filing of Plaintiff's Motion and noted the Court's inclination to hear the matter on January 26, 2016. Therefore, it is hereby ORDERED that the hearing on Plaintiff's Motion is CONTINUED to January 26, 2016 at 8:30 a.m.

**INTERIM CONDITIONS:**

D-11-443611-D

**FUTURE HEARINGS:** *Canceled: January 20, 2016 10:00 AM Motion*

January 26, 2016 8:30 AM Order to Show Cause
Duckworth, Bryce C.
Courtroom 01

January 26, 2016 8:30 AM Motion
Duckworth, Bryce C.
Courtroom 01

D-11-443611-D

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

**Divorce - Complaint** **COURT MINUTES** January 26, 2016

D-11-443611-D Kirk Ross Harrison, Plaintiff
vs.
Vivian Marie Lee Harrison, Defendant.

**January 26, 2016 8:30 AM All Pending Motions**

**HEARD BY:** Duckworth, Bryce C. **COURTROOM:** Courtroom 01

**COURT CLERK:** Victoria Pott; April Graham (ag)

**PARTIES:**

| | |
|---|---|
| Emma Harrison, Subject Minor, not present | |
| Kirk Harrison, Plaintiff, Counter Defendant, present | Edward Kainen, Attorney, present |
| Lisa Linning, Other, not present | |
| Rylee Harrison, Subject Minor, not present | |
| Vivian Harrison, Defendant, Counter Claimant, present | Radford Smith, Attorney, present |

**JOURNAL ENTRIES**

- ORDER TO SHOW CAUSE...PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR CONTINUING TO KNOWINGLY AND INTENTIONALLY VIOLATE OF SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF October 1, 2015

Argument and discussion regarding Dr. Paglini's report. Mr. Smith stated, he received the report late last night and Defendant has not had a chance to review it. Mr. Kainen stated, it is their goal to move forward and repair the relationship between Plaintiff and Brooke. Court noted, the report showed both parties need to take responsibility and it would like to see a therapeutic approach to repairing the relationship. Court further noted, as Plaintiff did not have visitation and an evidentiary hearing may set; however, the Court believes it would be counterproductive.

Further argument and discussion regarding evidentiary proceedings, show cause proceedings,

attorney's fees, and a change in custody. Court further noted, the minor children should be allowed to love the other parent.

COURT ORDERED as follows:

Based on Dr. Paglini's report, there is no basis to have contempt proceedings, notwithstanding the fact that Plaintiff has been denied visitation time. Therefore, the Order to Show Cause and Plaintiff's Motion for an Order to Show Cause shall be VACATED.

The parties shall follow a therapeutic reunification process with Dr. Ali within the parameters of Dr. Paglini's report. Dr. Ali will determine the pace of therapy and what is appropriate for Brooke. As this is a therapeutic approach, the Court is not requiring reports from Dr. Ali, and therapy shall not be used for the purpose of litigation. Should there be a problem in the future, Plaintiff may re-notice these proceedings as a status check.

There being no basis to modify custody at this time, the parties shall maintain JOINT PHYSICAL CUSTODY of the minor children.

Neither parent is to disparage the other parent in front of the minor children.

There shall be no ATTORNEY'S FEES AND COSTS OR SANCTIONS on either side. Therefore, each party shall bear their own fees and costs.

Mr. Kainen shall prepare the Order from today's hearing; Mr. Smith shall review and countersign. CASE shall be CLOSED upon entry of the Order from today's hearing.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

NOTICE OF ENTRY OF
FINDINGS AND ORDERS RE: JANUARY 26, 2016 HEARING

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that a Findings and Orders Re: January 26, 2016 Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Findings and Orders Re: January 26, 2016 Hearing** and this **Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.
Gary Silverman, Esq.

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

FINDINGS AND ORDERS RE:
JANUARY 26, 2016 HEARING

Plaintiff and Defendant appeared before this Court on January 26, 2016,[1] for a hearing on: (1) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 30, 2013 (Aug. 21, 2015) (hereinafter referred to as "Motion"); (2) Defendant's Opposition to Kirk's Motion and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") (Sep. 14, 2015) (hereinafter referred to as "Countermotion"); (3) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violation Section 5 of the Stipulation and Order Resolving Parent/Child

[1]The findings and orders set forth herein are ancillary to the issues currently on appeal.

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

Issues and this Court's Order of October 1, 2015 (Oct. 12, 2015) (hereinafter referred to as "Second Motion"); (4) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate of [sic] Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 1, 2015 (Dec. 16, 2015) (hereinafter referred to as "Third Motion"); and (5) this Court's Orders to Appear and Show Cause (Sep. 1, 2015 and Oct. 14, 2015).[2]

Plaintiff, KIRK ROSS HARRISON ("Father"), was present and represented by his attorney, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE HARRISON ("Mother"), was present and represented by her attorney, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED. This Court, being fully advised in the premises, and good cause appearing therefore, makes the following findings:

The papers filed herein provided this Court with a *prima facie* basis to issue an Order to Show Cause based on the undisputed fact that Father had been denied custodial time under Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). A finding of contempt, however, must necessarily include a finding that a party intentionally and wilfully violated the Court's Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). *Cunningham v. Eighth Jud. Dist. Court*, 102 Nev. 551, 729 P.2d 1328 (1986). During the course of these proceedings, Dr. John Paglini, Psy.D,

[2]Other papers filed by the parties prior to the January 26, 2016 hearing were reviewed and considered by the Court.



RYCE C. BUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

was designated to conduct a child interview of the parties' daughter, Brooke. Dr. Paglini was not appointed, however, to be the fact-finder for the Court on the issue of contempt. Rather, Dr. Paglini was appointed to assist in evaluating the dynamics regarding Father's relationship with Brooke and to establish a path by which said relationship could be remedied and repaired.

Prior to the hearing, this Court received and reviewed the Child Interview report of Dr. Paglini, dated January 25, 2016. Father offered that his preference was not to proceed immediately with the contempt relief sought by way of his Motion, Second Motion and Third Motion. Rather, Father submitted his preference to implement the recommendations of Dr. Paglini, including therapeutic counseling between Father and the parties' daughter Brooke with Dr. Jim Ali, PhD. Initially, Father requested that the contempt aspect of these proceedings be held in abeyance for a period of time (six months).

This Court makes no findings regarding the allegations of contempt against Mother. Further, although it is undisputed that Father lost custodial time with the parties' daughter, Brooke, this Court is not inclined to set further proceedings to adjudicate the issue of contempt. The continuation of further hearings regarding the allegations of contempt would be deleterious and counterproductive to Brooke's best interest. Thus, the contempt proceedings should be vacated and the parties should focus on the therapeutic aspect of Father's relationship with Brooke. The pace of therapy should be determined by Dr. Ali.

. . .

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

Pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993) and NRS 125.090 and NRS 125C.0025, there is not a sufficient basis to entertain further proceedings on Mother's Countermotion to modify custody. This Court finds and concludes that the preference of a minor child standing alone is insufficient to constitute a substantial change of circumstances pursuant to *Ellis v. Carrucci*, 123 Nev. 145, 161 P.3d 239 (2007). Pursuant to NRS 125C.0025, it this Court's preference that Father and Mother pursue a course of therapeutic counseling to maintain joint physical custody of Brooke as declared in their Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012).

Finally, there is not a sufficient basis to impose sanctions against or award fees to either party.

Based on the foregoing Findings, and good cause appearing therefor,

It is hereby ORDERED that the Orders to Show Cause are vacated and the relief sought by way of contempt in Plaintiff's Motion, Second Motion and Third Motion is vacated.

It is further ORDERED that the Countermotion to modify physical custody is denied.

It is further ORDERED that neither parent is to disparage the other parent in front of the children.

It is further ORDERED that each party shall bear their own attorney's fees and costs.

. . .

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that the parties are subject to the following provisions of NRS 125C.0045(6) for violation of the Court's Order:

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

IT IS FURTHER ORDERED that, pursuant to NRS 125C.006(1), if primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

> (a) Attempt to obtain the written consent of the non-custodial parent to relocate with the child; and
>
> (b) If the non-custodial parent refuses to give that consent, petition the court for permission to relocate with the child.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.006(3), a parent who relocates with a child pursuant to this section without the written consent of the non-custodial parent or the permission of the court is subject to the provisions of NRS 200.359.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. D
LAS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0065(1), if joint physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0065(3), a parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0075, if a parent with primary physical custody or joint physical custody relocates with a child in violation of NRS 200.359:

1. The court shall not consider any post-relocation facts or circumstances regarding the welfare of the child or the relocating parent in making any determination.

2. If the non-relocating parent files an action in response to the violation, the non-relocating parent is entitled to recover reasonable attorney's fees and costs incurred as a result of the violation.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that, 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 are applicable to the parties. IT IS FURTHER ORDERED that the minor children's habitual residence is located in the County of Clark, State of Nevada, within the United States of America. NRS 125C.0045(7) and (8) specifically provide as follows:

> Section 7. In addition to the language required pursuant to subsection 6, all orders authorized by this section must specify that 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.
>
> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning the child to his or her 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.

NOTICE IS HEREBY GIVEN that the parties are hereby advised that they may request a review of child support every three years, or at any time upon changed circumstances, pursuant to NRS 125B.145.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. O
LAS VEGAS, NEVADA 89101

NOTICE IS HEREBY GIVEN that the parties have been advised that the non-custodial parent may be subject to the withholding of wages and commissions for delinquent payments of support pursuant to NRS 31A.010, *et. seq.* and NRS 125.450(2).

DATED this 25th day of May, 2016.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

FAXED
MAY 31 2016

*John Paglini, Psy.D.*
**Licensed Psychologist**
**9163 West Flamingo, Suite 120**
**Las Vegas, Nevada 89147**
**Phone: (702) 869-9188** **Fax: (702) 869-9203**

May 31, 2016

The Honorable Judge Bryce Duckworth
Department Q
Eighth Judicial District Court, Family Division,
601 North Pecos,
Las Vegas, Nevada, 89101

RE: HARRISON VERSUS HARRISON
CASE # D-11-443611-D

Dear Judge Duckworth:

During the last several months, likely commencing in February 2016, Mr. Kirk Harrison has consistently contacted me regarding dynamics pertaining to reunification therapy with his daughter. There was one telephone contact with Mr. Harrison on February 23, 2016. Mr. Harrison processed concerns he had with reunification therapy not occurring fast enough of often enough. Mr. Harrison also called on February 27, 2016. Mr. Harrison sought my assistance because he and Brooke have not been in reunification therapy on a consistent basis. This evaluator also had received an email from Brooke indicating her difficulties scheduling a two hour session with her father and Dr. Ali due to her caseload and commitments. Brooke wanted this evaluator to possibly recommend a schedule of one hour every other week. I then talked to Ms. Vivian Harrison to elicit her cooperation. She appeared flexible on the phone.

Mr. Harrison then called on March 30, 2016. By this point there has only been one meeting between he and Brooke. He reported the previous session was positive, but everything is moving extremely slow. He is extremely frustrated with the lack of progress. Mr. Harrison would like to address the issues and share more time with his daughter.

Mr. Harrison then called again on May 10, 2016, and May 16, 2016. By this time, Mr. Harrison reported there have only been two meetings between he and Brooke with Dr. Ali. Mr. Harrison reported Brooke appears oppositional to meet further. Mr. Harrison has contacted my office in good faith based on my recommendations to the family court.

In my recommendations, I noted "What this evaluator would recommend is that Mr. Kirk Harrison and his daughter be involved in intense frequent therapy to resolve their issues." This evaluator recommended Dr. Ali because he is familiar with the family dynamics. I had noted in my earlier recommendations that Brooke had not seen Dr. Ali on a consistent basis, that Brooke should have attended therapy consistently during the previous timeframe when she had problems with her father. Also in my recommendations, it is noted "Brooke cannot dictate the pace in this

case." Additionally, it is noted in my report "Hence, although Brooke has a busy schedule, she and her father need to be seen for double sessions on a weekly basis to begin to repair the relationship."

This letter is written on behalf of Mr. Kirk Harrison. However, the courts should note I am dismayed at the alleged lack of sessions/progress that have occurred. Although Mr. Harrison was likely unhappy with my report, he attempted to follow the recommendations. Brooke and her father need to be involved in continuous/frequent treatment and address their issues. This evaluator had hoped that by now Brooke and her father would have resolved their issues, and that they would be sharing much more time together. This evaluator is very dismayed that only two known sessions have occurred in family reunification therapy between Brooke and Mr. Harrison. I have been in contact with Dr. Ali, but have informed Dr. Ali until he has current consent forms signed by both parents on his behalf it is not advisable to process this case.

As noted, this evaluator is concerned if it is true that rare reunification therapy occurred between Mr. Harrison and Brooke. As stressed in my report, Brooke should not be in charge of the pace of reunification therapy. Although I appreciate Brooke's dedication to her academics and other activities, her relationship with her father is extremely important and needs to be on the forefront of issues addressed and not something that is possibly delayed/avoided by Brooke. I appreciate that I may have heard one side of the story (Mr. Harrison) and that should be weighed accordingly with additional evidence.

It is recommended that the courts consider a detailed letter from Dr. Ali regarding his reunification attempts/treatment of the Harrison family. I hope the courts address this possible concern to help Mr. Harrison and Brooke resolve their issues and begin to share quality time together.

Respectfully submitted,

John Paglini, Psy.D.
Licensed Psychologist
JPng: 05/31/16

cc: Attorney Edward Kainen (Fax: 702-823-4488)
Attorney Radford Smith (Fax: 702-990-6456)

# Fax Cover Sheet

**John Paglini, Psy.D.**
**9163 West Flamingo, Suite 120**
**Las Vegas, NV 89147**

**Phone:** 702 -869-9188
**Fax:** 702-869-9203

**Date:** May 31, 2016

**TO:** Attorney Edward Kainen

**FROM:** John Paglini, Psy. D.

**RE:** Harrison versus Harrison
Case#D-11-443611-D

**FAX NO:** 702-823-4488

**NUMBER OF PAGES: 3**
**(Includes cover sheet)**

**COMMENT:**

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this **Notice of Entry of Order** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.
Gary Silverman, Esq.

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

RYCE C. DUCKWORTH
DISTRICT JUDGE

AMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

ORDER

This Court has reviewed the Letter from John Paglini, Psy.D., Dated May 31, 2016 (Jun. 3, 2016), which has been filed with the Court (and copied on counsel for the parties). Therein, Dr. Paglini relayed issues and concerns raised by the Plaintiff with respect to the pace and lack of regular reunification sessions between Plaintiff and the parties' daughter, Brooke. Dr. Paglini further recommended that this Court seek input from Dr. Ali "regarding his reunification attempts/treatment of the Harrison family."

Based on the Letter from John Paglini, PsyD., Dated May 31, 2016 (Jun. 3, 2016), this Court directs Dr. Ali to provide the Court with information about the history and status of reunification attempts and treatment associated with the parties' daughter, Brooke.

DATED this 21st day of June, 2016.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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CLERK OF THE COURT

NOAS

RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Telephone: (702) 990-6448
Facsimile: (702) 990-6456
rsmith@radfordsmith.com
*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK HARRISON,

Plaintiff,

vs.

VIVIAN HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY DIVISION**

**NOTICE OF APPEAL**

NOTICE is hereby given that Defendant, VIVIAN HARRISON, hereby appeals to the Supreme Court of the State of Nevada the District Court's Notice of Entry of Findings and Orders re: January 26, 2016 Hearing entered on May 25, 2016, a copy of which is attached hereto as Exhibit "A."

Dated this 27th day of June, 2016

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant*



A.App. 1964

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Radford J. Smith Chartered ("the Firm"). I am over the age of 18 and not a party to the within action.

I served the foregoing document described as "NOTICE OF APPEAL" on this 27th day of June, 2016, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Tom J. Standish, Esq.
Jolley, Urga, Woodbury, Worth & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
tjs@juww.com

Edward L. Kainen, Esq.
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10091 Park Run Dr., #110
Las Vegas, Nevada 89145
ed@kainenlawgroup.com
Attorneys for Kirk Harrison

Garvina Varshney
An employee of Radford J. Smith, Chartered

# EXHIBIT "A"

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

NOTICE OF ENTRY OF
FINDINGS AND ORDERS RE: JANUARY 26, 2016 HEARING

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that a Findings and Orders Re: January 26, 2016 Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Findings and Orders Re: January 26, 2016 Hearing** and this **Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.
Gary Silverman, Esq.

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

FINDINGS AND ORDERS RE:
JANUARY 26, 2016 HEARING

Plaintiff and Defendant appeared before this Court on January 26, 2016,[1] for a hearing on: (1) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 30, 2013 (Aug. 21, 2015) (hereinafter referred to as "Motion"); (2) Defendant's Opposition to Kirk's Motion and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") (Sep. 14, 2015) (hereinafter referred to as "Countermotion"); (3) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violation Section 5 of the Stipulation and Order Resolving Parent/Child

[1]The findings and orders set forth herein are ancillary to the issues currently on appeal.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Issues and this Court's Order of October 1, 2015 (Oct. 12, 2015) (hereinafter referred to as "Second Motion"); (4) Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate of [sic] Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's Order of October 1, 2015 (Dec. 16, 2015) (hereinafter referred to as "Third Motion"); and (5) this Court's Orders to Appear and Show Cause (Sep. 1, 2015 and Oct. 14, 2015).[2]

Plaintiff, KIRK ROSS HARRISON ("Father"), was present and represented by his attorney, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE HARRISON ("Mother"), was present and represented by her attorney, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED. This Court, being fully advised in the premises, and good cause appearing therefore, makes the following findings:

The papers filed herein provided this Court with a *prima facie* basis to issue an Order to Show Cause based on the undisputed fact that Father had been denied custodial time under Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). A finding of contempt, however, must necessarily include a finding that a party intentionally and wilfully violated the Court's Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). *Cunningham v. Eighth Jud. Dist. Court*, 102 Nev. 551, 729 P.2d 1328 (1986). During the course of these proceedings, Dr. John Paglini, Psy.D,

[2]Other papers filed by the parties prior to the January 26, 2016 hearing were reviewed and considered by the Court.



BRYCE C. BUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

was designated to conduct a child interview of the parties' daughter, Brooke. Dr. Paglini was not appointed, however, to be the fact-finder for the Court on the issue of contempt. Rather, Dr. Paglini was appointed to assist in evaluating the dynamics regarding Father's relationship with Brooke and to establish a path by which said relationship could be remedied and repaired.

Prior to the hearing, this Court received and reviewed the Child Interview report of Dr. Paglini, dated January 25, 2016. Father offered that his preference was not to proceed immediately with the contempt relief sought by way of his Motion, Second Motion and Third Motion. Rather, Father submitted his preference to implement the recommendations of Dr. Paglini, including therapeutic counseling between Father and the parties' daughter Brooke with Dr. Jim Ali, PhD. Initially, Father requested that the contempt aspect of these proceedings be held in abeyance for a period of time (six months).

This Court makes no findings regarding the allegations of contempt against Mother. Further, although it is undisputed that Father lost custodial time with the parties' daughter, Brooke, this Court is not inclined to set further proceedings to adjudicate the issue of contempt. The continuation of further hearings regarding the allegations of contempt would be deleterious and counterproductive to Brooke's best interest. Thus, the contempt proceedings should be vacated and the parties should focus on the therapeutic aspect of Father's relationship with Brooke. The pace of therapy should be determined by Dr. Ali.

. . .

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101



A.App. 1970

Pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993) and NRS 125.090 and NRS 125C.0025, there is not a sufficient basis to entertain further proceedings on Mother's Countermotion to modify custody. This Court finds and concludes that the preference of a minor child standing alone is insufficient to constitute a substantial change of circumstances pursuant to *Ellis v. Carrucci*, 123 Nev. 145, 161 P.3d 239 (2007). Pursuant to NRS 125C.0025, it this Court's preference that Father and Mother pursue a course of therapeutic counseling to maintain joint physical custody of Brooke as declared in their Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012).

Finally, there is not a sufficient basis to impose sanctions against or award fees to either party.

Based on the foregoing Findings, and good cause appearing therefor,

It is hereby ORDERED that the Orders to Show Cause are vacated and the relief sought by way of contempt in Plaintiff's Motion, Second Motion and Third Motion is vacated.

It is further ORDERED that the Countermotion to modify physical custody is denied.

It is further ORDERED that neither parent is to disparage the other parent in front of the children.

It is further ORDERED that each party shall bear their own attorney's fees and costs.

. . .

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that the parties are subject to the following provisions of NRS 125C.0045(6) for violation of the Court's Order:

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

IT IS FURTHER ORDERED that, pursuant to NRS 125C.006(1), if primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-custodial parent to relocate with the child; and

(b) If the non-custodial parent refuses to give that consent, petition the court for permission to relocate with the child.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.006(3), a parent who relocates with a child pursuant to this section without the written consent of the non-custodial parent or the permission of the court is subject to the provisions of NRS 200.359.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. D
LAS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0065(1), if joint physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0065(3), a parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

IT IS FURTHER ORDERED that, pursuant to NRS 125C.0075, if a parent with primary physical custody or joint physical custody relocates with a child in violation of NRS 200.359:

1. The court shall not consider any post-relocation facts or circumstances regarding the welfare of the child or the relocating parent in making any determination.

2. If the non-relocating parent files an action in response to the violation, the non-relocating parent is entitled to recover reasonable attorney's fees and costs incurred as a result of the violation.

RYCE C. BUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

IT IS FURTHER ORDERED that, 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 are applicable to the parties. IT IS FURTHER ORDERED that the minor children's habitual residence is located in the County of Clark, State of Nevada, within the United States of America. NRS 125C.0045(7) and (8) specifically provide as follows:

> Section 7. In addition to the language required pursuant to subsection 6, all orders authorized by this section must specify that 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.
>
> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning the child to his or her 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.

NOTICE IS HEREBY GIVEN that the parties are hereby advised that they may request a review of child support every three years, or at any time upon changed circumstances, pursuant to NRS 125B.145.

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. C
LAS VEGAS, NEVADA 89101

NOTICE IS HEREBY GIVEN that the parties have been advised that the non-custodial parent may be subject to the withholding of wages and commissions for delinquent payments of support pursuant to NRS 31A.010, *et. seq.* and NRS 125.450(2).

DATED this 25th day of May, 2016.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

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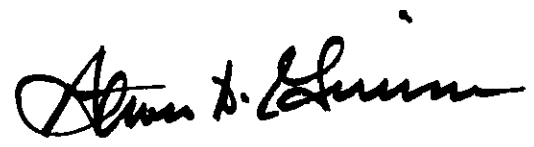

CLERK OF THE COURT

**MOT**
EDWARD KAINEN, ESQ.
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,
Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,
Defendant.

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

Date of Hearing: 8/24/2016
Time of Hearing: 10:00 AM

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

**PLAINTIFF'S MOTION FOR REUNIFICATION THERAPY FOR MINOR CHILDREN AND FATHER**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court for an order to facilitate the reunification of Brooke and Rylee with Kirk.

. . .

. . .

. . .

. . .

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, Plaintiff's affidavit in support thereof, and oral argument of counsel at the time of hearing.

DATED this 26th day of July, 2016.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 24 day of August, 2016, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 26th day of July, 2016.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Vivian has wrongfully empowered Brooke to determine her own custody schedule in clear violation of this Court's Custody Order. Vivian has been wrongfully empowering Brooke since before Brooke's fourteenth birthday. The Court will recall that shortly after Brooke's fourteenth birthday when Brooke, after an extended period of time with Vivian, announced she had the power to determine where she was going to live and she was going to live with Vivian full time.[1] Despite the Court's unequivocal ruling then that the parties had agreed to joint physical custody and the Court would not change custody based upon the wishes of a minor, soon after Brooke's sixteenth birthday, Vivian did it again. This false empowerment coupled with Vivian falsely and callously inciting Brooke with the Vivian created medical reimbursement issue was sufficient to cause material violations of the Custody Order. It should not be a surprise to anyone that Brooke now believes she can flagrantly violate this Court's Order regarding family reunification therapy as well.

Vivian has also callously enmeshed Brooke in the false narrative to the Court and Dr. Paglini that the reason Brooke is flagrantly violating the Custody Order is because of the pressing demands of a "college schedule," convenience, and to avoid packing her clothes for custody transfers. Unable to carry the burden of continuing the perpetration of this lie, during her second session with Dr. Ali and Kirk, Brooke admitted the reason she is violating the Custody Order is her hatred of Kirk and her belief that he is a mean and bad person.

Vivian is doing everything she can to exclude Kirk from Brooke's life. According to Vivian, Brooke does not have a father. This is what Vivian represented to Nevada State High School, where Brooke is enrolled.

Vivian is making a mockery of this Court's Custody Order. Kirk "has" 50/50 joint physical custody on a bi-weekly basis. Pursuant to this Court's Custody Order, between August

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[1] *See* Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing, filed 11.2.15, p. 11.

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12, 2015 and June 16, 2016, Brooke was supposed to be with Kirk a total of **165 days**. Despite this Court's repeated statements to Vivian that it is her responsibility to insure the minor children comply with the terms of the Custody Order, Brooke has only been with Kirk a total of **25 days** during that time period. Between April 8, 2016 and June 16, 2016 – **over a two month period**, Brooke spent **less than one day** in Kirk's physical custody.

Vivian is also successfully separating Brooke from her siblings. Because Brooke is spending almost no time with Kirk, Brooke is spending almost one-half of her time apart from Rylee, her thirteen year old sister.[2] Vivian is also successfully separating Brooke from her older sisters as well.

There is no question that Vivian has severely alienated Kirk from Brooke. It is also evident that Vivian is attempting to alienate Kirk from Rylee. The overwhelming authority on this subject concludes the only way to save Brooke and Rylee from what will otherwise be a horrible fate and to reunify the children with their father is for the Court to order the following: (1) Brooke, Rylee and Kirk spend four days with a family reunification firm that specializes in cases of parental alienation; (2) Vivian receives counseling on how to stop her alienating behavior and is sensitized to the damage she is doing to their children; (3) Vivian has no contact whatsoever with Brooke and Rylee for a period of ninety days,[3] and; (4) there are follow up sessions with Dr. Ali.

The hope and goal is that after the ninety day period, the parties will continue with the agreed and Court ordered 50/50 custody schedule. If Vivian can be made to understand the harm she is causing Brooke and Rylee and is able to stop her alienating behavior, there is no question it is in the best interest of Brooke and Rylee for there to be 50/50 joint physical custody as agreed to by the parties and ordered by the Court.

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---

[2] As the Court is aware, there is a long documented history of Vivian wrongfully empowering Brooke and Rylee in their relationship with Kirk. Vivian is now planting the seed with Rylee that it is just too difficult to comply with the Court's Custody Order by telling Rylee that making custody transfers is just too big of a hassle.

[3] Without the no-contact period, the family reunification effort will fail.



A.App. 1979

## II. STATEMENT OF FACTS

### A. Vivian Is Causing Brooke to Refuse to Comply with Dr. Paglini's Recommendation, Dr. Ali's Determination of the Pace of Reunification Therapy, and This Court's Order regarding Reunification Therapy

Dr. Paglini strongly recommended that Kirk and Brooke meet with Dr. Ali for a two hour session each week. More specifically, Dr. Paglini recommended that Brooke and Kirk have "intense frequent therapy to resolve their issues." And further, in his report, recommended, "Hence, although Brooke has a busy schedule, she and her father need to be seen for double sessions on a weekly basis to begin to repair the relationship." Dr. Ali agreed with Dr. Paglini's recommendations, and attempted to schedule weekly two hour sessions with Brooke and Kirk. This Court specifically ordered, "The pace of therapy should be determined by Dr. Ali." *See* Findings and Orders re January 26, 2016 Hearing, filed 5.25.16, p. 3, l. 26-27.

Despite the foregoing, Brooke refused to meet each week for two hours, with Vivian and Brooke falsely claiming Brooke's "college" schedule did not permit a weekly two hour session. Although Brooke initially agreed to meet for 1.5 hours each week, scheduling any time with Brooke was problematic for Dr. Ali's office. Vivian and Brooke have both represented that Brooke's schedule prevented her from meeting in compliance with Dr. Paglini's recommendations, Dr. Ali's determination of the pace of therapy, and this Court's order. *See* Email from Vivian to Kirk, dated February 27, 2016, and email from Brooke to Dr. Paglini, dated February 25, 2016, (wherein Brooke represented to Dr. Paglini she is "currently taking 6 **college** classes 5 days a week . . .") These two emails are collectively attached as Exhibit "1" hereto and hereby incorporated herein.[4]

Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the

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[4] Vivian's position is contrary to common knowledge. A student has considerably less class time when taking college classes and, therefore, considerably more flexibility to schedule the reunification sessions during the week. A full-time high school student is committed to school thirty (30) or more hours each week (six hours a day, or more, five days a week). On the other hand, a full-time student taking college classes is in class usually 14 to 16 hours each week, or about **one-half** as much time each week as the full-time high school student.



A.App. 1980

Court, on May 31, 2016,[5] Brooke, Kirk and Dr. Ali should reasonably have had fifteen or sixteen two hour weekly sessions. Unfortunately, there have only been two sessions. Despite Dr. Ali's office's diligent efforts, Brooke did not agree to the first session until March 17, 2016. The second and last session was on April 12, 2016. During the last session, Brooke made it clear to Dr. Ali and Kirk that she would not participate in any more sessions.

Dr. Paglini was appointed as an independent expert by this Court. Therefore, Kirk contacted him advising him of Brooke's unwillingness to participate in the Court ordered sessions. Dr. Paglini recommended that Dr. Ali send a letter to the Court advising the Court of the efforts his office had made to schedule the weekly double sessions and the current status to the Court. Dr. Ali agreed to send such a letter. However, several weeks passed and, although prepared, the letter was never sent. Dr. Ali's office finally advised Kirk the letter had never been sent because **Vivian refused to give her permission for the letter to be sent to the Court**. Upon receiving this information, Kirk again contacted Dr. Paglini and advised him of that fact. After several more weeks, Dr. Paglini sent his letter to the Court, dated May 31, 2016.

Pursuant to this Court's order, dated June 21, 2016, the Court directed, "Dr. Ali to provide the court with information about the history and status of reunification attempts and treatment associated with the parties' daughter, Brooke." Thereafter, in response to the Court's order, Dr. Ali provided a letter to the Court, which was received by the Court on July 5, 2016.

### B. Vivian's Narrative to This Court and Dr. Paglini Has Been Confirmed to Be False

The false narrative developed by Vivian and communicated by Vivian and Brooke to Dr. Paglini has been confirmed to be false. This story line is comprised primarily of the following assertions: Brooke does not hate Kirk. Brooke does not think Kirk is a bad person. Brooke

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[5] Dr. Paglini's letter to the Court, dated May 31, 2016, is attached hereto as Exhibit "2" and by this reference incorporated herein.

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does not think Kirk is mean. Brooke wants to have a relationship with Kirk. Brooke's (Vivian's) knowingly violating the Custody Order, which provides that Brooke is to spend 50% of her time with Kirk on a bi-weekly basis, to spending almost no time with Kirk and, consequently, spending about one-half as much time with her younger sister, Rylee, was motivated by convenience and the demands of Brooke's college class schedule and dance schedule. This false narrative continues with the assertion that it is simply too hard on Brooke to pack clothes for each custody transfer.[6] Vivian claims she had nothing to do with Brooke's decision to violate the Custody Order. Vivian claims she has tried to get Brooke to honor the Custody by taking Brooke's car keys and cell phone from Brooke, all to no avail.[7]

According to Vivian, it was a mere coincidence that Brooke removed all of her clothes from Kirk's home and stopped honoring the Custody Order right after Vivian falsely told Brooke that Kirk did not want to pay Brooke's medical bills, Vivian's credit rating was going to be ruined, Kirk refused to do anything to rectify the situation, and, as a consequence, Brooke had to become involved to save Vivian from being victimized by Kirk because Vivian was not on the medical policy. *See* Plaintiff's Motion for an Order to Show Cause Why Defendant Should not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013.

In Dr. Paglini's discussions with Kirk, Dr. Paglini readily acknowledged the parental alienation by Vivian. However, Dr. Paglini did not believe the alienation to be severe because Brooke made it clear to Dr. Paglini that she did not hate Kirk and wanted a relationship with

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[6] This issue was self-created. For years, Brooke had ample clothing at both homes and there was no need to "pack" clothes for custody transfers. Kirk would simply pick up Brooke from school and then take Brooke to Vivian's house to pick up her dance bag, a small make-up bag, and a lap top computer. Only since Brooke took all of her clothes to Vivian's house, does Brooke need to "pack."

[7] If this were truly the case, the car keys and cell phone would have been kept from Brooke until she fully complied with the Custody order.

Kirk.[8] In other words, Dr. Paglini focused on what he was led to believe was Brooke's state of mind, and based upon that conclusion, deduced the parental alienation was not severe because it had failed to completely alienate Kirk from Brooke.[9]

Despite this Court's unequivocal order, Dr. Paglini's very strong recommendation, and Dr. Ali going forward on the basis that Brooke was to meet with Dr. Ali and Kirk each week for two hours, Brooke only met with Dr. Ali and Kirk twice and now refuses to schedule any further sessions.

However, during those two sessions it was clearly confirmed that Brooke hates Kirk. Brooke fervently believes Kirk is a bad person and a mean person. Brooke stated she does not want to spend any time with Kirk at all and has refused to meet with Dr. Ali and Kirk since the second session.[10]

During the second session, Brooke, who doesn't wear a baseball cap, showed up with a baseball cap pulled low upon her face. The stress upon Brooke of having the responsibility of continuing Vivian's ruse that the Custody Order was being violated because of the demands of her "college" schedule, convenience, and packing clothes for custody transfers was obvious to Kirk. Brooke is not naturally a liar. Brooke, initially, tried to continue with Vivian's false narrative. However, Kirk asked Brooke to simply be honest and Brooke soon admitted to Dr.

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[8] Dr. Paglini, obviously, chose to ignore Vivian's acts of parental alienation during the last four years and focused only upon what he was led to believe to be Brooke's state of mind. *See* Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing, filed 11.2.15, p. 6-24.

[9] Dr. Paglini's discussions with Kirk regarding the degree of the parental alienation was in the context of Demosthenes Lorandos et al, *Parental Alienation – The Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013), wherein the authors categorize the level of parental alienation as being mild, moderate, or severe.

[10] Based upon these truthful assertions by Brooke to Dr. Ali and Kirk, presumably, Dr. Paglini would now correctly conclude not only the existence of the **severe** parental alienation by Vivian, but also the effectiveness of that severe parental alienation. Based upon Brooke's prior statements to Kirk, as well as her conduct towards him, Kirk was well aware of Brooke's hatred of him, Brooke not wanting to spend any time with him, and her lack of desire to have a relationship with him prior to the admission in front of Dr. Ali and Kirk.



A.App. 1983

Ali and Kirk that she did not stop complying with the Joint Custody Order because of her "college" schedule, convenience, or the stress of the custody transfers, which is what Vivian has been representing to this Court. Brooke made it very clear that she stopped complying with the Custody Order when she did because of her hatred for Kirk. Brooke said that she hates Kirk and that Kirk is a mean person and a bad person. Brooke said she does not want to spend any time with Kirk.

It was very evident during the second session that Brooke hates Kirk and believes that Kirk is a bad and mean person, in large part, because of the false medical payment issue, which was created by Vivian and used by Vivian to incite Brooke. More specifically, Vivian's sensational and false claims and Vivian's inexcusable involvement of Brooke in the insurance claims process have created this level of hatred and false belief that Kirk is a bad and mean person: "**Brooke and I just spoke to supervisor Kim C. At Sierra.**" And later, "**Brooke and I Are working directly with them for reimbursement.**" Vivian also was soon, baselessly attacking Kirk and Becky Palmer, writing, "GET ABSOLUTELY NO HELP, SUPPORT OR ASSISTANCE FROM KIRK OR YOU (No calls on my behalf to repair credit. . ..no help in paying bill, No attempt to resubmit invoices for payment no phone calls to hospital or collections agency–NADA, NOTHING– (Heck not even important enough for the policy holder to telephone member services to ask them directly as to why his daughters clams haven't been paid) Vivian also wrote, "**Kirk just can't quite understand why he should have to pay any part of his daughters medical bills.**" *See* Plaintiff's Motion for an Order to Show Cause Why Defendant Should not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013, filed 8.21.15, p. 8-9 (citations omitted).

### 1. What Dr. Paglini was Told Regarding Parent Observation was a Lie As Well

There are additional facts which clearly establish that Vivian and Brooke intentionally misled Dr. Paglini to hide the level of hate and disdain Brooke has for Kirk. Brooke told Dr. Paglini that Brooke had no problem with Kirk attending Parent Observation with the other

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parents and that Brooke only wanted Kirk to not attend her hip hop class because it was too suggestive. However, not long after Brooke told Dr. Paglini she had no problem with Kirk attending all of her other dance classes, Kirk went to Parent Observation to attend Brooke's dance classes. On February 1, 2016, Kirk went to Dance Etc to attend Parent Observation from 6 p.m. to 9 p.m. that night and also planned to also attend from 3:30 p.m. to 9:30 p.m. the next night. When Kirk first walked in the lobby area, Brooke saw Kirk and avoided him. Later, when they opened the door for Studio B where the jazz class was to take place, Kirk approached Brooke and said hello. Brooke responded by telling Kirk she did not want him there and to please leave. Kirk explained to Brooke that he was told she only did not want him to attend her hip hop class. Brooke emphatically said she did not want Kirk to attend any of her dance classes and to please leave. Kirk left.

Vivian is continuing to demonstrate no respect whatsoever for the Orders of this Court. Vivian is continuing to knowingly and intentionally violate Section 5 of the Stipulation and Custody Order of this Court. Vivian believes she can do whatever she wants and there will be no consequence for her intentional and wrongful behavior.

Vivian now has Brooke so enmeshed in her agenda to alienate Kirk from Brooke that Brooke is now not only blatantly violating this Court's Custody Order, but also knowingly violating this Court's order for two hour weekly joint sessions with Dr. Ali and Kirk, as well.

**C. Vivian is Making a Mockery of this Court's Custody Order**

Pursuant to this Court's Custody Order, between August 12, 2015 and July 21, 2016, Brooke was supposed to be with Kirk a total of **190 days**. Despite the explicit terms of the Custody Order and this Court's repeated statements to Vivian that it is her responsibility to insure the minor children comply with the terms of the Custody Order, of the total of 190 days Brooke was to be with Kirk per this Court's Custody Order, Brooke was only with Kirk a total of **38 days**. Therefore, just since August 12, 2015, Kirk has lost **152 days** with Brooke, which is **80%** of his custody time.

Since this Court ordered the double sessions with Dr. Ali, the continuing violation of this Court's Custody Order has been even worse. Between April 8, 2016 and June 16, 2016 – **over**

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**a two month period**, Brooke spent **less than one day** in Kirk's physical custody.[11] Tahnee, Brooke's oldest sister, drove to Boulder City from California to watch Brooke's dance performance on Saturday, April 30, 2016. Brooke did not show up until 2:24 p.m. the afternoon of May 1, 2016 and left at 9:00 a.m. on May 2, 2016. This was despite the fact that Kirk sent Brooke a text on Friday morning, April 29, 2016, advising her that Tahnee was arriving that afternoon to see her dance performance that weekend. Since Brooke has no classes on Friday, Brooke could have come over Friday afternoon for several hours before she had to get ready for dance. Brooke could have stayed home on Friday night after the performance and Saturday morning, as the next dance show was not until 1:00 p.m. on Saturday. Brooke went to Prom after the 6:30 show, but could have come home after Prom, staying home Saturday night and being home all day on Sunday.

### D. Vivian is Doing Everything She Can To Exclude Kirk from Brooke's Life

#### 1. Vivian's Refusal to Provide Brooke's Class Schedule

The Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, was primarily drafted by Vivian's attorney. Paragraph 2.5 requires Vivian to provide to Kirk, "upon receipt, with **any information** concerning the children's care, **education,** or activities, including, but not limited to, copies of report cards, . . . class programs . . notices or **schedules** of activities . . etc. (Emphasis added).

On or about September 1, 2015, Kirk asked Vivian for a copy of Brooke's class schedule for Nevada State High School. Vivian told Kirk to ask Brooke. Kirk asked Brooke for a copy of Brooke's class schedule at Nevada State High School later that same day. Neither would provide Kirk a schedule. Kirk later again asked Brooke for a copy of her class schedule. The schedule was still not provided. Then on December 14, 2016, Kirk's attorneys sent a letter to Radford Smith, noting both Vivian's and Brooke's unwillingness to provide the class schedule

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[11] Surely not coincidental with Vivian's receipt of Dr. Paglini's May 31, 2016 letter to the Court, without any prior notice whatsoever, Brooke showed up at Kirk's home at 9:45 p.m. on June 16, 2016, stating she was going to spend some vacation time with Kirk.

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and requesting that Mr. Smith provide the class schedule. A true and correct copy of that letter to Mr. Smith, dated December 14, 2015, is attached hereto as Exhibit "3" and by this reference incorporated herein. Mr. Smith has never responded to this letter.

**2. According to Vivian, Brooke Does Not Have a Father and, Because of Vivian, the Nevada State High School Was Led to Believe that Brooke Does Not Have a Father**

After months of attempting to get Brooke's class schedule from Brooke, Vivian, and Vivian's attorneys, Kirk called Nevada State High School, Henderson Campus, in an effort to get her schedule. Kirk spoke with Carina Deras. Kirk told Ms. Deras that he is Brooke's father and asked Ms. Deras if she could email him Brooke's class schedule. She said she would and Kirk gave her his email address. The email Kirk later received was disturbing. Ms. Deras could not send Brooke's class schedule "due to your information not being in our records as a legal parent/guardian. . ." The email from Ms. Deras, dated April 1, 2016, is attached hereto as Exhibit "4" and by this reference incorporated herein.

Kirk then contacted Dr. John Hawk, the Executive Director of Nevada State High School. On April 4, 2016, Dr. Hawk emailed to Kirk the document which indisputably established why Kirk was never identified as a legal parent to Brooke. As Brooke's legal parent, Vivian signed and submitted this document. On the first page of the Nevada State High School Enrollment Form there is a place to set forth the information for the Primary Guardian. Vivian filled out all of the information identifying Vivian and her contact information. There was also a place for the Secondary Guardian including identifying the Secondary Guardian and his contact information. Vivian left this section blank.

On the second page of the form there is a place to identify, "Guardian 1 Mother Full Name and Cell." Vivian provided her name and her cell phone number. There is then a place to identify, "Guardian 2 **Father** Full Name and Cell." (emphasis added). Vivian left this section blank as well. The next section requests, "Emergency Contact Name and Cell." Vivian wrote, "Heather Atkinson" and her cell number. A true and correct copy of the Nevada State High School Enrollment Form, dated August 10, 2015, is attached hereto as Exhibit "5" and by this reference incorporated herein. Vivian – not Brooke – made the conscious decision to

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exclude Kirk, Brooke's father, from Brooke's academic records.[12] Vivian also made the conscious decision to alienate Kirk from Brooke and to motivate and incite Brooke to exclude Kirk from Brooke's life.

We now have a scenario that if Brooke is seriously injured or becomes seriously ill while at CSN and is rushed to the hospital, Vivian would be contacted. Heather Atkinson would be contacted. Kirk, Brooke's father, would not be contacted. Kirk, who, by order of this Court, has shared legal custody of Brooke and physical custody of Brooke for 50% of the time on a bi-weekly basis, would first learn of the incident when he received the medical bills or saw the funeral notice in the newspaper.

For the above reasons, Dr. Hawk also refused to provide Kirk with a copy of Brooke's class schedule. However, Kirk continued his effort's with Dr. Hawk to get a copy of Brooke's class schedule and finally, on May 26, 2016, Dr. Hawk texted to Kirk a copy of Brooke's Spring Class schedule. A true and correct copy of Brooke's class schedule is attached hereto as Exhibit "6" and by this reference incorporated herein.

Brooke's Student Identification Number is 5003931057. Brooke takes all of her classes at the CSN Henderson Campus. Her weekly schedule is as follows:

**English 231**
M & W 9:30 a.m. to 10:50 a.m.
**Math 127**
M & W 11:00 a.m. to 12:20 p.m.
**Chemistry 105**
M & W 12:30 a.m. to 1:50 p.m.
**Chemistry Lab 106**
M 2:30 p.m. to 5:30 p.m.
**Psychology 101**
T & Th 8:00 a.m. to 9:20 a.m.
**History 102**
T & Th 9:30 a.m. to 10:50 a.m.

Brooke's total class time each week is therefore 15 hours. Brooke must also take a Transition course at UNLV on one Friday each month.

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[12] The fact that Vivian was overtly attempting to exclude Kirk from Brooke's life at about the same time Vivian was representing to this Court that she had nothing to do with Brooke's decision to knowingly violate the Custody Order is, undoubtedly, not lost upon the Court.

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Brooke's dance classes do not start until 3:30 p.m. on Tuesday and until 3:45 p.m. on Thursday. Brooke's dance schedule is as follows:

**Monday**

| | |
|---|---|
| Jazz | 6:30 to 8:00 p.m. |
| Hip Hop | 8:00 p.m. to 9:00 p.m. |

**Tuesday**

| | |
|---|---|
| Contemporary | 3:30 p.m. to 4:45 p.m. |
| Tap | 5:00 p.m. to 5:45 p.m. |
| Ballet | 6:00 p.m. to 7:15 p.m. |
| Musical Theater | 8:15 p.m. to 9:30 p.m. |

**Thursday**

| | |
|---|---|
| Jazz | 3:45 p.m. to 5:00 p.m. |
| Ballet | 5:00 p.m. to 6:30 p.m. |
| Couples | 8:00 p.m. to 9:00 p.m. |

Brooke will also, on occasion, attend Musical Theater on Wednesday nights from 8:15 p.m. to 9:30 p.m. Brooke usually takes her ACT prep course on Wednesday nights from 4:00 p.m. to 6:00 p.m.

### E. Brooke's (Vivian's) Refusal To Comply With This Court's Order Requiring Weekly Two Hour Sessions with Dr. Ali and Kirk

In light of Brooke's actual schedule (as opposed to the schedule Vivian and Brooke assert in Exhibit "1."), it is difficult to understand why Brooke could not have a 2 hour session once a week on either Tuesday or Thursday when her last class at school ends by 10:50 and her first dance class does not begin until 3:30 p.m. on Tuesday and 3:45 p.m. on Thursday. According to Google Maps, it should take Brooke only 29 minutes to drive from the Henderson Campus, located at 700 College Drive, to Dr. Ali's office, located at 7221 West Charleston.

As a consequence of Brooke telling Dr. Ali's office that her class schedule did not permit her to meet for 2 hours as ordered by the Court, Dr. Ali's office scheduled weekly sessions for 1.5 hours. On Thursday, March 31, 2016, a session was scheduled from 11:30 a.m. until 1:00 p.m. At about 9:45 a.m. that morning, Brooke telephoned Dr. Ali's office and cancelled the appointment stating she had an important math test the following week and the only time the tutor could meet with her was during the time of the session.

What actually happened on Thursday, March 31, 2016 reveals knowing violations of the Court's Order, and the blatant disregard and disrespect of the Court ordered sessions.

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Although he did not teach school last year, Brooke's math tutor teaches school this year during the day. Therefore, he is not available for tutoring until 2:30 p.m. each day of the school week. Apparently, unaware her math tutor is not available until 2:30 p.m. for tutoring, Brooke (Vivian) tried to knowingly create a schedule conflict by scheduling her tutoring session at the same time as her already scheduled session with Dr. Ali and Kirk. Brooke sent a text to her math tutor providing **she** was available for tutoring at either 11:00 a.m. or 12:00 noon on Thursday, March 31, 2016. He responded that he would be in school until 2:30 p.m. Brooke met with the tutor from approximately 2:30 p.m. until 5:30 p.m. on Thursday, March 31, 2016. Interestingly, Vivian/Brooke have represented that Brooke cannot schedule a session with Dr. Ali and Kirk when a dance class is scheduled, as she, purportedly, cannot miss a dance class. However, Brooke chose to miss two dance classes for the math tutoring session on Thursday, March 31, 2016. This is despite the fact that Brooke likely could have met with her math tutor the next day, as Brooke has no school or dance classes on Fridays. Brooke also likely could have met with her math tutor on Saturday, when she also has no school or dance classes.

The Court has specifically found that Vivian is responsible for Brooke's failure to comply with the Custody Order of the Court. This fact has been reaffirmed by the Court to Vivian on several occasions. Therefore, the cost of the effort to cause Brooke to comply with the Court's Custody Order should logically and equitably be bourne by Vivian. One of the primary purposes of the sessions with Dr. Ali was to cause Brooke to comply with the Custody Order. Despite this fact, Kirk offered to pay one-half of Dr. Ali's fees in this regard. Dr. Ali's office has requested Vivian to pay the other one-half of those fees on several occasions. Vivian has refused and continues to refuses to just pay one half of those fees.[13]

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[13] Missouri Statutes 452.400 provides that when a parent interferes with the custody of the other parent, the violator may be ordered "to pay the cost of counseling to reestablish the parent-child relationship between the aggrieved party and the child."

### F. Vivian Is Not Only Alienating Kirk from Brooke, But She is Separating Brooke's Sisters from Brooke Well

#### 1. Vivian has Motivated Brooke to Not Spend Time with Her Older Sisters When They are Home

Vivian is continuing the alienation of Kirk from Brooke, as well as Brooke's older sisters from Brooke. Brooke has always been close to Tahnee and Whitney. Brooke has been especially close to Tahnee, as they share many of the same interests. However, as noted previously, Tahnee drove home for the purpose of seeing Brooke's dance performance. Despite Brooke knowing that Tahnee was here for several days when Brooke was supposed to be with Kirk, Brooke did not come to Kirk's home until 2:45 p.m. that Sunday. Before that visit, Tahnee came home for Christmas. Although Brooke knew Tahnee was here and Brooke was to be with Kirk under the custody schedule, Brooke stayed away for most of the time. More specifically, Tahnee came home for Christmas on December 21, 2015. Brooke was supposed to be with Kirk from after school on December 16, 2015 until noon on December 25, 2015. However, Brooke did not come to Kirk's house until about 6:30 p.m. the night of December 23, 2015.

Similarly, Brooke is also not complying with the Custody Order, when Whitney is home as well. Whitney was home from October 15, 201 through October 18, 2015. Brooke was supposed to be at Kirk's home from after school on October 14, 2015 through after school on October 19, 2015. However, Brooke did not come to Kirk's home until 11:00 p.m. the night of October 16, 2015. Whitney was again home from February 14, 2016 until February 21, 2016. Brooke was supposed to be with Kirk from after school on February 17, 2016 until after school on February 22, 2016. However, despite knowing that Whitney was home, Brooke did not show up until about 10:45 p.m. on February 17, 2016 and despite knowing that Whitney was staying home until the following Sunday, Brooke left the morning of February 19, 2016.

However, this situation has deteriorated even further. Kirk sent a text to Brooke on May 9, 2016 advising her that Whitney was home and would be home through Sunday, May 15, 2016. Whitney also sent a text to Brooke advising her that she was home and wanted to see

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Brooke. Whitney was in town for medical and dental appointments. Whitney has a serious medical condition, which will require a three hour surgery with two surgeons working simultaneously. Kirk was to have custody of Brooke for five days from after school on May 11, 2016 until after school on May 16, 2016. Brooke was absent during this entire custody time. This is especially alarming as Whitney had traveled home all the way from Texas. This was especially disappointing for Whitney, as Whitney was home and dealing with a serious medical issue. Despite a close relationship their entire lives, Brooke did not respond to Kirk's or Whitney's texts and made no effort, whatsoever, to see Whitney, despite being in Boulder City.

The foregoing illustrates the extent to which Vivian has enmeshed Brooke into Vivian's agenda. Until the Vivian created medical reimbursement issue last Summer, Vivian would not have been able to convince Brooke to not only knowingly violate this Court's Order, but she would not have been able to prevent Brooke from spending as much time as possible with her older sisters. This is a source of serious concern. At this point, Brooke's entire world is pleasing Vivian, who Brooke falsely believes to be a victim.[14] Brooke now hates and has disdain for Kirk, without any basis whatsoever. Moreover, Brooke is now being alienated and separated from her older sisters. Vivian has motivated Brooke to violate the Custody Order, which is separating Brooke from Rylee, who is just 13 years old, for almost one-half the time. All of this should be cause for alarm. Vivian is isolating Brooke from those who truly love and care for Brooke and, importantly, have the ability to place Brooke's best interests, above any personal agenda. Vivian does not have that ability or she would not do what she is doing. [15]

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[14] Vivian is rewarding Brooke for her loyalty to Vivian and her alienation of Kirk and her sisters. Vivian just bought Brooke a new 2015 Toyota Avalon XLE. This replaces the 2011 Toyota Avalon that Vivian had given to Brooke for her sixteenth birthday. Contrast this with Vivian's disingenuous assertion to the Court that she is taking the keys to the car and Brooke's cell phone from Brooke to motivate her to comply with the Custody Order.

[15] Vivian needs counseling. Parents do not do to their own children what Vivian is doing to Brooke and Rylee, unless something is amiss. Alienating parents have a deficiency in their psychological makeup. "Today, most scholars believe that parental alienation is caused by some deficiency in the psychological makeup of the alienator parent. Some of these scholars believe that alienators are sociopaths, while others believe that they suffer from personality disorders, mental illness, or an inability to "individuate" herself from the child. Others think that alienator parents are just

Brooke's overwhelming need to please Vivian is stifling the development of Brooke's own sense of self identity and personal growth. Vivian's intentional actions of poisoning Brooke's mind and instilling hatred in Brooke toward her father is a very serious form of child abuse. Action must be taken to attempt to save Brooke from what will otherwise be a horrible fate. Kirk does not want Brooke to go through life incapable of having trusting loving relationships with other people. If Brooke later marries and has children, Kirk does not want Brooke alienating her children from their father.

Brooke is so enmeshed in Vivian's agenda she has lost herself. Brooke was a loving, caring, happy, witty, and honest person. In the past, Brooke did not lie and she was not deceitful. What Vivian is doing to Brooke must be stopped.

**2. Vivian has Successfully Developed a Scheme Each Summer to Prevent Brooke from Having Vacations with Her Older Sisters**

Each summer, Kirk plans vacations and time together for all four daughters. Joseph's professional golf schedule during the summer usually prevents him from participating in this vacation time. Each summer Kirk, takes all four girls to see the plays at Tuacahn in St. George, Utah. Each summer, Kirk plans at least a one week vacation with all four girls.

However, Kirk's ability to schedule vacation time is restricted each summer by Vivian's right each year to choose 10 days of her vacation time before Kirk gets to choose any of his vacation time. *See* Paragraph 7.1 of Custody Order. In addition, Brooke and Rylee have historically had two weeks of intensive dance classes each summer. Last summer, despite it being his year to choose "first," because of these restrictions Kirk was, for practical purposes, relegated to choosing his three weeks of vacation time, during the first half of the summer. Summer classes at CSN can be taken starting either the first week of June or the first week of July. After Kirk made his selection for vacation time, Vivian had Brooke, who was 15 years old at the time, take one class beginning the first week of June. This prevented Kirk from utilizing

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impulsive and deceitful people who lack feelings of empathy, sympathy, or guilt." Sandi S. Varnado, *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113 (2011) (citations omitted).

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any of the three one week periods of vacation time, when all four girls could spend time together.

Vivian has chosen vacation time first this year. This year, Vivian has blocked her vacation time with Brooke and Rylee from July 22, 2016 through August 23, 2016. Predictably, Brooke later announced that she is taking two classes beginning the first week of June this summer, once again eliminating Kirk's ability to schedule a one week vacation or longer for all of the four girls together.

As mentioned earlier, Brooke and Rylee take intensive dance for one or two weeks each summer. This year those weeks are July 11 through July 14 and July 18 through July 21. Kirk picked his third week of vacation from July 14 through July 20, hoping that Brooke and Rylee would take intensive dance from July 11 through July 14, and Kirk could take Brooke and Rylee on a vacation trip with Tahnee. Brooke, however, is taking dance from July 18 through July 21.

### G. Vivian is Now Trying to Minimize the Time Rylee Spends with Her Older Sisters as Well

It is, unfortunately, very evident that Vivian is trying to control Rylee while she is with Kirk and that Vivian is trying to damage the relationships Rylee enjoys with Tahnee and Whitney as well.

Just as Vivian previously convinced Brooke that she is empowered to solely determine what she does or does not do while with Kirk, Vivian is now trying to do the same thing to Rylee. Kirk does not question Rylee as to what she does when she is with Vivian and Kirk certainly does not try to control what Rylee does when Rylee is with Vivian. Unfortunately, the same is not true with respect to Vivian.

Kirk and Vivian alternate custody during Spring Break each year, with Kirk having custody during the even numbered years. *See* Custody Order, Paragraph 7.4. According to the Custody Order, custody was to transfer to Vivian after Spring Break at 7:00 p.m. on Sunday evening, March 27, 2016. When Vivian failed to pick up Rylee, Kirk sent a "Courtesy Custody

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Reminder" email to Vivian (Vivian receives her emails on her telephone and computer) at 7:49 p.m.:

> Vivian,
>
> I think you were supposed to pick up Rylee at 7:00 p.m. this evening. If you are out of town, I am happy for Rylee to stay with me and I will take her to school in the morning. If you are in the middle of something and want to come over later this evening, that works as well. If I have interpreted the provision incorrectly, kindly let me know. Thanks.
>
> Kirk

Vivian did not respond until **4:33 a.m.** the next morning:

> Thank you for the unnecessary reminder. No I'm not out of town, and no I'm not in the middle of something.
> Rylee told me before spring beak that she told you and Whitney she wanted to stay in town and not go to Whitneys house for the break. Rylee was sent to Tahnees in California and then to Whitneys in Texas for her Spring break. She texted me today and said was on her way back to Boulder. I wanted Rylee to have time to get settled in before going back to school tomorrow. Having Rylee pack yet again the day she returns to come to my house and then pack again for your house this weekend is not in her best interest. She gets hauled back and forth to [sic] much as it is.
>
> Sent from my iPhone

Vivian was, apparently, still not home at 4:33 a.m. for, as noted in her email, her response was sent from her Iphone and not from her home computer. Kirk responded to Vivian's email when he got up the next morning at 6:45 a.m.:

> Your email is made up nonsense. Rylee does not pack for custody transfers. She has lots of clothes at both homes. That used to be the case for Brooke as well until you convinced Brooke to move all of her clothes to your house. The issue of packing with Brooke was self-created. Rylee wanted to spend time with both Tahnee and Whitney. Rylee wanted to go visit Tahnee. Rylee said she had a good time with Tahnee. Rylee, initially, said she would prefer that Whitney travels here to spend time with her. However, when I explained to her that Sean could not get the time off, Rylee was happy to go see Whitney and Sean. I talked to Rylee on the way back and she said she had a very good time.
>
> If you were not in the middle of something, why did you not respond until 4:33 a.m.?

All three emails are attached hereto as Exhibit "7" and by this reference incorporated herein.

Vivian is well aware of the fact that each Spring Break that Kirk has custody of the

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Brooke and Rylee, he schedules time so Brooke and Rylee can spend time with Tahnee and Whitney. The last time he had Brooke and Rylee for Spring Break was in 2014 and Kirk took all four girls on a cruise. It is very evident in reading Vivian's email, that she is upset that her efforts to keep Rylee from spending time with Tahnee and Whitney were unsuccessful. Vivian falsely alleges that Rylee was "**sent** to Tahnees in California and then to Whitneys in Texas for her Spring Break." Kirk drove Rylee to Victorville where they met Tahnee and Kirk picked Rylee up in the same way, by meeting Tahnee approximately half way. Kirk and Rylee flew to Texas together to spend time with Whitney and Sean. Vivian would have preferred that Rylee spent the entire Spring Break in her bedroom on her phone watching videos. Vivian does not care what is best for Rylee. Vivian does not care if Rylee has fun during her Spring Break. Vivian does not want Rylee spending quality time with Tahnee, Whitney, or Kirk.

Vivian is so blinded by seeking revenge against Kirk, she does not care about the damage she is doing to Brooke and Rylee or what is best for Brooke and Rylee. Vivian's view is very simplistic. Tahnee and Whitney remain close to Kirk. Therefore, Vivian does not want either Brooke or Rylee to have a relationship with Tahnee and Whitney and Vivian is doing everything within her power to interfere with Tahnee's and Whitney's continued relationships with Brooke and Rylee.

Just as Vivian has callously convinced Brooke, Vivian is now attempting to indoctrinate Rylee into believing that joint custody is too much of an inconvenience, writing, "She gets hauled back and forth to [sic] much as it is."

### H. Vivian's response to the Court's conclusion that Vivian incited Brooke to start violating the Custody Order was basically a "Who me!"

Vivian made the conscious decision to exclude Kirk, Brooke's father, from Brooke's schooling by representing to Nevada State High School that Brooke does not have a father. Vivian's continuing refusal to simply provide Kirk with a copy of Brooke's class schedule is a further continuing attempt to exclude Kirk from any involvement or even knowledge of Brooke's life. This is so outrageous and truly reveals how Vivian is intentionally and overtly

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excluding Kirk from Brooke's life. The enrollment form confirms Vivian's intimate involvement and overt efforts to exclude Kirk from Brooke's life. The date of this form of **August 10, 2015**, was the same time Vivian was making other efforts to alienate Kirk from Brooke. On July 24, 2015, Vivian sent the email providing, "Kirk just can't quite understand why he should have to pay any part of his daughters medical bills." On August 2, 2015, Kirk returned from his trip with Joseph, to find that, while in Vivian's custody, Brooke had come to their home and clean out her closet and drawers. On **August 12, 2015**, Brooke sent Kirk a text advising him that she is not switching houses anymore because it is too hard because she is attending college classes. Vivian is clearly orchestrating all of this.

Vivian has chosen the ruse, which she and Brooke have implemented, that Brooke is dishonoring the Custody Order simply because she is too busy and the weekly transfers between the two houses are too inconvenient. This is nonsense. A child does not choose to leave a parent because she has a busy schedule. A child chooses to leave a parent when she hates the parent, has disdain for the parent, and has been falsely led to believe that parent has victimized the other parent. The truth is that Vivian's four years of alienating Kirk from Brooke, culminating in the medical reimbursement issue, has caused Brooke to now hate Kirk, believes Kirk has victimized Vivian, and with Vivian's guidance and encouragement is trying to remove Kirk from her life.

Any assertion there is no parental alienation, flies in the face of undisputed facts of four years of parental alienation by Vivian.[16] *See* Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing, filed 11.2.15, p. 6-24.

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[16] Any assertion that Dr. Ali had not found parental alienation is unpersuasive and inexplicable. Dr. Ali was tasked with providing therapy for two minor children. He was never tasked to make any type of assessment regarding whether there has been parental alienation. His role was limited to helping the girls. For example, if Brooke told Dr. Ali that she hated Kirk because of the medical reimbursement issue, Dr. Ali would have no way of knowing whether Kirk had actually done something to justify Brooke's ire and hatred, or that Vivian orchestrated the entire issue for the purpose of alienating Kirk from Brooke.

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As noted earlier, Brooke told Dr. Paglini that she felt uncomfortable with Kirk being at Parent Observation for the hip hop class only as it was too suggestive. However, when Kirk then went to Parent Observation this year, Brooke made it very clear that she did not want Kirk attending Parent Observation for any of her dance classes telling him to leave.

### I. Vivian has Told Brooke that Kirk Does Not Support Brooke in Taking Dance and Kirk Refused to Pay Any Part of Brooke's Dance Tuition for an Entire Year

While the parties were still married, Vivian registered Brooke to take the intensive dance program at Dance Etc. The intensive dance program entails approximately 14 or 15 hours of weekly class time during the academic school year. Sometime thereafter, Brooke approached Kirk stating she wasn't sure she wanted to take the intensive program because of the time commitment during school. Kirk responded that Brooke is a very good dancer and he fully supports her taking dance. Kirk also stated that although Tahnee and Whitney took dance, they also played team sports such as volley ball, soft ball, basketball, and golf. Kirk said that although it was Brooke's decision, he wished she had the time to also participate in team sports. Kirk then advised Brooke to talk to Vivian before she made a final decision, as Vivian had already signed her up for the intensive program. Several days later, Brooke came to Kirk and asked Kirk to drive her to Dance Etc. so she could change her dance schedule. Kirk asked Brooke if she had talked to Vivian about her decision. Brooke said that Vivian told her it was her decision. Kirk drove Brooke to the dance studio and Brooke changed the schedule to a less intensive schedule. Sometime within the next two days, Brooke came to Kirk crying uncontrollably. Brooke said that Vivian told her that by reducing the number of classes, Brooke "had ruined her life" and by not taking intensive, Brooke would never get a lead role in any of the dance productions.

Both during the marriage and after the divorce, Kirk has attended every dance production in which Brooke or Rylee has danced.

During the marriage, although Kirk always drove Brooke and Rylee to and from their dance classes, Vivian had the dance studio bill her credit card for the lessons. Kirk would then pay Vivian's credit card bill each month.

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After the divorce, Kirk has always paid each and every bill he has received for Brooke and Rylee's extra-curricular activities, such as dance lessons, piano lessons, and voice lessons. Vivian has made the arrangements for payments with the dance studio, the piano teachers, and the voice teacher. Kirk received a bill for two months of dance lessons during 2013, which he promptly paid. Sometime in August of 2014, the office manager of the dance studio informed Kirk that Vivian told her that since she had paid for dance the prior year, then Kirk should pay 100% of the dance charges for the year then beginning. Despite paying for the two months he was billed the prior year, Kirk did not argue and he paid for all the dance classes for Brooke and Rylee for that year. When Kirk received a bill for Brooke's and Rylee's dance classes in August of 2015, he called the dance studio office manager to advise her it was Vivian's year to pay. Kirk was advised that Vivian now wanted Kirk to pay one-half and Vivian to pay one-half. It is Kirk's understanding that is how the dance bills have been billed and paid since that time. Kirk therefore believes that since the divorce, he has paid more money than Vivian for Brooke's and Rylee's dance lessons.

Kirk believes he paid for all of the girls piano lessons during 2013. Kirk believes he paid for all of the girls piano and voice lessons during 2014. To this day, Kirk continues to pay what he understands to be at least one-half of the total charges for Brooke's and Rylee's dance classes and voice lessons. Neither Brooke nor Rylee is currently taking piano lessons.

Despite these undeniable facts, it is Kirk's understanding now that Vivian has convinced Brooke that Kirk has never supported Brooke taking dance classes and that he refused to pay for any part of her dance lessons for an entire year.

## III. RELIEF REQUESTED

In an effort to get the necessary help for Brooke and Rylee, Kirk contacted Dr. Richard Warshak, author of, "Divorce Poison." Dr. Warshak recommended Dr. Robert Evans as an expert who could advise the Court and describe what is entailed in a family reunification program. Dr. Evans is a leading expert in parental alienation and a co-author of the article, *How to Select an Expert in Parental Alienation* (Nov. 14, 2015). A true and correct copy of this article is attached hereto as Exhibit 8." Both Kirk and Ed Kainen have

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spoken to Dr. Evans in an effort to determine the optimal course of action for Brooke and Rylee.

"[T]ypical or conventional office therapy is virtually never successful in severe cases [of parental alienation], and often makes things catastrophically worse." Kathleen Reay, *Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System* (The American Journal of Family Therapy 2015), p. 4 (citations omitted). A true and correct copy of this article is attached hereto as Exhibit "9."

In severe cases of parental alienation, such as presently before the Court, it is necessary to temporarily separate the children from the alienating parent,[17] to enroll the children and the alienated or targeted parent in a four day reunification program, for there to be no contact between the alienating parent and the children for 90 days or more[18], for the alienating parent to get counseling in how to stop the alienating behavior, and for the family to continue with after care counseling services.

Kirk has been able to identify what are considered to be three of the best reunification programs in North America, which are as follows:

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[17] "Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated." Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added) (citations omitted). "As a general rule, we have found that change of the physical environment and increased social contact with the target parent are the major positive ways to deprogramme a child. The more continuous and regular contact the child has with the programmer and brainwasher, the more likely the process is to continue and damage is to increase." STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 229.

[18] As noted previously, since August 12, 2015, Kirk has lost **152** custody days with Brooke.

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1. Turning Points 4 Families
Linda J. Gottlieb, LMFT, LCSW-R
35 Slocum Road
Beacon, New York 12508
(631) 707-0174
Article Linda Gottlieb entitled, "*Reunification Therapy for Severe Parental Alienation or for the Disruption of a Parent-Child Relationship*" attached as Exhibit "10."

2. Family Reflections
Dr. Kathleen Reay
Okahagan, BC, Canada
(888) 208-8565
drkathleenreay@gmail.com
Article entitled, "Kathleen Reay, *Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System* (The American Journal of Family Therapy 2015) *See* Exhibit "9" supra.

3. Family Bridges
Dr. Randy Rand
randy@docrand.com
Article by Richard Warshak entitled, "*Family Bridges: A Workshop for Troubled and Alienated Parent-Child Relationships*" is attached hereto as Exhibit "11."

Turning Points 4 Families was founded by Linda Gottlieb and is a four day program. Linda Gottlieb personally works with the children and the rejected parent. This program requires a 90 day no-contact period between the alienating parent and the children. Turning Points for Families claims a 100% success rate. The cost of this program is $12,000.00, which does not include transportation, lodging, or meals.

Family Reflections was founded by Dr. Kathleen Reay and is also a four day program. Family Reflections also only works with one family at a time and Dr. Reay is the lead psychologist, who works with the children and the rejected parent. This program requires an indefinite period of no contact between the alienating parent and the children. Family Reflections claims a 95% success rate, if all their program requirements are followed. The cost of this program, which includes lodging and meals, but does not include transportation, is $24,000.00.

Family Bridges was founded by Dr. Richard Warshak and is also a four day program. Dr. Warshak is no longer involved with the program. This program requires a 90 day no-contact period between the alienating parent and the children. Family Bridges claims a

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98% success rate, if all their program requirements are followed. The cost of this program is believed to be about $20,000.00, which does not include transportation, lodging or meals. There is no telephone number or address for Family Bridges.

Vivian should pay for the reunification therapy and all related expenses.[19] Brooke, Rylee, Tahnee, Whitney, and Kirk are the victims of the alienation. To assign these expenses to Kirk, the alienated parent, is akin to blaming the victim. "For the most effective and swift results, the alienating parent should be primarily responsible for the treatment services and for all travel and shelter expenses incurred by the rejected parent and child – should the alienating [parent] have this means. Therapy is *significantly swifter and progress maintained if the alienating parent incurs a financial investment* [in] *the therapeutic process*–this is simply human nature." Linda Gottlieb , *Reunification Therapy for Severe Parental Alienation or for the Disruption of a Parent-Child Relationship*, p. 11.

Kirk respectfully requests the Court to order reunification therapy for Brooke, Rylee and Kirk with any one of these three reunification firms. Such order should include the following: (1) Vivian shall be responsible for transporting Brooke and Rylee to the location of the reunification (Family Reflections will have someone travel to Vivian's house, who will travel with Brooke and Rylee to the Family Reflections location); (2) temporary change in physical custody to Kirk for a period of 90 days; (3) a 90 day no-contact period between the children and Vivian; this must include telephone and electronic communications, physical contact, and communications through third parties; this is a necessary protective provision to prevent the children's relapse and regression; (4) an extension of the no-contact requirement should the alienating parent fail to support the rejected parent's relationship with the children; (5) Vivian must have parent education services with the reunification firm; (6) Vivian must counsel with a local therapist to address any behaviors that had been unsupportive of the relationship between the children and Kirk, and to recognize that it is

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[19] Missouri Statutes 452.400 provides that when a parent interferes with the custody of the other parent, the violator may be ordered "to pay the cost of counseling to reestablish the parent-child relationship between the aggrieved party and the child."

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in Brooke's and Rylee's best interests for both parents to be in their lives; (7) Vivian must provide Brooke and Rylee with a letter stating the importance of having Kirk in their lives and in what specific ways she supports the reunification of Brooke and Rylee with Kirk; (8) Vivian is to provide Kirk with any mementos and materials of the family history and of Kirk's interactions with Brooke and Rylee, specifically including the photographs and videos of Brooke and Rylee that Vivian agreed to provide pursuant to the Decree of Divorce, filed on October 31, 2013, p. 26-27, but which Vivian has refused and continues to refuse to provide; (9) Vivian and Kirk shall jointly meet with Dr. Ali on a periodic basis after the reunification therapy in an effort to avoid any relapse or regression on the part of Brooke and Rylee, and; (10) Vivian shall pay for all costs incurred for reunification therapy and Vivian's therapy.

DATED this 26th day of July, 2016.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Motion for Reunification Therapy for Minor Children and Father are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 26 day of July, 2016, Kirk Harrison.

NOTARY PUBLIC in and for said County and State

LILY L. SCHAFER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 1-17-2020
Certificate No: 08-5963-1

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# EXHIBIT “1”

**Kirk Harrison**

**From:** Vivian Harrison [vivianlharrison@aol.com]
**Sent:** Saturday, February 27, 2016 7:12 PM
**To:** kharrison@harrisonresolution.com
**Subject:** Brooke & Dr Ali appointment scheduling

Kirk,

Dr Paglini telephoned me today. He said you had called him with concerns. Dr Paglini asked me to write you a quick email with the following information.

Dr Ali's office called me two weeks ago. They informed me that Brooke had sent them her normal weekly schedule as they requested. They called her to book an appointment for last Friday. Brooke told them she couldn't meet because she had a 3 day State DECA conference that she was scheduled to attend for Boulder City High School. Brooke didn't list that conference on that schedule since it wasn't her "normal weekly schedule". She did extremely well in that competition and took 3rd in the State. She also had a place finish in another category I'm telling you this because now that she finished 3rd in the state she now will move on to attend the International conference which I'm told is in April. I have not been given any additional info on the International Conference. She hasn't received permission to attend this conference from Nevada State High School and her college professors yet.

I informed Dr Ali's office that given her school schedule and college entrance exam test preparation, scheduled ACT/SAT college entrance exams and her last week DECA conference with Boulder City High School that Spring Break seems to be a good time to have a block of sessions. I had the impression Dr Ali's assistant agreed but couldn't commit without speaking to Dr Ali and getting his input and checking his calendar. That conversation ended on Thursday and she said she would get back to us. I've heard no further response from them since that last call..

I know her first Scheduled ACT test she has been preparing with Dr Coakley for is this Tuesday. Today she took a 2 hour pre-test. I believe she is scheduled for a minimum of 4 or 5 more college entrance exams (dates I don't know), additional pre-tests, study sessions along with completing assigned packets and reading. I know she has **6** college courses. As you might remember 4 is considered full-time and she attends two high school classes, one at Boulder City High School the other at Nevada State High School and then an additional transitional course for 6 hours monthly on Friday at UNLV.

I also know she has her normal dance schedule, which she is currently required to attend rehearsals for her upcoming lead role in "Annie". Then her rehearsals will begin for her Spring dance recital where she is a primary dancer in April.

Brooke sent her "normal weekly" schedule to Dr Ali over 2 weeks ago and sent an additional email to Dr Paglini and Dr Ali last week. I've asked her to forward that email to you today.

Vivian

**Kirk Harrison**

**From:** Emma Harrison [ebrookeharrison@gmail.com]
**Sent:** Saturday, February 27, 2016 10:39 PM
**To:** kharrison@harrisonresolution.com
**Subject:** Fwd: Dr. Ali Therapy

---------- Forwarded message ----------
From: **Emma Harrison** <ebrookeharrison@gmail.com>
Date: Thu, Feb 25, 2016 at 11:23 AM
Subject: Dr. Ali Therapy
To: paglini.office@gmail.com

Dr. Paglini,

I am currently having difficulty scheduling a weekly two hour session with my dad and Ali in Vegas. As a Junior in high school, I need to study and sit for college entrance exams in addition to my normal schedule.

I am currently taking 6 **college** classes 5 days a week and they are as follows:

Chemistry
Chemistry Lab
Pre-Calculus
World History
World Literature
Psychology

In addition to taking over a full-time college schedule, I'm required to attend a transitions course at UNLV for high school credit. I attend a DECA class weekly at BCHS where I'm required to make a weekly presentation for the DECA champions league and participate in an hour bi-weekly conference call. I'm also taking an SAT/ACT preparatory course for 2 hours twice a week. I'm scheduled to sit for 5 ACT/SAT college entrance exams. Nevada State High School also requires a 20 volunteer hour minimum per semester along with attending school functions and events as a part of my grade.

In addition to the above schedule I need to attend a 3 day state DECA conference where I'm required to present an 11 page essay on an entrepreneurial business plan, take exams, participate in interviews, etc to compete for the upcoming international convention in April for a week. I'm also one of the leads in an upcoming production of Annie where there are mandatory rehearsals and dance classes that exceed 18 hrs per week and recitals in April and May.

The schedule above does not include any homework, studying, class prep, required reading, or project time that each class and/or activity requires.

Dr. Ali's office is a 45-50 minute drive each way and scheduling a 4 hr block of time is impossible given my schedule. I needed to alter my living arrangements to accommodate this schedule and make my life more manageable, and less stressful so I could concentrate on my college and high school classes and college entrance exams. This is such a crucial time for my future and academics.

I have been transferring to my Dad's house every other week as I have previously stated. My dad has just recently asked me why I even bother to go over to his house if all I do is stay in my room. That is where I have to study and keep up with my schedule. I don't have time to even go out with my friends anymore.

Dr. Paglini, is it possible to alter your recommended schedule to one hour every other week?

# EXHIBIT “2”

FAXED
MAY 31 2016

*John Paglini, Psy.D.*
**Licensed Psychologist**
**9163 West Flamingo, Suite 120**
**Las Vegas, Nevada 89147**

**Phone: (702) 869-9188** **Fax: (702) 869-9203**

May 31, 2016

The Honorable Judge Bryce Duckworth
Department Q
Eighth Judicial District Court, Family Division,
601 North Pecos,
Las Vegas, Nevada, 89101

RE: HARRISON VERSUS HARRISON
CASE # D-11-443611-D

Dear Judge Duckworth:

During the last several months, likely commencing in February 2016, Mr. Kirk Harrison has consistently contacted me regarding dynamics pertaining to reunification therapy with his daughter. There was one telephone contact with Mr. Harrison on February 23, 2016. Mr. Harrison processed concerns he had with reunification therapy not occurring fast enough of often enough. Mr. Harrison also called on February 27, 2016. Mr. Harrison sought my assistance because he and Brooke have not been in reunification therapy on a consistent basis. This evaluator also had received an email from Brooke indicating her difficulties scheduling a two hour session with her father and Dr. Ali due to her caseload and commitments. Brooke wanted this evaluator to possibly recommend a schedule of one hour every other week. I then talked to Ms. Vivian Harrison to elicit her cooperation. She appeared flexible on the phone.

Mr. Harrison then called on March 30, 2016. By this point there has only been one meeting between he and Brooke. He reported the previous session was positive, but everything is moving extremely slow. He is extremely frustrated with the lack of progress. Mr. Harrison would like to address the issues and share more time with his daughter.

Mr. Harrison then called again on May 10, 2016, and May 16, 2016. By this time, Mr. Harrison reported there have only been two meetings between he and Brooke with Dr. Ali. Mr. Harrison reported Brooke appears oppositional to meet further. Mr. Harrison has contacted my office in good faith based on my recommendations to the family court.

In my recommendations, I noted "What this evaluator would recommend is that Mr. Kirk Harrison and his daughter be involved in intense frequent therapy to resolve their issues." This evaluator recommended Dr. Ali because he is familiar with the family dynamics. I had noted in my earlier recommendations that Brooke had not seen Dr. Ali on a consistent basis, that Brooke should have attended therapy consistently during the previous timeframe when she had problems with her father. Also in my recommendations, it is noted "Brooke cannot dictate the pace in this

case." Additionally, it is noted in my report "Hence, although Brooke has a busy schedule, she and her father need to be seen for double sessions on a weekly basis to begin to repair the relationship."

This letter is written on behalf of Mr. Kirk Harrison. However, the courts should note I am dismayed at the alleged lack of sessions/progress that have occurred. Although Mr. Harrison was likely unhappy with my report, he attempted to follow the recommendations. Brooke and her father need to be involved in continuous/frequent treatment and address their issues. This evaluator had hoped that by now Brooke and her father would have resolved their issues, and that they would be sharing much more time together. This evaluator is very dismayed that only two known sessions have occurred in family reunification therapy between Brooke and Mr. Harrison. I have been in contact with Dr. Ali, but have informed Dr. Ali until he has current consent forms signed by both parents on his behalf it is not advisable to process this case.

As noted, this evaluator is concerned if it is true that rare reunification therapy occurred between Mr. Harrison and Brooke. As stressed in my report, Brooke should not be in charge of the pace of reunification therapy. Although I appreciate Brooke's dedication to her academics and other activities, her relationship with her father is extremely important and needs to be on the forefront of issues addressed and not something that is possibly delayed/avoided by Brooke. I appreciate that I may have heard one side of the story (Mr. Harrison) and that should be weighed accordingly with additional evidence.

It is recommended that the courts consider a detailed letter from Dr. Ali regarding his reunification attempts/treatment of the Harrison family. I hope the courts address this possible concern to help Mr. Harrison and Brooke resolve their issues and begin to share quality time together.

Respectfully submitted,

John Paglini, Psy.D.
Licensed Psychologist
JPng: 05/31/16

cc: Attorney Edward Kainen (Fax: 702-823-4488)
Attorney Radford Smith (Fax: 702-990-6456)

# Fax Cover Sheet

**John Paglini, Psy.D.**
**9163 West Flamingo, Suite 120**
**Las Vegas, NV 89147**

**Phone:** 702 -869-9188
**Fax:** 702-869-9203

**Date:** May 31, 2016

**TO:** Attorney Edward Kainen

**FROM:** John Paglini, Psy. D.

**RE:** Harrison versus Harrison
Case#D-11-443611-D

**FAX NO:** 702-823-4488

**NUMBER OF PAGES:** 3
**(Includes cover sheet)**

**COMMENT:**

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# EXHIBIT “3”

# KAINEN
## LAW GROUP
A Professional Limited Liability Company

December 14, 2015

**Via Facsimile: 702-990-6456**
Radford Smith, Esq.
Radford J. Smith, Chartered
64 North Pecos Road, Suite 700
Henderson, Nevada 89074

Re: **Kirk Harrison v. Vivian Harrison**

Dear Rad,

During the hearing today I thought I understood you referenced a letter from Brooke. Neither my client nor I are aware of such a letter. Would you please provide a copy of that letter to me at your earliest convenience.

Additionally, we have asked repeatedly for Brooke's class schedule from your client, as well as directly from Brooke. To date, each of these requests have been completely ignored. Please provide Brooke's class schedule for the Spring 2016 semester.

Please remit all documents and information requested herein to my office, by noon on Wednesday, December 16, 2015.

Should you have any questions, please feel free to contact our office.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.

ELK/kln
cc: Kirk Harrison

KAINEN
LAW GROUP
A Professional Limited Liability Company

FAX COVER SHEET

**DATE:** 12/14/2015

**TO:** Radford Smith, Esq.

**FAX NUMBER:** 702-990-6456

**FROM:** Edward Kainen, Esq.

**RE:** Harrison v. Harrison

**NUMBER OF PAGES (Including Cover Sheet):** 2

**MESSAGE/COMMENTS:** Please see attached.

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TRANSMISSION VERIFICATION REPORT

TIME : 12/14/2015 12:59
NAME : KAINEN LAW GROUP
FAX : 8234488
TEL : 7028234900
SER.# : C1N995789

| | |
|---|---|
| DATE,TIME | 12/14 12:59 |
| FAX NO./NAME | 17029906456 |
| DURATION | 00:00:34 |
| PAGE(S) | 02 |
| RESULT | OK |
| MODE | STANDARD ECM |

KAINEN
LAW GROUP
A Professional Limited Liability Company

FAX COVER SHEET

**DATE:** 12/14/2015

**TO:** Radford Smith, Esq.

**FAX NUMBER:** 702-990-6456

**FROM:** Edward Kainen, Esq.

**RE:** Harrison v. Harrison

**NUMBER OF PAGES (Including Cover Sheet):** 2

**MESSAGE/COMMENTS:** Please see attached.

# EXHIBIT “4”

**Kirk Harrison**

**From:** Carina Deras [cderas@earlycollegenv.com]
**Sent:** Friday, April 01, 2016 2:17 PM
**To:** kharrison@harrisonresolution.com
**Subject:** Emma's Schedule

Hello Mr. Harrison,

We previously spoke on the phone this afternoon regarding Emma's schedule. Unfortunately, due to your information not being in our records as a legal parent/guardian I cannot send you Emma's schedule via email. I apologize for any confusion.

Regards,

*Carina Deras*
Office Aide/Registration Advocate
Nevada State High School
Phone: (702) 953-2600
Fax: (702) 953-2608
www.earlycollegenv.com
cderas@earlycollegenv.com

# EXHIBIT “5”

# Nevada State High School Enrollment Form

**Nevada State High School**
233 N. Stephanie St.
Henderson, NV 89074
850 S. Durango Dr. Ste. 100
Las Vegas, NV 89145
Phone: 702-953-2600 // Fax: 702-953-2608
www.earlycollegeNV.com

**Official Enrollment Form:**
Congratulations on completing the registration process to enroll at Nevada State High School (NSHS).
This is the student's official enrollment form.

## Student Information

Student Legal First Name: **Emma**
Student Middle Name: **Brooke**
Student Legal Last Name: **Harrison**
Student 15/16 Grade Level: **11**
Ethnicity: **C**
Race: **White**
Gender: **Female**
Date of Birth (DOB): **6/26/1999**
Date entered US or DOB (if born in US): **6/26/1999**
County of Residence: **Clark**
NSHE#: 5003431057
Student Email: **Emmabharrison@aol.com**
Student Cell Phone: **7022757655**

## Student Residence

Street: 1514 Sunrise Circle
City: Boulder City State: NV Zip: 89005

## Student Mailing Address

Street/Box: 1514 Sunrise Circle
City: Boulder City State: NV Zip: 89005

**Student NSHS Base Campus**: Henderson
**2nd Year at NSHS**: No

**Primary Guardian Contact:**
Guardian Name: Vivian Lee Harrison
Guardian Email: vivianlharrison@aol.com
Guardian Cell Phone: 7022750000
Guardian Home Phone: 7022946000
Guardian Work Phone: None

**Secondary Guardian Contact:**
Guardian Name:
Guardian Email:
Guardian Cell Phone:
Guardian Work Phone:

**Emergency Contact:**

## Previous Education Information:

Prev. School: Boulder City High School
Previous Student ID: 522410
Incoming GPA: 3.8279999999999998

Note: You are now officially enrolled with NSHS and are no longer enrolled in any other public, private, or home school for the 2015-16 school year. NSHS will contact the previous school listed on this form to request your education records and notify them you are attending NSHS. After today, if you choose to withdrawal, you will need to complete a withdrawal form in person with a parent/guardian. See the Student/Parent Handbook for specifics at www.earlycollegenv.com.

Student Signature: Emma B H

NSHS Administrator Signature:

Date: 8/10/2015

Emma: Thank you for registering with Nevada State High School (NSHS), an early college high school accredited with AdvancED. Personally deliver this form Mondays - Thursdays (2pm-5pm) to either NSHS Henderson at 233 North Stephanie Street Henderson, NV 89074 or NSHS Summerlin at 850 South Durango Drive Suite 100, Las Vegas, NV 89145 within two weeks of receiving this email to register for Fall 2015.

| | |
|---|---|
| Social Security Number: ___ | ___ (write number here). |
| Student Email: | Emmabharrison@aol.com |
| Legal Name: | Emma Brooke Harrison |
| Student Cell and Home Phone: | 7022757655 7022946000 |
| Date of Birth, USA Entry, and Place: | Jun 26, 1999, Jun 26, 1999, |
| US United States Boulder City NV | |
| Gender: | Female |
| Ethnicity, Race: | Not Hispanic/Latino, White |
| Home Address: 1514 Sunrise Circle | Boulder City, NV 89005 |
| Mail Address: 1514 Sunrise Circle | Boulder City, NV 89005 |
| NV County of Residence: | Clark |
| Guardian1 Mother Full Name and Cell: | Vivian Lee Harrison |
| 7022750000 | |
| Guardian1 Mother Email: | vivianlharrison@aol.com |
| Guardian2 Father Full Name and Cell: | |
| Emergency Contact Full Name and Cell: | Heather Atkinson |
| 7022964118 | |
| Previous School Name and ID#: | Boulder City High School |
| 522410 | |
| Grade Level for Fall 2015 and GPA: | Grade 11 3.828 |
| History of any health issue(s) and explanation: | No |
| Preferred Campus: | Henderson |
| EVER received expulsion from any school: | No |
| EVER received special education (IEP): | No |
| EVER received 504 services from any school: | No |

Any falsification or witholding information may prohibit enrollment. You have verified that this form is accurate and complete: Agree

Student and parent need to sign and personally deliver this form with other documents (listed here: http://www.earlycollegenv.com/thank-you/) within two weeks of receiving this email. Enrollment is not guaranteed and is subject to openings available.

Student Signature: Emma B Harrison

Parent Signature: Vivian Lee Harrison

# EXHIBIT “6”

**CHEM 105 - Chemistry, Man & Society**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 3.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| 31563 | 5001 | Lecture | MoWe 12:30PM - 1:50PM | Henderson Bldg C 106 | Thomas Gill | 01/19/2016 - 05/15/2016 |

**CHEM 106 - Beginning Chemistry Lab**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 1.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| 31572 | 5002 | Lecture | Mo 2:30PM - 5:30PM | Henderson Bldg C 207 | Staff | 01/19/2016 - 05/15/2016 |

**ENG 231 - World Literature I**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 3.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| 307 | 4001 | Lecture | MoWe 9:30AM - 10:50AM | Henderson Bldg B 202 | Karen Hyman | 01/19/2016 - 05/15/2016 |

**HIST 102 - U S History II**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 3.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| 36107 | 4003 | Lecture | TuTh 9:30AM - 10:50AM | Henderson Bldg B 207 | Charles Deitrich | 01/19/2016 - 05/15/2016 |

**MATH 127 - Precalculus II**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 3.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| 34830 | 5002 | Lecture | MoWe 11:00AM - 12:20PM | Henderson Bldg B 210 | Lisa Savy | 01/19/2016 - 05/15/2016 |

**PSY 101 - General Psychology**

| Status | Units | Grading | Grade Deadlines |
|---|---|---|---|
| Enrolled | 3.00 | Letter Grades | |

| Class Nbr | Section | Component | Days & Times | Room | Instructor | Start/End Date |
|---|---|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

# EXHIBIT “7”

**Kirk Harrison**

**From:** Kirk Harrison [kharrison@harrisonresolution.com]
**Sent:** Monday, March 28, 2016 6:45 AM
**To:** 'Vivian Harrison'
**Subject:** RE: Custody courtesy reminder

Your email is made up nonsense. Rylee does not pack for custody transfers. She has lots of clothes at both homes. That used to be the case for Brooke as well until you convinced Brooke to move all of her clothes to your house. The issue of packing with Brooke was self-created. Rylee wanted to spend time with both Tahnee and Whitney. Rylee wanted to go visit Tahnee. Rylee said she had a good time with Tahnee. Rylee, initially, said she would prefer that Whitney travels here to spend time with her. However, when I explained to her that Sean could not get the time off, Rylee was happy to go see Whitney and Sean. I talked to Rylee on the way back and she said she had a very good time.

If you were not in the middle of something, why did you not respond until 4:33 a.m.?

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Monday, March 28, 2016 4:33 AM
**To:** Kirk Harrison
**Subject:** Re: Custody courtesy reminder

Thank you for the unnecessary reminder. No I'm not out of town, and no I'm not in the middle of something.
Rylee told me before spring beak that she told you and Whitney she wanted to stay in town and not go to Whitneys house for the break. Rylee was sent to Tahnees in California and then to Whitneys in Texas for her Spring break. She texted me today and said was on her way back to Boulder. I wanted Rylee to have time to get settled in before going back to school tomorrow. Having Rylee pack yet again the day she returns to come to my house and then pack again for your house this weekend is not in her best interest. She gets hauled back and forth to much as it is.

Sent from my iPhone

On Mar 27, 2016, at 7:49 PM, Kirk Harrison <kharrison@harrisonresolution.com> wrote:

> Vivian,
>
> I think you were supposed to pick up Rylee at 7:00 p.m. this evening. If you are out of town, I am happy for Rylee to stay with me and I will take her to school in the morning. If you are in the middle of something and want to come over later this evening, that works as well. If I have interpreted the provision incorrectly, kindly let me know. Thanks.
>
> Kirk

This email has been checked for viruses by Avast antivirus software.
www.avast.com

# EXHIBIT “8”

# Parental Alienation Help

*Support and Resources for Alienated Parents, Family Members, and Professionals*

## How to Select an Expert in Parental Alienation

Posted on November 14, 2015 by drkathleenreay

**Parental alienation**, a family dynamic in which one parent engages in behaviors that are likely to foster a child's unjustified rejection of the other parent, is all too common. By some estimates 80% of all divorcing parents engage in some PA behaviors (Clawar & Rivlin, 1992). Although, not all children exposed to PA behaviors become alienated (unjustifiably reject one parent and align with the other), rates of alienation in children may be as high as 1% (Bernet, Boch-Galhau, Baker, & Morrison, 2010). A body of research now exists establishing the negative long-term effects of exposure to PA behaviors for children (e.g., Baker & Eichler, 2014; Bernet, Baker, & Verrocchio, 2015; Verrocchio & Baker, 2015). Some research, along with a host of memoirs, also documents the extremely painful experience of alienation for the targeted parents (e.g., Baker, 2006; Baker, & 2006; Baker & Fine, 2014).

Many targeted parents find themselves involved with legal as well as mental health professionals as they navigate their parental alienation journey (Gardner, 1998). Although there is considerable research and clinical wisdom in our current knowledge base, PA is still an emerging field. Presently, there is no credentialing body to provide professionals with an evidence-based training protocol and/or related information to address the problem of parental alienation. This parallels the progression in other mental health fields. For example, although addictions existed well before the 1980's, it wasn't until 1988 that the American Academy of Health Care Providers in the Addictive Disorders was created to provide credentialing as a Certified Addiction Specialist. Prior to that, anyone could claim to be an expert in the treatment of addictions regardless of his or her knowledge, experience, or skill.

This is problematic because—as a bona fide specialized field of practice—there is a knowledge base and core content that experts must have to properly assist families affected by parental alienation and to avoid common errors that can result in poor outcomes for such families. Such errors are very common among non-specialists because many aspects of parental alienation are highly

counterintuitive. The field is counterintuitive because the human brain is hard-wired to commit certain types of systematic cognitive errors that are particularly common in PA cases (Miller, 2013). Consequently, non-specialists who attempt to evaluate or manage such cases will often fall prey to a variety of cognitive and clinical errors, particularly if they rely on naïve intuition rather than a highly-specialized knowledge base. Furthermore, such clinicians are likely to have great confidence in their incorrect conclusions. Indeed, the usual repertoire of clinical skills is often inadequate in such cases and will often result in poor clinical and forensic outcomes (Miller, 2013). To avoid such errors, clinicians require highly-specific training in PA and related family dynamics such as pathological alignment and pathological enmeshment (Minuchin, 1974; Wallerstein & Kelly, 1980). PA-specific training and knowledge is required in order to avoid such mistakes. Three examples are provided here (and mentioned below as axiomatic positions within the field).

The first is that mental health professionals are trained to rely on their clinical judgment and impressions when meeting and working with clients. These impressions form the data points that clinicians draw on when making decisions about client's mental health status. This is problematic for PA cases because targeted parents often present as anxious, agitated, angry, and afraid. Having sustained severe psychological and emotional trauma, they are in crisis mode and will therefore often make a poor first impression. They may have pressured speech. They may display psychomotor agitation. They may avoid eye contact. They may interrupt the clinician.

They may appear to have an agenda and may even appear paranoid or delusional because they are likely to believe—accurately, if the case is indeed one of PA—that the other parent is trying to undermine their relationship with their child. They are also likely to appear defensive and—not unreasonably—be unwilling to take responsibility for causing the crisis. In contrast, alienating parents are likely to make an excellent first impression. They present as cool, calm, charming, and convincing. They are poised and in command of their emotions. They are basking in the glow of victory—of their children's professed preference for them and emphatic rejection of the other parent. To a PA novice (regardless of how experienced the clinician might be with other types of cases) the parents' contrasting presentations may seem genuine and come to dominate hypothesis generation and clinical decision-making as to the family dynamics. The children's complaints about the targeted parent may appear well-founded and their preference for the alienating parent may appear reasonable. Non-specialists who fail to recognize this characteristic pattern—i.e., that targeted parents generally present poorly and alienating parents generally present well—are likely to accept the alienating parent's version of events, especially when provided with an almost identical history by the child(ren). They are also likely to find the alienating parent more pleasant and likeable, and thus more sympathetic.

The second counterintuitive aspect of PA, one that is rarely appreciated by non-specialists, is that in moderate and severe cases the alienation is usually accompanied by pathological enmeshment. This is problematic because unless the observer or evaluator has extensive expertise in this area, pathological enmeshment appears to be—and could be mistaken for—healthy bonding—a close, loving, healthy, parent-child relationship. Evaluators who mistake enmeshment for healthy bonding fail to appreciate the serious psychopathology that is typical of enmeshed parents including pathological dependence or co-dependence, delusional thinking, and severe boundary violations. Such observers may also fail to appreciate that an enmeshed child has lost his or her identity, sense of self, individuality, autonomy, and critical reasoning skills to the point that he or she has become an extension of, and proxy for, the

parent. This is potentially catastrophic in the setting of a custody dispute because the clinician or custody evaluator, having made these mistakes (often with great confidence), may then recommend that sole custody be awarded to the pathologically-enmeshed parent. If this happens, the child has been entrusted to a deeply-disturbed, personality-disordered, abusive parent who is incapable of putting the child's needs ahead of his or her own. Indeed, in our collective experience, when cases of severe alienation and enmeshment are evaluated by professionals who are not bona fide specialists in alienation and estrangement such errors are common.

Third, a non-PA specialist is unlikely to know how to differentiate an abused child from an alienated child. Alienated children present as extremely angry, rude, aggressive, and provocative towards the targeted parent. They are likely to deny ever having had a good relationship with that parent and are unlikely to express any interest in repairing the relationship in the future. While this may appear to be a rational response to abusive parenting, it is actually not the expected response from an abused child. Research and the clinical literature consistently report that abused children generally cling to and are protective of the abusive parent. They want to repair the relationship and forgive the abuser, and they are likely to deny or minimize past abuse (Baker & Schneiderman, 2015; Clawar & Rivlin, 2013; Gottlieb, 2012). In fact, it is only alienated children who demonstrate a particular clinical picture which may—to the untrained clinician—appear to be consistent with maltreatment.

In sum, there is a knowledge base in the field of parental alienation that has been gathered through academic research and expert clinical observation and shared among experts but that is not yet routinely available to front-line clinicians in the form of a credentialing or training protocol. In the absence of such credentialing, any mental health professional can assume the title of an "alienation expert" with respect to diagnosis, intervention, or treatment regardless of his or her level of actual knowledge. Because we believe that some mental health professionals naively or otherwise claim to be PA experts when in fact they are not, we have come together to provide targeted parents with some guidelines for differentiating true PA specialists from non-specialists or pseudo-specialists.

Our motivation for undertaking this effort was that we understand how horrible it is for targeted parents to have their relationship with their beloved child undermined, disrupted, or damaged by a third party, either the other parent or some other alienator. Collectively, we have worked with several thousand parents who want to protect their children from this terrible form of child abuse.

We know that many targeted parents are avid consumers of PA knowledge and strive to educate themselves about this problem. We have come together, as experts in the field, to help such parents weed through the myriad resources now available on and off-line and to help them identify accurate and reliable information. Regrettably, some professionals claim to be experts in PA when, in fact, they lack the necessary background, credentials, or expertise to properly advise parents in this regard. Worse, some of these self-proclaimed "experts" promote ideas that are inconsistent with well-established scientific principles—that is, their opinions and theories are in conflict with generally-accepted, evidence-based scientific understanding about what PA is and how to remedy it.

Unfortunately, it is not always easy for non-scientists to distinguish between good science and bad science—or between science and pseudoscience. As the field has grown, and as more and more is written, there has been an explosion of information on the subject of parental alienation. There are

multiple websites, YouTube videos, blogs, and Facebook pages devoted to the subject. When sifting through this abundance of information, it is important to understand that some statements and sources are more accurate than others. Likewise, some "experts" are more scientific than others. The purpose of this brief paper is to help targeted parents identify who is and is not truly an expert in the field.

The rest of this paper is divided into two sections. First, we present some guidelines as to what a targeted parent should look for with respect to the background, experience, and credentials of a genuine expert. Second, we identify core information, fundamental points, and basic concepts to which an expert should subscribe. These basic premises have been scientifically validated and are neither controversial nor debatable among genuine experts who are credible specialists in alienation and estrangement. No genuine expert in PA should disagree with any of these ideas—they are axiomatic within the field.

**Factors to Consider When Selecting an Alienation Expert**

The qualifications below can be used as a checklist to identify true expertise as opposed to limited or pseudo-expertise. It is imperative for the expert to have a strong background and training in relevant areas—rooted in sound science and the scientific method. While experience as a targeted/alienated parent, or perhaps a formerly-alienated child, can be very helpful, personal experience alone is not enough. We believe that it is this scientific educational background—applied to the phenomenon of PA—that separates truth from ideology, fact from fiction, and good advice from bad. Though a genuine expert might not meet every one of these criteria—for instance, an excellent clinician might not have published any scientific papers—a true expert should have most of these.

1. An advanced degree (masters or doctoral) from an accredited educational institution in a relevant discipline or field. This is not meant to trivialize the importance of some lay counselors and coaches who, through experience and/or "on-the-job training" may have much to offer, but it is critical for targeted parents to understand that, in general, PA is a complex, complicated problem that generally requires substantial scientific understanding and professional expertise.

2. A deep, extensive knowledge of the clinical literature regarding pathological alignment, alienation and estrangement, and pathological enmeshment, as well substantial knowledge and understanding of borderline, narcissistic, and sociopathic personality disorders. The reason for the latter point is that such personality disorders are not only common among alienating parents (and virtually ubiquitous among severe alienators), but are often missed by non-specialists, in part because individuals with these disorders tend to be master manipulators who are charming and highly-skilled at managing first impressions. They also tend to be pathologically dependent which helps to explain the pathological enmeshment with the child.

3. Authored or co-authored published works regarding PA in peer-reviewed publications. (Self-publication does not meet this criterion.)

4. Completed educational programs or other training by qualified experts in relevant areas. These training programs should be recent and should include advances in research and evidence-based practice.

5. Provided Continuing Education (CE) training to mental health professionals or Continuing Legal Education (CLE) to legal professionals on parental alienation. CE and CLE training experience suggests the presenter is a recognized expert in the subject matter he or she is teaching.

6. Qualified as an expert in a court of law with respect to PA and related issues.

7. Maintained an ongoing, collaborative communication with other experts in PA in order to benefit from an exchange of ideas and recent advances in the field.

**Scientifically-Derived Consensus Regarding Parental Alienation**

PA was first described decades ago, and has been given a variety of names. As the problem has become better recognized, our understanding has become increasingly refined. Evidence-based practice dictates that the key elements—the various "moving parts"—of PA must be examined and tested through using the scientific method. The following expert consensus opinions are the result of this process and form the foundation of our current understanding of alienation and related issues.

1. Alienated children present very differently than estranged children. The similarities are superficial. Although both alienated children and estranged children will often align with one parent over the other, to expert eyes—by which we mean a professional who specializes in alienation and estrangement—it is usually straightforward, if not easy, to distinguish between the two. On the other hand, the differences are often missed by non-specialists.

2. Many aspects of identification and treatment of PA are counterintuitive. For example, alienated children often appear to have a healthy bond with the alienating parent although it is actually an unhealthy, enmeshed relationship. Many alienating parents present well to evaluators and courts although they are actually engaging in destructive behaviors. Many targeted parents appear anxious and agitated despite being healthy and competent. For this reason, only a qualified PA specialist should conduct this work.

3. Children rarely reject a parent—even an abusive parent. Therefore, in the absence of bona fide abuse or neglect, when a child strongly aligns with one parent and emphatically rejects the other, that pattern strongly suggests alienation—not estrangement.

4. Clinicians and other professionals should carefully consider severity. PA is typically a progressive process in which—sometimes gradually, sometimes suddenly—the child begins to resist contact with and/or reject the previously-loved targeted parent. Severity should be identified as mild, moderate, or severe. This is important because, among other things, it allows the examiner to identify early warning signs of PA which, in turn, permits a qualified clinician to provide interventions in ways that are customized and appropriate for the level of severity.

5. The work of Dr. Richard Gardner (e.g., 1998), a child psychiatrist, provided a theoretical framework and conceptual model for understanding the phenomenon. His original insights have since been validated by both researchers and clinicians. His work was based on sound scientific principles and generally-accepted standards of psychiatric practice.

6. The eight manifestations of parental alienation first identified by Dr. Gardner are generally-accepted and valid. Although others have been identified, the original eight are well-established as valid and useful indicators of alienation, and are rarely, if ever, seen with estrangement. They have been tested empirically and found to be accurate, valid, and reliable.

7. The seventeen alienation behaviors described by Dr. Amy J.L. Baker are research-supported and evidence-based. They provide a valid and reliable set of useful indicators with which to assess the behavior of favored parents with respect to PA.

8. Although some cases are hybrids, the assertion that most cases are hybrids (meaning a mix of alienation and estrangement) is not supported by the clinical literature.

9. Children do not have the cognitive maturity or the capacity to make an informed decision about whether to have a relationship with a parent. They cannot imagine the implications of having a parent absent from their lives, and do not necessarily know what is in their best interest. Nor do they genuinely want the power to cut a parent out of their lives.

10. Children (and adults) can be unduly influenced by emotional manipulation to act against their own best interests. They can be misled to believe things that are not true, even about a parent. It is possible to induce false memories in children and/or to program children to relate events—often sincerely and convincingly (at least to naïve or unwary observers)—that, in fact, did not take place or did not take place in the way described.

11. Many, but not necessarily all, alienating parents have one or more personality disorders (typically of the borderline, narcissistic and/or sociopathic type). The more extreme or severe the alienating behavior, the more likely it is that the alienating parent has an underlying personality disorder.

12. Parental alienation is a form of child abuse, specifically psychological and emotional abuse. It meets the diagnostic criteria for child psychological abuse as described in the Diagnostic and Statistical Manual of Mental Disorders (the DSM-5) published by the American Psychiatric Association (2013).

13. Although Dr. Gardner popularized the concept and clarified many of the definitions and subsets inherent in the determination of what PA means, its development, and its deleterious effects upon the family, the concept appeared long before Dr. Gardner first wrote about the problem in 1985.

14. The model provided by Dr. Gardner has provided an excellent framework for both diagnosis and treatment. Although it has been refined and enhanced over the past 30 years, the basic concepts remain valid. Virtually all of the successful treatment programs for PA are based on his original model. Despite unsupported claims to the contrary, no alternative model has been shown to be clinically, theoretically, or scientifically superior. For the most part, proposed alternatives provide little or no outcome data and/or appear to be neither clinically, nor theoretically, nor scientifically sound.

15. Only reunification therapy provided by a PA specialist who thoroughly understands the clinical and scientific points in this paper, and whose treatment plan is highly-customized for PA based on sound scientific evidence and clinical outcome data, is recommended. Team-based "intensive reunification

therapy" is appropriate in treating moderate to severe alienation while traditional in-office, out-patient reunification therapy may have its place when considering treatment for mild alienation. The treatment should be appropriately matched to the family.

We hope this information will be helpful in obtaining qualified advice or assistance.

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And in alphabetical order

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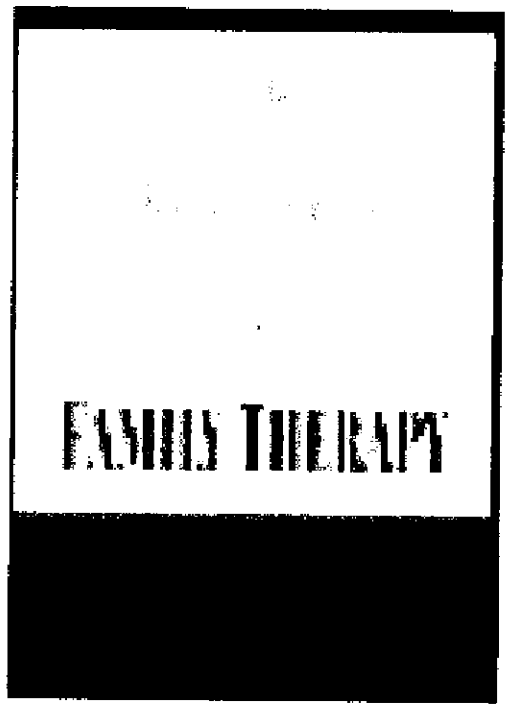


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# Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System

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# Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System

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*Parental alienation is a form of child psychological abuse and traditional therapeutic approaches do not work with these types of cases. This article provides explanation for the gross failure of traditional therapeutic approaches. The rest of the article discusses the Family Reflections Reunification Program (FRRP), specifically designed to treat severely alienated children and their family system. This program was piloted in 2012 with 22 children in 12 families. Evaluations at the end of the retreat and at 3-month, 6-month, 9-month, and 12-month follow-ups demonstrate a 95% success rate in re-establishing and maintaining a relationship between children and once-rejected parents.*

It is not uncommon to work with clients who are undergoing the devastating effects of a bitter divorce or custody dispute. Parental alienation is a particularly pernicious outcome of dysfunctional family relationships and is a burgeoning phenomenon in psycho-legal communities. By definition, the term *alienation* is used to indicate that a child has rejected a parent without a reasonable or valid reason—that is, for weak, trivial, frivolous, or absurd reasons. This phenomenon is commonly known as *parental alienation*. By contrast, the term *estrangement* is used to indicate that a child has rejected a parent for reasonable or valid reasons—that is, as a result of bona fide abuse, neglect, or markedly deficient parenting. These definitions are generally accepted within the clinical literature (Bernet, 2010; Fidler, Bala, & Saini, 2013; Lorandos, Bernet, & Sauber, 2013).

In the setting of parental alienation, the favored parent is typically referred to as the *alienating parent*, and the rejected normative parent is

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typically referred to as the *target parent*. Parental alienation is a valid concept and the diagnostic criteria for parental alienation are reliable (Baker & Darnall, 2006, 2007; Rueda, 2004). In accordance with these definitions, generally accepted manifestations of parental alienation include:

- A campaign of denigration against the target parent;
- Weak, frivolous, and absurd rationalizations for the denigration;
- Lack of ambivalence;
- The independent thinker phenomenon;
- Reflexive support of the alienating parent;
- Cruelty towards the target parent with no remorse or guilt;
- Presence of borrowed scenarios;
- Spread of the animosity to the extended family of the target parent;
- A good base-line relationship between the target parent and the child; and
- An abrupt, negative change in the relationship between the target parent and child, generally corresponding to the onset of the separation/divorce proceedings (Gardner et al., 2006; Lorandos et al., 2013; Miller, 2013).

There are three levels of parental alienation: mild, moderate, and severe (Gardner et al., 2006; Lorandos et al., 2013). In mild cases, the child opposes contact with the target parent however appreciates the time with that parent once parenting time is in progress. In moderate cases, the child unequivocally opposes contact with the target parent and is tenaciously oppositional with that parent once parenting time is in progress. In severe cases, the child diligently and resolvedly opposes contact with the target parent and may shroud or flee to prevent any form of contact with the target parent. The eight specific manifestations of parental alienation are almost always present in severely alienated children but rarely present in severely estranged children (Gardner et al., 2006; Lorandos et al., 2013).

Child psychological abuse is included as a new disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; *DSM–5*; American Psychiatric Association, 2013) and is defined as "nonaccidental verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child" (p. 719). Several examples of child psychological abuse are offered in the DSM-5 including, but not limited to, "berating, disparaging, or humiliating the child; threatening the child; harming/abandoning—or indicating that the alleged offender will harm/abandon—people or things that the child cares about . . . ." (p. 719).

Parental alienation meets the criteria for child psychological abuse in the DSM-5 and must therefore be treated as any other form of child abuse. In severe cases of alienation, it is necessary to protect children and youths from the further influence of the abusive favored parent or any other individual who clearly helps proliferate the alienation dynamics (i.e., older

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siblings, grandparents or step-parents). Empirical evidence and clinical literature have consistently revealed that the greater the level of severity in parental alienation cases, the greater the likelihood that the child and rejected parent will not reconcile with or without traditional therapeutic approaches (Darnall, 2010; Gardner et al., 2006; Reay, 2007, 2011; Warshak, 2010a). This article will present rationale for the gross failure of traditional therapeutic approaches that attempt to treat severely alienated children and their family members. Additionally, the Family Reflections Reunification Program (FRRP) for severely alienated children and their family members will be introduced. Preliminary outcome data on this highly specialized program will also be discussed.

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## EXPLANATION FOR THE GROSS FAILURE OF TRADITIONAL THERAPEUTIC APPROACHES

In separation and divorce cases where a child is severely alienated from a once loved parent, traditional therapeutic approaches grossly fail (Darnall, 2010; Fidler et al., 2013; Miller, 2013; Reay, 2011; Warshak, 2010a). Families where parental alienation exist are not a matter of business as usual; entirely different therapeutic skills are needed. For example, the heads of these toxic families have been described as cult leaders (Baker, 2005). The children and other family members who refuse to be followers of the cult leader are treated with cruelty. Alienated children literally have their critical thinking taken away and are forced to align with the cult leader. This becomes a desperate survival issue for the children. They no longer understand that the rejected parent and relatives that represent one half of their heritage still love them. These rejected family members are helpless in that they are unable to help the child to maintain anything close to an objective reality about their family. Without exposure to healthy people, these children's actions become increasingly bizarre, including accusing the rejected parent of a host of horrible behaviors that he or she has never done.

There are at least ten reasons why traditional therapeutic approaches grossly fail with these types of families. They are:

1. Cases of parental alienation tend to be highly counterintuitive to anyone who is not a specialist or subspecialist in alienation and estrangement (Miller, 2013).
2. The treatment for severely alienated children and their family members is entirely different from that of mild or moderate alienation cases (Gardner et al., 2006).
3. Numerous therapists who are not trained in the specialized techniques that these families require often fall into the trap of believing the

alienating parent and the programmed child and make the egregious mistake of contributing to the problem. This phenomenon is often referred to as "third party alienation" (Garber, 2004).

4. Some therapists will team up with the alienating parent and the alienated child. The target parent is excluded. In doing so, these clinicians run the risk of creating complete family annihilation. They get so caught up in the alienator's and child's manipulation and delusional thinking that they lose sight of the realities of parental alienation. They may even form a strong bias against the target parent.
5. Untrained child protection workers and clinicians may not be able to accurately assess the differences between true allegations of child abuse and false allegations of child abuse which are commonly seen in severe cases of parental alienation (Sauber, 2010).
6. Parents who make false allegations of child abuse, conceivably those who are obsessively determined to annihilate the child's relationship with the target parent, are likely to demonstrate characteristics of various personality disorders. In particular, borderline personality disorder; narcissistic personality disorder; paranoid personality disorder; or sociopathic traits (Darnall, 2010; Gardner et al., 2006; Lorandos et al., 2013; Miller, 2013).
7. In severe cases, the alienating parent and alienated child are too determined and too delusional to respond to any form of traditional therapy (Fidler et al., 2013).
8. In court-ordered as well as non-court-ordered cases, alienating parents will fire therapists who question their motives and actions. If the therapy is focused on improving the relationship between the child and the rejected parent, then the favored parent will stop the child from seeking further interventions. It is not uncommon for alienating parents to "shop around" for clinicians who will eventually buy into their delusional thinking and manipulative games.
9. In court-ordered and non-court-ordered cases, alienating parents and alienated children are typically not motivated to attend therapy. They are obsessively determined to undermine both the therapist and the therapy (Darnall, 2010; Fidler et al., 2013; Miller, 2013; Reay, 2011; Sauber, 2010).
10. In traditional therapeutic settings, no attempt is made to physically remove the severely alienated child from the toxic home environment. The therapist attempts to influence the child for one hour a week while the child continues to reside with the alienating parent for the rest of the week (Miller, 2013).

All in all, the reality is that typical or conventional office therapy is virtually never successful in severe cases, and often makes things catastrophically worse (Miller, 2013; Sauber, 2010).

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## ORIGINS OF THE FAMILY REFLECTIONS REUNIFICATION PROGRAM (FRRP)

The FRRP was envisioned over 7 years ago, at which time the founder was a child custody evaluator and family therapist experienced with high-conflict separation and divorce cases in which many assessment and counseling experiences involved children and their siblings rejecting a once loving parent for no legitimate reasons. It was soon recognized that traditional therapeutic approaches were futile with this specialized population.

In 2007, the founder purchased a spacious property in the Okanagan Valley, British Columbia, Canada with the intent of it one day becoming a unique year-round retreat for the purpose of reunifying children with their rejected parents. The following 3 years consisted of keeping up-to-date on empirical research and clinical literature on high-conflict divorce, alienation and estrangement (e.g., Baker, 2005, Baker & Darnall, 2007; Bernet, 2010; Gardner et al., 2006; Warshak, 2010a), the link between child psychological abuse and child neurodevelopment (e.g., Siegel, D.J., 2012; Teicher, 2002; Yates, 2007), and best practices for teaching children through the use of multimedia (e.g., Brunye, Taylor, Rapp, & Spiro, 2006; Deimann & Keller, 2006; Rosen & Salomon, 2007). Additionally, the founder researched two well-known reunification programs—Family Bridges: A Workshop for Troubled and Alienated Parent-Child Relationships, originally developed by Randy Rand and later refined by Rand and Warshak (Kelly, 2010; Warshak, 2010a, b; Warshak & Otis, 2010), and the Overcoming Barriers Program (Sullivan, Ward, & Deutsch, 2010). From there, the current FRRP model developed, drawn upon the strengths of both reunification programs and best practices for multimedia learning. Subsequently, the FRRP founder facilitated training programs for mental health professionals throughout various parts of the United States and Canada. At the time this article was written, over 2,000 clinicians have become certified FRRP on-call independent contractors for the program's aftercare counseling services. After launching successful pilot programs in 2012, the FRRP came to fruition in the spring of 2013.

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## PROGRAM OBJECTIVES

The primary objective of the FRRP is to reconcile children between 8 and 18 years of age with their normative rejected parent to foster a healthy relationship between the child and his or her rejected parent. This specialized program facilitates a swift, emotionally safe reunification between children and rejected parents, provides favored parents with necessary emotional support and assistance during that time, and provides other necessary intervention strategies for maintaining a successful reunification. This intervention model works very well with high-conflict families that exhibit

extremely rigid organizational patterns. Trends suggest that the most effective treatment response for these cases is a family-systems approach involving the children, father, mother, step-parents, step-siblings, and sometimes other members of the family such as grandparents (Fidler & Bala, 2010; Fidler et al., 2013; Sullivan et al., 2010).

## SIX KEY COMPONENTS

The FRRP consists of six major components. They are the following:

1. The child and his or her siblings initially attend the retreat facility without having any contact with either parent (referred to as "the transition phase").
2. The child subsequently begins a psycho-educational program that leads to the reunification process with the rejected parent (referred to as "the reunification phase").
3. The rejected parent arrives at the retreat and begins working with a psychologist in preparation for a successful reunification.
4. The child and rejected parent engage in various psycho-educational and outdoor experiential programs separately and then together after they have successfully reconnected with each other. Prior to exiting the program, the child and parent share the same large living quarters and enjoy a special celebration chosen by the child (referred to as "the departure phase").
5. The favored parent seeks counseling with a trained and certified FRRP therapist in his or her own locale. Or, if that is not possible, the favored parent seeks counseling with a trained, certified FRRP therapist near the retreat or via a safe, secure video-conferencing service.
6. A strong continuing care plan supports the reunification process and is an important key to obtaining long-term success (referred to as "the follow-up phase"). In a vast majority of cases, the aftercare plan is established long before the child and rejected parent arrive at the retreat. As the on-site program draws to a close, clients work with their therapists to develop future plans of action. This ensures that the elements of a good recovery plan are in place before the family leaves. The plan may include individual and family therapy by a trained and certified FRRP therapist located near the family's home or continued involvement via phone or Internet with the on-site therapists at the retreat facility.

## PROGRAM GOALS

There are eight primary goals of the program:

1. Promote healthy child adjustment;
2. Improve the child's critical thinking skills;

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3. Help the child understand how and why the alienation occurred;
4. Help the favored parent understand how and why the alienation occurred;
5. Work with each family member to help create more appropriate parent-parent and parent-child roles, responsibilities, and boundaries;
6. Strengthen each parent's ability to communicate with each other and resolve relevant parent-parent and parent-child conflicts;
7. Maintain the reunification process; and
8. Promote relationships between the child and both parents unless there are specific circumstances that preclude such a relationship.

## ENROLLMENT SUITABILITY

The FRRP is suitable for all children between 8 and 18 years of age who resist or refuse contact with a normative parent. FRRP is often utilized in circumstances in which traditional therapy has not proven successful in fostering a healthy relationship between children and the rejected normative parent. The FRRP is suitable for severely alienated children and youths who have phobic reactions and refuse contact with the rejected parent. This program is also suitable for severely alienated children and youths who threaten risk of flight, risk of harm to self, or risk of harm to the rejected parent. This program is also suitable for some hybrid cases.

The FRRP is not suitable for children who are realistically estranged from a parent because of (a) clinically significant parental abuse or neglect, (b) child trauma because of exposure to domestic violence, (c) parental history of unreasonably inept or harsh discipline, (d) parental history of incarceration, (e) harm from parental substance abuse or dependency, and (f) major untreated parental mental illness or medical illness.

## REFERRALS AND INTAKE

Referrals for the FRRP are generally provided by the family court community across Canada and the United States through word-of-mouth to fellow court professionals, word-of-mouth between child-custody evaluators and other mental health professionals, presentations at mental health and legal conferences, social media connections, dissemination of brochures and other publications, and international television and radio appearances by the founder of the program.

Acceptance into the FRRP requires a court order for a suspension of direct and indirect contact between the alienating parent and the child for a period of time until the child's resilience to any negative messaging or to an enmeshed relationship can be rebuilt and the child's attachment to the rejected parent rebuilt. Acceptance also generally requires a court order for a reversal of custody in favor of the rejected parent that may or may not

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be permanent, the duration of which can be determined by the alienator's response to counseling, including the parent's insight, judgment, conduct, behavior and parenting skills. Collaborative work is essential between the rejected parent, his or her attorney, and the FRRP clinical director during the intake process.[1]

## PRELIMINARY OUTCOME DATA

The FRRP was piloted in March 2012 with 12 families. The sample of rejected parents comprised of 6 mothers and 6 fathers. A total of 22 children attended the retreat—14 boys and 8 girls. Prior to beginning the retreat, 2 children had restricted adverse contact with the rejected parent and 20 children had no contact with the rejected parent for a significant period of time ($\bar{x} = 26$ months).

In each case, a rejected parent and child(ren) went through together as one family with no other families at the retreat facility. Each family consisted of at least one youth ranging from either 8 to 12 years of age for one pilot study, or 13 to 18 years of age for a second pilot study, the rejected parent, and the favored parent. The child(ren) and rejected parent attended the retreat for 4 days and 5 nights, while the favored parent began therapy with a trained and certified FRRP therapist in his or her locale.

In each family's case, there had been at least one previous failed attempt at counseling. The courts were satisfied that it would be in the best interests of the children for the rejected parents to have the rights and responsibilities of primary care of the children and for the children to have temporary suspended contact with their favored parents. Comprehensive child custody evaluations, court reports, rejected parents' reports, and the failure of prior counseling attempts were all utilized to determine the degree of the child's resistance and his or her refusal to have contact with the rejected parent at the outset of the retreat and then compare it with the same data as evaluated at the end of the retreat.

The pilot revealed a 95% success rate (21 of the 22 children) in re-establishing a relationship between the children and their once-rejected parents between the second and third day of the retreat as evidenced by the children's statements, parents' statements, and observations of the multi-disciplinary team at the retreat. A 16-year-old participant was prematurely released from the retreat. At the beginning of the program he learned that his favored parent (mother) had just been diagnosed with a terminal illness and would likely pass away within 3–4 months. The youth naturally began to undergo anticipatory grieving. It was mutually agreed by all parties, including his rejected father, that it was not an appropriate time to undergo the reunification process given the acute situational factors.

The rest of the families in the FRRP pilot were followed at 3-month, 6-month, 9-month, and 12-month intervals. The 21 children and their

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once-rejected parents maintained positive, healthy, loving attachments with each other as evidenced by the children's own statements, by the once-rejected parents' own statements, and by the observations of the aftercare counselors. The majority of favored parents made positive strides during the program.

The FRRP preliminary outcome findings also clearly demonstrated that a sudden unexpected separation from the favored parent is not harmful or traumatic for a child when an effective transfer in custody occurs. Once children are removed from the favored parent, and any other extended family member involved in the alienation dynamics, they begin to feel emotionally safe and steadfastly reconnect with the rejected parent. As such, an interim reversal of custody in favor of the rejected parent and a temporary suspension of direct and indirect contact between the child and favored parent seem necessary when other judicial or mental health remedies have not worked. The latter findings are consistent with other mental health and legal professionals who "have repeatedly observed that once out of the orbit of the preferred parent, an alienated child can transform very well, sometimes very quickly, from staunchly resisting the rejected parent, to being able to show and receive love from that parent" (Fidler et al., 2013, p. 228). Moreover, removing the child from a toxic environment to cease child psychological abuse is indicated in severe cases of alienation because a continued strong bond with a favored parent is not a healthy attachment and the long-term consequences are devastating (Baker, 2005; Fidler et al., 2013; Reay, 2007, 2011; Warshak, 2010a).

## CONCLUSION

Parental alienation is a form of child psychological abuse. Traditional therapeutic approaches do not work in severe parental alienation cases. There are at least ten major reasons why traditional therapeutic remedies are not effective with this specialized population. The FRRP was piloted in 2012. Preliminary outcome evidence demonstrated a 95% success rate after children and their rejected parents attended an intensive 4-day retreat. The participants were reevaluated at 3-month, 6-month, 9-month, and 12-month follow-ups. The children and their former rejected parents continued to demonstrate a 95% success rate in maintaining healthy attachments following the 4-day intervention. Preliminary evidence also demonstrated that once children are safely removed from the alienating parent, and any other extended family member involved in the alienation dynamics, they begin to feel emotionally safe and steadfastly reconnect with the rejected parent. Specific court-ordered terms are necessary for acceptance into the FRRP.[2]

Preliminary outcomes were based on a small sample and descriptive statistics. It would have been more suitable for an outside source to have conducted the pilot. Although the way of measuring family members' progress at different intervals over a period of 1 year was helpful and enlightening,

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the FRRP has since been measuring children's progress by administering the Parental Acceptance and Rejection/Control Questionnaires (PARQ/Control) (Rohner & Khaleque, 2005) at 6 different intervals—prior to the start of the retreat component, prior to the discharge of the retreat component and at 3-month, 6-month, 9-month, and 12-month intervals.

Future research will need to look at larger samples and consider the PARQ/Control instrument or other means of measuring the program's outcomes. Future research will also need to control for other variables to make more definitive conclusions. A randomized control trial of various reunification programs would also be advantageous to conduct in the future.

## NOTES

1. A lengthier discussion of these topics is available upon contact with the author.
2. A lengthier discussion of sub-sections in this paper is available upon contact with the author.

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# EXHIBIT “10”

# TurningPoints 4 Families

## Reunification Therapy for Severe Parental Alienation[1] or for the Disruption of a Parent-Child Relationship

**A short-term, effective treatment program to restore a healthy relationship between parent and child *and* to promote a civil and respectful co-parenting relationship**

**Treatment by Linda J. Gottlieb, LMFT, LCSW-R**

***Program Philosophy***

This program is based upon the principles of structural family therapy as founded by my mentor, child psychiatrist, Salvador Minuchin. Its philosophical underpinnings are effective and logical: people are most likely to change for those whom they love and for those who love them. Based on that axiom, my program elevates the rejected parent into the position of the healer of the child. To quote from my book:

> No quantity or quality of words between the child and the therapist—who is nonetheless a stranger—can possibly have as powerful and as meaningful an impact as when the therapist provides, instead, an environment in which emotions and experiences are released among family members. No therapist, however competent and well intentioned, can possibly recreate a relationship with the child that rivals intimate family relationships—particularly the meaningful parent/child relationship.

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[1] By definition, the term *parental alienation* describes a family dynamic in which a child deprecates and rejects a parent (known as the alienated parent) *in the absence* of a reasonable or valid reason, such as child abuse/maltreatment, and justifies the rejection for weak, trivial, frivolous or absurd reasons. The rejection by the child is orchestrated by the other parent/parental figure (known as the alienating parent/figure) and is achieved through a brainwashing process of the child by the alienating parent/parental figure, whose goal—at least in severe cases—is to sever the relationship between the alienated parent and their child. The child and alienating parent/parental figure form a coalition against the alienated parent. This dysfunctional cross-generational coalition is typified as "pathological enmeshment."

> It seems so evident, then, that the crucial player to assume the deprogramming role for the child is the "formerly" loved and loving rejected parent. Indeed, I assert that the deprogrammer who has the greatest potential for success is the rejected parent—who is not only the holder of the family truths—but who has had the loving relationship with the child. The role then for the therapist is to serve as a catalyst, who encourages and guides the creation of healthy, corrective transactions between the rejected parent and child as well as among all the family members. (P. 143)

Using various mementos of the family history—such as photographs, video recordings, cards, letters, drawings, etc.—I will assist the rejected parent and child to travel down memory lane together so as to help them emotionally reconnect with one another as their memories come alive by reviewing such mementos and reliving the experiences in which the mementos had been created. As a result of corrective experiences with the rejected parent, the child will lift the repression of her/his genuine loving feelings and need for the rejected parent. Through this process, the child's instinctual, although repressed, positive emotions for the rejected parent emerge. These experiences have a powerful impact upon all involved. This approach—as with all schools of family systems therapy—appreciates the compelling effect of experience over words to produce change.

To accomplish this, the rejected parent must bring to the therapy mementos of their family life and relationship with the child. There is the unfortunate reality that, in many of these cases, such mementos have been denied to the rejected parent—who, in some cases, has been excluded from the child's life for several years. The favored parent must therefore lend/provide to the rejected parent any and all meaningful material about the child's life—and, in particular, the child's life with the rejected parent.

I will also support the rejected parent to correct the child's revisionist history about her/him and about the family events—but without pathologizing or criticizing the source of the misinformation. I will assist the rejected parent to sensitively correct the child's distorted, and perhaps delusional thinking about her/him and about the family history. The rejected parent will be inspired to remind the child of their prior positive and meaningful relationship as memories come to life through the reminiscing. Positive new experiences will be created to replace unhealthy, inaccurate ones. The healing process is a give and take in which the child will be supported in expressing her/his feelings and beliefs—but always in a respectful and civil manner. Inaccurate perceptions and beliefs will be corrected. Accurate perceptions will be validated and worked through. In recognition that no parent is perfect, I will help the child and rejected parent resolve any *legitimate* issues that the child may have with the rejected parent. Respect for the child's chronological age and developmental stage will be considered—after all, due to the rupture of some of these relationships that span several years, the child may require very different responses from the rejected parent, who no longer knows whom she/he is

and has become. Special attention will be provided to help the child deal with guilt from having maltreated and rejected a parent.

The treatment approach not only involves the events occurring in the therapy office but also through the daily activities in which the child and parent engage in together as they go through the day to day activities outside of the therapy office. Again complying with the philosophical underpinnings of family systems therapy, change occurs—not as a result of talking about new experiences—but *actually creating experiences.* I will actively participate in accomplishing these activities outside of my office.

Extended family of the alienated parent are urged to participate in the therapy and are usually very helpful to achieving the reunification and proving beneficial to the child. Who such members are will be nominated by the alienated parent.

***Why reunification is essential to the child's healthy behavioral, cognitive, and emotional development***

1. Emotional cutoffs are never an appropriate remedy for interpersonal conflicts—especially with respect to the vital parent/child relationship. Remaining with hatred and anger is not healthy under any circumstances, especially when directed at a parent.

2. How a child relates to and resolves conflicts with each parent is the single, most significant factor that will determine how the child interacts with peer and other authority relationships.

3. A child cannot develop healthy self-esteem if she/he perceives a parent to be evil, abusive, unloving, worthless, etc. Expert consensus recognizes that children think very concretely—I am half my mother and half my father. The qualities the child attributes to parents are therefore introjected by the child and experienced as characterlogical to her/him.

4. If a child feels unloved *by a parent,* then the child cannot help but feel unlovable *in general* and will pursue the perilous goal of seeking love in all the wrong places.

5. Misperceptions and misconceptions about the rejected parent and about the family history are often so extreme that they represent a break with reality. Cognitive stability is therefore put at risk if not corrected for the child.

6. It is anti-instinctual to hate and reject a parent. The child must therefore create an elaborate delusional system to justify the rejection.

7. The child is existing under a cloud of anxiety due to the fear that of a slip of the tongue or a slip of behavior will reveal the child's true loving feelings and need for the rejected parent. This situationally caused anxiety is frequently mistaken for a chemical imbalance—and the child consequently receives inappropriate treatment.

8. The rejection of a parent is essentially a loss—and one of the deepest of all. Generally the rejection extends to the rejected parent's family of origin so that loving grandparents, aunts, uncles, and cousins are likewise rejected. Losses of this magnitude often lead to depressive symptoms. These symptoms are, again, often assumed to be the result of a bio-chemical imbalance rather than being situationally caused. As a result, the child is often needlessly treated with powerful, psychotropic medications.

9. The rejecting child is subject to suffering from guilt because, at some point, the child accepts that she/he has maltreated a parent. And if that parent is no longer available for an apology should the child become free to provide it, the guilt will last a lifetime.

10. The emotional hole left in the child from the loss of a parent is frequently filled with a great deal of negativity including, but not limited to: eating disorders, suicidal symptoms, self-cutting, criminal activities, oppositional and other antisocial behaviors, defiance, disrespect for other authority figures, cognitive distortion, depression, anxiety, panic attacks, other forms of emotional dysregulation, unhealthy peer relationships, underperformance in school, drug abuse, and a general malaise about one's life.

***Standard clinical practice for severe cases of parental rejection***

By overwhelming consensus among specialists in cases of severe parental rejection, my treatment protocol is standard clinical practice given the grave circumstance of the severing of a meaningful relationship between a child and a parent.

The treatment protocol requires a 90-day sequestration period in which there can be no contact in any form between the alienating/favored parent and child, this is to include all forms of electronic communication. This requirement has scientific support for its necessity as well as support from evidence-based practice from hundreds of successful treatments in my practice as well as in the practices of my colleagues who provide this very specialized treatment. Just briefly, the necessity derives from our experience that the rejecting child will readily invest in the rejected parent absent any influence on the child from the favored parent. The favored parent must temporarily be relieved of exercising power and control over the child—that is, the child must be psychologically free from the conflict of feeling disloyal to the favored parent because of acceptance of the rejected parent. The sequestration period is a necessity beyond the 4-day intensive treatment phase in

order to prevent the child's *regression and relapse*—which I have witnessed occurring in a mere one-hour phone conversation between the child and the favored or alienating parent.

I recognize that there are some situations in which the favored or alienating parent either fails to recognize or denies any role in influencing the child to reject the other parent. Indeed, I have heard some professionals offer the argument that the influencing parent should be held blameless—with the implication for not being responsible—should her/his behaviors be the result of operations occurring on an unconscious level. To the contrary, this situation might actually be more detrimental to the child and more insidious—one cannot correct what one does not recognize to be a problem. The alienating parent's denial must therefore be lifted as the preliminary step to remedying the alienating behaviors.

***The Rejecting or Alienated Child***

It is one of many counterintuitive issues in the situation of parental alienation to assume that the rejected parent must have done something to warrant the child's rejection. To the contrary, when one considers how very rare it is for a child to reject a parent—even an abusive parent—another explanation must be pursued. I discovered just how rare this is in my professional work with 3000 foster children, who had been removed from their homes due to adjudicated abuse and/or neglect. This population rarely rejected a parent and craved to be reunited with their parents. Furthermore, they were quite protective of their abusive parents—often denying or minimizing the abuse.

So *particularly* in cases when abuse and/or neglect have not occurred or when the rejected parent has not created a situation that resulted in traumatizing the child, an alternate hypothesis for the rejection must be explored. This alternate hypothesis is that the child had been unduly influenced by the other parent or a parental figure to engage in the rejection. That being the case, we must recognize that the child's rejection is *not genuine*. The child is *not* opposed to restoring the relationship with the rejected parent. To the contrary, the child secretly relishes the reconnection, but—because of loyalty to the influencing parent—the child cannot initiate contact and must actively oppose it. But when the contact is imposed by outside forces, the child experiences an albatross being lifted from around her/his neck. When professionals release the child from the untenable position of being like the rope in a tug of war between her/his parents, it is exactly what the child needs and desires. *Children really do not want to chose!*

In other words, when the child expresses rejection and hatred for, and fear of the rejected parent, the sentiments are not genuine to the child. The child is merely going along to get along and is doing the bidding of the favored/alienating parent. This being the case, the child will *flip like a light switch* should the favored/alienating parent grant the child permission to welcome the rejected parent back in her/his life. But such reversal of behavior on the part of severe

alienating parents rarely occurs spontaneously. It generally occurs only in the face of legal consequences.

Do not be fooled by threats of self-harm and running away. I have not experienced a child who acted on such threats in this situation. Certainly acquiescing to a child's threats would only serve to further empower the child—who is already overly-empowered in cases of parental separation in general and very specifically in cases for which this therapy is being suggested. Appropriate measures, instead, must be employed to handle a child's threats and demands—just as we would do should the child engage in threats to manipulate the adults to acquiesce to any other demand. And anyone who has been a parent knows exactly how manipulative a child can be should the child come to believe she/he can get away with it.

★ My program does not have an age requirement for the rejecting/alienated child. I have treated children as young as 12 months for refusal to be cuddled by a loving parent at the instigation of the other parent. At the other end of the spectrum, I do not have an upper age limit. It a parent-child relationship needs healing, please feel free to contact me.

***The Favored or Alienating Parent***

It is necessary that the favored or alienating parent provide a letter to the child stating genuine support for the restoration of the child's relationship with the rejected parent. It is also necessary to include a statement as to why the child needs the rejected parent meaningfully in her or his life—that is, to state clearly and explicitly what the rejected parent has to offer their child.

I am committed to facilitating a meaningful and respectful co-parenting relationship between both parents and developing a resolution to the family dysfunction that will assure that both parents are meaningfully involved with their child. But it must be acknowledged that the favored parent plays a significant role in the success of the reunification therapy. When the favored parent is *genuinely* supportive of the reunification, the child knows and *experiences* it and acts accordingly—just like the child cooperates with any *genuine* parental expectation. Specialists on the family—nay, even a prudent parent's perception—recognize that parental competency involves the capacity to get the child to do *what the parent really wants the child to do.*

Because I recognize that the severing of the parent/child relationship is so inimical to the child's best interests, I will engage the favored/alienating parent to address the barriers to lifting the sequester period *in the least amount of time.* I will be encouraging daily contact with me to provide the parent with updates on her/his child's progress in the therapy and education services via phone or in person in my office—should the parent chose to come in person, although separately from the child. It is important that the favored/alienating begin treatment with a local therapist to address any behaviors that had been employed—either consciously or

unconsciously—to unduly influence the child against the rejected parent and/or to have failed to employ proactive behaviors to *require* the child to have a relationship with the rejected parent—*just as a competent parent would require the child attend school and keep medical appointments.* I will work collaboratively with the parent's local therapist so that insight and behavioral change are facilitated as quickly as possible. It will be a collaborative effort with the local therapist to make any necessary/required recommendations to the court for relevant family developments.

But we further must acknowledge that severe alienation cases are complex clinical situations requiring other factors to become the focus of clinical attention: *normal* parents *do not* perpetrate alienation on their children; *normal* parents will not selfishly keep the child for themselves, drive a fit parent from their child's life; and represent themselves as the only biological parent the child needs for optimal development. We have peer-reviewed research which confirms that severe alienators suffer from at least one but as many as four personality disorders. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) defines a personality disorder as follows:

> "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture." The pattern is "inflexible and pervasive across a broad range of personal and social situations." The pattern is manifested in the areas of cognition, affectivity, interpersonal functioning, and impulse control." DSM 5, P. 646.

Furthermore, it should be noted that the most common and most prevalent personality disorder characteristic of a severe alienator is "borderline personality disorder" (BPD.) One diagnostic criterion for BPD is "recurrent suicidal behavior, gestures, or threats, or self-mutilating behaviors." (P. 663.)[2] Because of the pathological enmeshment[3] between the child and severe alienator, the alienated child is at risk for suicide should the pathological enmeshment not be terminated.

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[2] There are 9 diagnostic criteria for BPD, 5 of 9 being needed to make the diagnosis. This means that the obsession with suicide and/or self-harm may not be present for the diagnosis to be made.

[3] Enmeshment is a term coined by child psychiatrist Salvador Minuchin. Dr. Minuchin did not precede the term with "pathological" because he deemed *all* enmeshment to be a dysfunctional family interactional pattern. As defined by Dr. Minuchin, enmeshment is a severe boundary violation of a dependent child by an adult in a parental role so that the parental figure imposes her/his feelings and beliefs on the child to the point that the child must repress her/his own feelings and beliefs. Boundary violation in cases of severe alienation involves behaviors by the alienating parent such that the parent "hijacks" the child's mind, body, and soul. The violation occurs across all spectrums—psychological, cognitive, and behavioral. The child loses her/his critical reasoning skills and connections to her/his own feelings and does the bidding of the alienating parent. The child becomes an extension of the parent to do that parent's bidding to deprecate and reject the other parent and often maltreat the parent.

This is one of many reasons why I have written that parental alienation is a form of psychological maltreatment of a child.[4]

***The Rejected Parent***

Not infrequently the mental health clinician/forensic evaluator who is not a specialist in alienation misdiagnoses the rejected parent with a characterlogical/dispositional disorder or with a psychological problem. What occurs in this situation is that the professional has failed to assess whether the symptom/symptomatic behavior is situationally caused—because of the trauma from the alienation/rejection—as opposed to being a characteristic internal to the rejected parent. When attributing the problems to the latter, absent an assessment to rule out for the situation, this error is known as the "fundamental attribution error." It is a very common cognitive and clinical error in these cases. Before arriving at the finding that the problematic behaviors are characterlogical, one must establish that the behaviors were casually connected to the rejection—that is, temporally connected or *preceding* the rejection. If the problematical behaviors were a *response* to the rejection, then the cause is situational. Rejected/alienated parents are trauma victims; they are *reacting* to the rejection, humiliation, and maltreatment by their beloved children. Surely, it is an example blaming the victim when professionals then criticize and pathologize the rejected parent for having a normal human reaction of anger, fear, anxiety, and any other symptom associated with trauma.

Should the rejected parent evidence symptoms of a trauma victim, therapy is recommended. But it must be emphasized that the rejected parent *not* be deemed to be the problem *nor* assessed as having contributed equally to the family dysfunction. Indeed, when a proper clinical assessment is considered for *severity*, the rejected parent's possible contribution is generally miniscule.

***Family Healing***

No family is perfect. This therapy will therefore support the expression of needed apologies by all members for any individual behaviors that *may* have contributed to the family dysfunction and breakdown. Apologies may take written as well as verbal form and could involve an appropriate behavioral gesture—given that actions speak louder than words. In addition to the goal of reunification between the child and rejected parent, I have the goal of promoting healthy family functioning and providing tools to the family that will enable them to solve future problems without professional intervention.

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[4] For an detailed discussion of how alienation is a form of psychological child abuse, please refer to my Amicus Brief on the subject, listed on this website and on my other website, www.endparentalalienation.com

***Timely Transition to the care of the Alienated Parent***

Given the research we have about the psychological instability of the typical severe alienator—and especially if the favored/alienating parent has had a history of suicidal ideation, attempts, and/or threats or if there are other significant red flags for instability—a careful evaluation must be made to determine if the child will be safe remaining in the alienating/favored parent's care upon issuance of the Court ruling for the therapy but before the therapy can be initiated. In such cases involving psychological instability on the part of the favored/alienating parent, I would have concerns should the child not be transitioned out of that parent's care immediately upon the issuance of the order for the reunification therapy. Therapy should ideally begin immediately upon issuing of the court order. Should this not be possible, an interim placement for the child should be planned until the therapy is initiated. The alienated parent's relatives are a good option. But again, this should be effectuated after a risk assessment for the child is undertaken.

***Location:***

The family will need to travel to New York near my office and secure housing at a local hotel or make arrangements to stay with family or friends.

***Requirements:***

There must be a court order to include the following stipulations: 1) for the child to accompany the rejected parent to my office for 4 days; 2) a temporary or permanent order for the transfer of physical and legal custody to the alienated parent; 3) a 90 day no-contact period between the child and the favored/alienating parent; this must include telephone and electronic communications as well as physical contact; this is a necessary protective provision to prevent the child's relapse and regression; 4) a requirement for the favored/alienating parent to accept parent education services with me—either in person or on the telephone; 5) The favored/alienating parent is to provide the child with a letter stating the importance of having the rejected parent in the child's life and in what specific ways and that, further, she/he supports the reunification; 5) the favored/alienating parent is to provide the alienated parent with any mementos, resources, and materials of the family history and of the alienated parent's interactions with their child; 6) a provision for an indefinite extension of the no-contact requirement should the rejected parent fail to support the rejected parent's relationship with their child. This last provision is based upon my professional opinion that the rejection would end as quickly as flipping a light switch should the favored/alienating parent *genuinely* support the reunification; 7) the favored/alienating parent to engage with a local therapist to address any behaviors that had been unsupportive of the relationship between the other parent and their child and to recognize that it is in the child's best interests for both parents to be in her/his life; 8) an adjourned court date or a process by which the court can be notified about the relevant family developments.

**Travel to my Program**

Given my extensive experience assessing and/or treating cases in which alienation has occurred—involving direct work with more than 550 alienated children and another 250 whom I assessed from the clinical/legal files, I can state with a high degree of clinical certainty that the alienated child secretly craves the reunification—even if the desire has been severely repressed. I have never yet had and I do not anticipate any difficulty in the transporting of the child to my office when accompanied by the alienated parent and any family with whom the child has had a positive relationship. Alienated children will readily attend the travel with their alienated parent once they understand that 1) the professionals have made the decision for the therapy; 2) the treatment goal is for them to have a healthy relationship with both parents; 3) the swift resolution to this family crisis and the reinstatement of a relationship with both parents is contingent upon the child's cooperation; 4) that the favored/alienating parent has conveyed to the child *genuine* support for the reunification process.[5]

I understand however, the reticence of the professionals—as well as that of the alienated parent—as to the perceived difficulties during the travel to my office. As such, I welcome the assistance of any and all relatives or significant friends of the alienated parent who had had a previously positive relationship with the child. They should accompany the child and alienated parent on the travel and will further be meaningfully incorporated into the reunification therapy.

***Payment of Fees:***

Fees will be provided upon written request and are considered to be reasonable for this type of treatment. For the most effective and swift results, the alienating parent should be primarily responsible for the treatment services and for all travel and shelter expenses incurred by the rejected parent and child—should the alienating have this means. Therapy is *significantly swifter and progress maintained if the alienating parent incurs a financial investment the therapeutic process*—this is simply human nature. Dependent upon verified financial status, at least some financial investment by the alienating parent is highly recommended.

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[5] I have not experienced resistance on the part of the child to accompanying the rejected parent to my office when the favored/alienating parent has conveyed to the child *genuine* support for the reunification. As previously stated, when a child has rejected a fit parent, it can be only at the behest of an alienating influence. That is why the alienating/favored parent must play an important role in the reunification. If, however, the alienating/favored parent fails to convey to the child *genuine* support for the reunification, then the situation must be perceived as child abuse. I stated in my Amicus Brief on the subject as to why the alienation-aware professional community has adopted the position that alienation is child abuse. We must therefore treat the case of alienation as we do any other case of child abuse. Alienation cases are *not* an ordinary custody case in which a determination must be made as to who is the better parent between two fit parents. To the contrary, in alienation, the alienating parent is *not* a fit a parent.

A therapy session will be provided daily on each of the 4 days. A daily session will last for a minimum of 3 hours or as much as 7—depending upon how events develop. The balance of the day is also therapeutic—perhaps even more so; this is because the rejected parent and child will be engaging in continual new corrective *experiences* with each other. They can enjoy each other by exploring the local attractions and experiencing mutually satisfying activities. They can visit the local library where the rejected parent can provide tutorial services where needed. We have museums, amusement parks, gardens, swimming, boating, hiking, and of course, toy and electronic stores. The rejected parent's authority with the child will be re-established as a result of the supervision being provided by her/him throughout the four days. I will accompany them on these activities, coaching and intervening when necessary and monitoring the developments.

I will be on call 24/7 should my services be needed in an emergency—which has never happened, by the way!

***Follow-up services:***

It is generally a swift and lasting reunification, and I have had a 100% success rate. Follow-up treatment with a local, experienced therapist assures the maintenance of the reunification as well as facilitating the development of a civil and respectful co-parenting relationship. I will be available to provide collaboration services to the therapist(s.)

**ALL SESSIONS ARE VIDEO RECORDED AND ARE SUBJECT TO HIPAA PROTECTION**

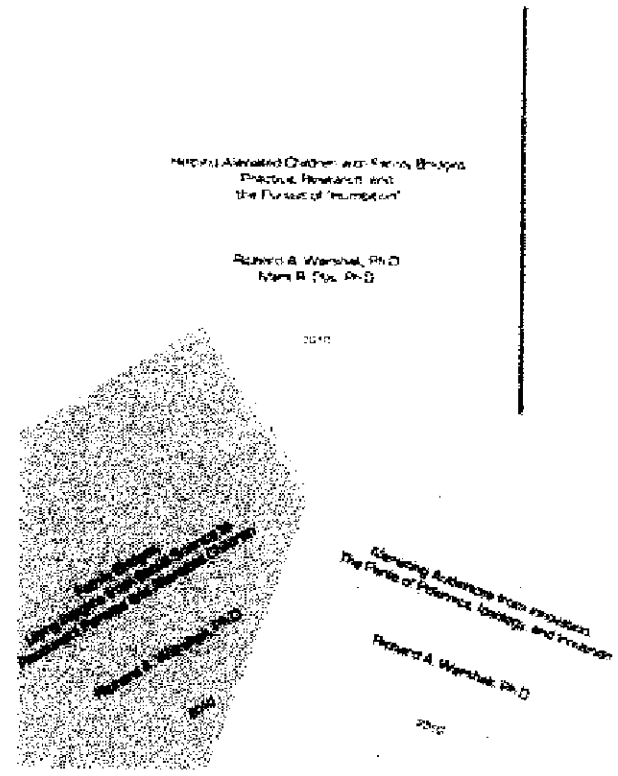
631-707-0174 Telephone
845-859-5505 Fax
turningpoints4families@gmail.com

# EXHIBIT “11”

# Family Bridges: A Workshop for Troubled and Alienated Parent-Child Relationships

**QuickLinks**:

Families Served
Families Not Served
Favored Parents
Goals
Scientific Foundation
Outcome Research and Experience
Fees and Admissions Procedures
Aftercare
FAQs
Participants' Comments



Family Bridges is an innovative educational and experiential program that helps unreasonably alienated children and adolescents adjust to living with a parent they claim to hate or fear. An increasing number of independent practitioners in the U. S., Canada, Australia, and South Africa are trained to lead the program. Although alternative interventions exist, which Dr. Warshak is available to discuss with interested parties, Family Bridges is described on this website because, in his opinion, currently it is the program that has the best chance of helping to alleviate moderate-severe alienation.

In the past Dr. Warshak provided treatment for families with alienated children and conducted Family Bridges workshops. In order to devote more time to his research and writing Dr. Warshak does not currently provide such services. He continues to investigate the effectiveness of various interventions including outcomes of the Family Bridges workshop and has no business or legal affiliation with professionals who conduct any intervention for alienated children including Family Bridges.

In some cases the court has determined that a child's best interests are served by placing the child in the custody of a rejected parent and suspending contact for a period of time with the other parent. In other cases, the favored parent is no longer available to care for the child. This may occur, for instance, if an abducted child is found and returned to the rejected parent, and the abducting parent is either in jail, prohibited from seeing the child, or remains underground or out of the country in order to avoid capture.

Children who reject a parent after divorce, who refuse or resist contact with a parent, or whose contact with a parent is characterized either by extreme withdrawal or gross contempt, represent one of the greatest challenges facing courts, divorced families, and the professionals who serve them. Family Bridges was designed to help families whom courts and therapists have traditionally viewed as beyond help.

Led by a team of two professionals, Family Bridges offers a safe and secure environment that gives participants, in four consecutive days, what they need to restore a normal relationship. Beyond reconnecting children with their parents, the program teaches children how to think critically and how to maintain balanced, realistic, and compassionate views of both parents. The program also helps children develop skills to resist outside pressures that can lead them to act against their judgment-a valuable lesson for teens. Parents learn how to sensitively manage their children's behavior, and the family learns tools to effectively communicate and manage conflicts.

The children and the rejected parent go through Family Bridges together as one family in a private workshop and not with a group of families. This allows the workshop leaders to schedule and tailor the program to meet the exact needs of each individual family. Usually Family Bridges takes place in a vacation setting, although in some cases the program has been conducted in the family home.

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## The Families Served

Family Bridges is one option to consider for a family in which a child's view of a parent and other relatives is unrealistic, the child refuses contact with a parent or shows extreme reluctance to spend time with that parent, and the family needs help adjusting to court orders that place the child in the sole custody of the rejected parent and suspend contact between the child and the other parent until specified conditions are met. Courts make such orders in cases where the evidence demonstrates that the rejected parent is better suited to meet the child's needs and that the child's contact with the favored parent will make it more difficult for the child to repair the damaged relationship.

Family Bridges may also be appropriate to consider in situations where a child's relationship with a parent is damaged to a less severe degree, but the child's negative attitudes and behavior toward the parent are not a reasonable and proportionate response to that parent's behavior toward the child.

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## Families Not Served

Family Bridges is not for every family in which children reject a parent. It is not for:

- Children whose rejection is reasonable, proportionate to and warranted by the history of the child's relationship with the rejected parent
- Families in which the court finds that a child's relationship with a rejected parent is severely damaged but that overall it is in the child's best interests to remain with the favored parent, such as in a case where the rejected parent's physical health renders her or him incapable of exercising custodial responsibilities
- Children whose alienation is not likely to become severe
- Families in which children who reject a parent will continue to spend most of their time away from that parent, or who will be with the rejected parent only for a short period of time before returning to the home of the favored parent. If,

for instance, a rejected parent will see a child only during school vacation periods, Family Bridges is probably not the answer to the child's alienation.

Often a parent, attorney, or judge hopes that this program can resolve a custody dispute by repairing a damaged parent-child relationship in a situation that fails to meet the enrollment prerequisites or when the favored parent maintains custody and significant residential time with the child or will resume custody upon completion of the workshop. Unfortunately, this program is not designed for such circumstances and usually is not offered in these circumstances.

In selected cases when the standard enrollment criteria are not met, Family Bridges may be offered to families with irrationally alienated children when there is good reason to believe that the family can benefit from the program. The workshop has had some success with families that did not meet the regular entrance criteria. An example might be a family in which a child's relationship with a parent is damaged to a less severe degree, but the child's negative attitudes and behavior toward the parent are not a reasonable and proportionate response to that parent's behavior toward the child.

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## Services to the Parent Whom the Children Favor

In some cases, courts will suspend contact between children and their favored parent until the parent demonstrates to the court that they are willing and able to support the children's progress in their relationship with the formerly rejected parent. A modified version of Family Bridges may be available to parents who want to develop the knowledge and skills to help protect their children from alienation and who want to show the court that the resumption of contact with their children will be in the children's best interests.

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## Goals of Family Bridges

- Facilitate, repair, and strengthen the children's ability to maintain healthy relationships with both parents
- Help children do what they can to avoid being in the middle of their parents' conflicts
- Strengthen children's critical thinking skills Protect children from unreasonably rejecting a parent in the future
- Help children maintain balanced views and a more realistic perspective of each parent as well as themselves
- Help family members develop compassionate views of each other's actions rather than excessively harsh or critical views
- Strengthen the family's ability to communicate effectively with each other and to manage conflicts in a productive manner
- Strengthen the parents' skills in nurturing their children by setting and enforcing appropriate limits and avoiding psychologically intrusive interactions.

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## Scientific Foundation of Family Bridges

The principles, syllabus, and procedures of Family Bridges are firmly grounded in well-accepted peer-reviewed scientific research in cognitive, social, and developmental psychology, sociology, and social neuroscience. In essence, the program offers an intensive course on concepts taught in formal classrooms, adapting and tailoring the syllabus, selection of materials, and procedures to the developmental level and circumstances of the children. The design of the lessons and learning environment is consistent with scientific evidence-based instruction principles.

This scientific basis for Family Bridges was noted by Dr. Joan Kelly, a leading authority on divorce, who wrote: "In the overall development of Family Bridges, its goals and principles, and particularly the varied and relevant materials selected for use with parents and children, the incorporation of relevant social science research was evident. Further, the daily structure and manner of presentation of the Family Bridges Workshop were guided by well-established evidence-based instruction principles and incorporated multi-media learning, a positive learning environment, focused lessons addressing relevant concepts, and learning materials providing assistance with integration of materials. The most striking feature of the Family Bridges Workshop was the empirical research foundation underlying the specific content of the four day educational program. The lessons and materials were drawn from universally accepted research in social, cognitive, and child developmental psychology, sociology, and social neuroscience."

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## Outcome Research and Experience

The Family Bridges workshop has helped families with alienated children throughout the U.S. and other countries for the past 23 years. When courts order families to see a therapist, counselor, or parenting coordinator, usually the court has little or no information documenting the effectiveness of the intervention. In contrast, the outcome of Family Bridges has been evaluated and published in a peer-review, refereed professional journal, and is the subject of ongoing research.

Most of the children who attend Family Bridges have led custody evaluators, parents, and the court to expect no cooperation when it comes to accepting placement with the rejected parent. All the children have had failed experiences with counseling prior to enrollment. Some have threatened to act out, insist that they will not comply with court orders, and act as though they are above the law. Nevertheless, in line with Clawar & Rivlin's observations, when the court issues its orders, most of the threats give way to muted disappointment in the court and anxiety about the future.

Although at first children are overtly unhappy with the court orders, the workshop beings with videos that are immediately engaging, entertaining, and nonthreatening, and the children settle down to the task of learning how to live as a family with the parent whom they have been rejecting. Early in the workshop, usually during the first day, the

children begin communicating directly and somewhat positively with the rejected parent and appear relieved to be offered a face-saving way to reconnect. In a study of a sample of 23 children who participated in the workshop, 22 restored a positive relationship with the rejected parent by the workshop's
conclusion. At follow-up, 18 of the 22 children maintained their gains; those who relapsed had premature contact with the alienating parent.

A study of a larger sample is in progress analyzing data on 88 children who enrolled in the Family Bridges workshop. Thirty-nine of the 88 participants were 14 or older; 26 were 12-13 years old. There were 55 boys and 33 girls. Nearly half of the group of rejected parents are mothers. The preliminary results parallel those found with the smaller sample.

At the workshop's conclusion, 95% of the child participants recovered a positive relationship with the rejected parent. Most of these children previously frustrated the court-ordered parenting plan and threatened to continue to do so if the court did not endorse their stated preferences. With the help of the four-day workshop they were able to accomplish the goal of adjusting to the transition put in place by the court orders. They complied with the court's custody decision, and were prepared to return home with their formerly rejected parent, live with that parent safely and in relative harmony, manage conflicts with newly learned skills, and avoid any of the dangerous and noncompliant behavior that they previously threatened. On follow-up, 83% of the sample enjoyed good relationships with the parents they had formerly rejected. The most prevalent factor associated with a child's relapse into rejecting the parent was the child's premature contact (usually clandestine and in violation of the court orders) with the other parent whose negative influence was formidable and rendered the child unable to resist.

The impact of Family Bridges workshops continues to be studied using independent and multi-measure pre- and post-workshop assessments of parent-child relationships. Follow-up studies compare changes in children who participated in Family Bridges with alienated children who did not participate. These studies are eliciting data that help understand how participants view specific aspects and components of the workshop as well as the overall experience. The workshop's impact on children's attitudes and behavior is assessed through observations and ratings by clinicians, parents, and children. Preliminary review of anonymous ratings by parents and children give the program high marks. The children acknowledge that when they first learned of the workshop they felt very negative about having to attend, but that upon its completion their attitudes about the experience are positive and they believe that other families in similar situations would benefit from the program. Their ratings indicate that the workshop successfully accomplished its goals and most experienced it as an educational program in contrast with their previous experiences in counseling. The children report that the workshop leaders treated them with respect and kindness.

An example is one young man who looked back on his experiences with Family Bridges. He said that throughout the litigation when he was insisting to the custody evaluator and the guardian ad litem that he hated his mother and never wanted to see her again, he never expected the court to take him seriously. He is grateful that the court did not appease his demands and that the court protected him from the tragic loss of his mother and his extended family.

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## Fees and Admissions Procedures

Each family accepted into Family Bridges is admitted after a review of the individual circumstances in the family. In most cases the family has undergone a comprehensive child custody evaluation (in some jurisdictions this is called a custody and access assessment or a parenting responsibility evaluation). A custody evaluation report is not always required. But the workshop is suitable only for children whose response to the rejected parent is not a proportional reaction to that parent's behavior and personality, and for rejected parents who are capable of managing the responsibilities of caring for and supervising the children.

Parents and professionals (for instance, evaluators, attorneys, or therapists) who want to learn more about Family Bridges and other interventions for families with alienated children may email Dr. Warshak. He no longer conducts interventions with alienated children, but Dr. Warshak can direct interested parties to various resources, including professionals who offer Family Bridges workshops.

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## Aftercare

Following the conclusion of the workshop, the team leaders are available to take calls from the parent or child regarding any questions or to receive assistance in applying what they have learned. Usually, prior to beginning the workshop, one or more local professionals are designated to provide aftercare and support to the family as needed. This local professional facilitates and/or monitors the situation and provides feedback as necessary and as ordered by the Court. In most cases the local professional is a mental health professional that either has prior experience with the family, is recommended by a Court-appointed custody evaluator, parent coordinator, or child's legal representative, or is appointed by the Court. When an aftercare professional has been designated, one team member works with that professional to provide information about the child's experience in the workshop and to facilitate the coordination of the professional's work with the learning that took place at Family Bridges.

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## Frequently Asked Questions

### How do I enroll with my children in Family Bridges?

For information about participating in Family Bridges or other programs for families with alienated children, email Dr. Warshak. He will direct interested parties to professionals who offer various interventions.

### Where is Family Bridges conducted?

The workshops are offered at various locations, usually at a vacation resort facility that allows the family plenty of opportunities for recreation and enjoyable interactions. In a few select cases the team leaders travel to the family's city to conduct the workshop in the relaxed setting of their home. In other cases the family travels to another city and combines the program with a brief vacation at the conclusion of the workshop. Two independent practitioners co-lead

the workshop on an ad hoc basis at a suitable location. Family Bridges is an educational service the co-leaders provide. There is no Family Bridges Center or Family Bridges facility.

## When is Family Bridges conducted?

Each workshop is arranged privately for the family and is scheduled on an individual basis to coordinate with the availability of workshop leaders and the needs of the family. The workshop is usually scheduled close to the date on which a court issues orders regarding the children's living arrangements.

## Are Families ordered by the court to participate in Family Bridges?

In some cases the court will order that a rejected parent participate with the children in a Family Bridges workshop. In other cases the court will grant the rejected parent sole authority to pursue whatever remedy he or she deems necessary and/or appropriate, including, but not limited to, Family Bridges. Divorce decrees and court orders determine who has the authority to make educational and health care decisions for children. If a parent has the sole authority to make such decisions, and does not need to consult with or obtain the approval of the other parent, a parent can choose to enroll a child in Family Bridges just as the parent with such authority can enroll a child in different types of educational experiences, tutoring, counseling, medical treatment, etc. In some particularly volatile situations, where concerns are raised about one parent interfering with the custodial parent's right to enroll the child in Family Bridges, such as by unlawfully retaining a child, it may help for the court to take judicial recognition of a parent's exploration of, or intent to have the child participate in, Family Bridges. Workshop leaders do not accept referrals of parents who have been ordered to participate against their will. Parents may decide to enroll a child in the program without first obtaining a minor child's consent (just as children are enrolled in special schools, programs, and mental health treatment), but the parent must seek our assistance voluntarily.

## Is Family Bridges therapy or counseling?

No. Almost every workshop participant comes to the program with a history of failed attempts at counseling. Instead the workshop provides an educational experience based on scientifically established concepts and procedures.

## Are professionals who offer the Family Bridges workshop formally affiliated in a group practice?

No. Leaders of the Family Bridges workshop have been trained to conduct the workshop and those without such training cannot label their interventions as Family Bridges. Professionals who conduct the Family Bridges workshop join together on an ad hoc basis for each workshop, but they are not affiliated with each other in their independent practices.

## Does a family go through Family Bridges alone, or is the program conducted for a group of families?

To date Family Bridges workshop are offered to one family at a time. This allows the workshop leaders to tailor the program to the individual needs and circumstances of the family. Family Bridges workshop leaders are open to

exploring the option of conducting a multi-family workshop if the opportunity presents itself and appears to be potentially beneficial to all participants.

## Do all siblings participate in Family Bridges, or just those who are severely alienated?

Usually all siblings will benefit from participation in the workshop. Parents will need to make arrangements for the care of children who are too young to benefit from all phases of the program.

## Who pays for Family Bridges?

Family Bridges is a fee-for-service program paid for by the parent who participates in the workshop. Workshop leaders do not accept cases in which the court orders a non-participating parent to pay for the workshop provided to the other parent and children.

In the future perhaps scholarships will be available for families that cannot afford the program, but these are not currently available.

In cases involving returning abducted children, other agencies may provide funding to assist families with the reunification process.

## Does Family Bridges separate children from one of their parents?

No. Family Bridges workshop leaders have no authority to determine how much contact children have with each of their parents. Many of the families with children under 18 with whom we work are subject to court orders regarding parent-child access and contact. In many of these cases the court has determined that, despite the children's stated wishes and demands, it is in the children's best interests to temporarily suspend their contact with one parent. In such cases, the court's order temporarily separates children from a parent. In some of these cases the children and their parents need help to adjust to the changes brought about by the court orders. Family Bridges is one intervention that provides such help and support for reunification between children and a parent whom they have rejected in the past. Although Family Bridges workshop leaders work with children whom the court has separated from a parent, it is the court, not the workshop leaders, who make this determination.

## Are children isolated when participating in a Family Bridges workshop?

No. To the contrary, rather than isolate children, all siblings and their parent participate together in the workshop. In addition, each late afternoon and evening following the day's workshop activities, parents and children (without the workshop leaders) engage together in enjoyable recreational activities away from the workshop site, such as visiting nearby malls, attending movies, hiking, etc.

## Do most children choose to attend a Family Bridges workshop?

Adult children who attend the Family Bridges workshop choose to participate. Some children younger than 18 years old choose to participate. Others comply with a parent's expectation when the Court Orders give that parent the legal authority to make such a decision. In some cases the court takes judicial notice that the parent intends to enroll the

children in the workshop, and in other cases the Court Orders explicitly require the parent and children to participate in the workshop. In this respect, children's enrollment in a Family Bridges workshop is similar to their enrollment in other educational and therapeutic experiences in which children may not voluntarily choose to participate, such as when a court or parents expect children to participate in psychotherapy and counseling, admit children with drug-abuse problems to a drug rehabilitation program, admit children with mental health problems to a residential treatment center or hospital, or enroll children in a boarding school, military academy, or other private school against the children's stated wishes.

## Are children "deprogrammed" in Family Bridges?

No. The term "deprogramming" is a misnomer when applied to Family Bridges. The term deprogramming was originally used in reference to work with cult victims and came to evoke images of abducting, forcibly restraining, and isolating cult members while wearing them down with lectures in a process that could be described as a form of brainwashing. By contrast, although a parent may insist that a child be enrolled in Family Bridges, at the outset of the workshop leaders explain to children that they are free to withdraw their participation at any time.

Most children whose behavior is inappropriate do not choose to enroll in special schools, special programs, and mental health treatment. Caring adults make the decision for them. Similarly, alienated children do not generally regard their alienated behavior as something that they need to change. Adults who have the authority to make such decisions for the children enroll them in Family Bridges. But, once the children begin Family Bridges they make the choice about whether to continue to participate. Workshop leaders do not restrain children in any manner, and the leaders make it clear to the children that this is not the role of the workshop leader.

Throughout the workshop, the leaders repeatedly solicit feedback from the participants, answer questions, correct misimpressions, reinforce the participants' prerogative to have their own opinions after each presentation, and ask the participants whether the workshop is meeting their goals and expectations. As opposed to brainwashing, which fosters the suspension of critical thinking and inculcates distortions of reality, the workshop teaches children to think critically and to correct distorted perceptions. Children receive information commonly presented in Psychology and Sociology classes and it is left to the participants to decide if and how they want to apply what they have learned.

## How do children experience Family Bridges?

Many children arrive at the workshop anxious, angry, and confused. Most have felt empowered to dictate the nature of their relationships with their parents and are stunned that the court has overturned the status quo. By the end of the first day, the participants are usually relaxed and in an upbeat mood. They are relieved that the process is easier than anticipated and the parents often are overjoyed at having contact and regaining some semblance of a relationship with a once lost child. Children usually are relieved when they learn that they can restore a relationship with the rejected parent without forgoing their relationship with the other parent. They reveal that they have all along preferred to keep both parents in their lives. Also, they are relieved when they can save face by not having to rehash all the bad moments and painful scenes in order to reconcile.

For the most part, the program is entertaining, benign, non-confrontational, and presented in a manner that respects children's emotional needs and capacities. Other than the initial requirement to participate in the program, children do not feel and are not coerced. Children are given a great deal of latitude in regulating the pace of the program, the emotional intensity of the discussions, and the frequency and duration of breaks. As opposed to pressure the children might have felt in the past to think a certain way about the rejected parent, this program teaches children to correct distortions of reality and a premium is placed on the exercise, rather than the suspension, of critical thinking. The children appreciate that the goal of the intervention is to foster children's positive relationships with rejected parents, not to damage children's relationship with favored parents. Also, children appreciate that a goal of the intervention is for children to develop balanced, realistic and compassionate views of both parents rather than polarized views in which one parent is considered all good and the other is considered all bad.

By the end of the program, children are grateful for the experience and the workshop facilitators' help. Nearly all the children express a strong desire for the other parent to go through the same program and to learn how to keep the child out of the middle of parental disputes.

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## Participants' Comments About Family Bridges

Two days following the completion of the workshop, a formerly alienated father wrote: *"Today was a wonderful day. All the kids interacted well with me and had a lot of fun. It was almost as though they had never been alienated. [Children's names redacted] call me 'dad' very naturally now. [Child's name redacted] uses it occasionally. [Child's name redacted] told me several times '**this is the best day of my life!!**'"* **Just prior to the workshop this child was terrified of her father and had been alienated for close to two years.**

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*"If it were not for the Family Bridges workshop we would never be where we are now. The unimaginable horror and chaos would not have ended. Now things are going really well with the kids. My son (15 years old) has become more involved in school. He has been talking so much about all his thoughts and feelings about what has happened these last few years. He has talked about how he felt so compelled to agree with his dad. As a family, we can lead a normal life. Things are relaxed, with nothing more than the normal ups and downs of daily life.*

*"The children's lawyer said in court that she sees no more signs of depression and sadness in my son, and that there has seen a 180 degree shift in the children's attitudes towards most things. Both children are now saying kind things about me. Life feels so good and normal right now, that at times I can almost forget the horrors that we all had to endure."* ~ Formerly alienated mother of two teens

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*"It has been one year since we were awarded custody of the children. It has been a phenomenal year… so full of blessings. The children have adjusted so well, have made terrific friends, and have excelled in school. We are a*

*family. Thank you again for all you did for us through Family Bridges. This has been a remarkable and blessed journey. We are so grateful."* ~ A Grateful Mother

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*"Today my son is a normal teenager in every sense of the word. His anger and defiance have been replaced by respect and a real caring for others, especially his sister. He is focused on his studies and is doing very well. His sister, as well, has grown in her self confidence and is much more talkative and smiling. We also had the opportunity to travel during the summer and spend time with family and cousins. Slowly, they are making connections and experiencing positive relationships without the fear of being judged or criticized. The positive changes in them are apparent to everyone.*

*"I would like to convey to you my gratitude for helping them at a most crucial time in their lives. It is difficult for me to express in words what you did for my children through the Family Bridges workshop. For that, I will remain forever indebted to you."* ~ A Grateful Parent

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*"I really hope Richard and Randy understand how much* ***this changed my life****. It was like someone un-docked a speedboat from the harbor. I'm honestly still at a loss for words as to how caught up I was in this 'selective attention' nonsense."* ~ A young man who participated in Family Bridges when he was 19 years old made this comment nine years after the workshop.

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*"It was an educational program consisting of no apparent purpose other than the delivery of information and the children could do with it what they pleased. By Day Two both sons asked if their dad could participate in the intervention. The above is in striking contrast to the tone of the year of family therapy we engaged in. I believe the family therapy did more harm than good in our case."*

*"By the end of the three-and-a-half days, my sons and I had reconnected. The intervention gave us a method of communicating that enabled us to move beyond the effects of the divorce. For the first time in years, I felt I could have a normal conversation with my sons. As hot topics or loaded dynamics emerged over the subsequent days and months, one or both sons would reference a relevant piece of information acquired during the intervention."*

*"We were immersed in watching a series of short documentary-like movies, slide presentations, without any lecturing or discussion about the marital breakdown, conduct of my former husband or me, or [child]'s wishes. Instead, the focus was upon that which we were viewing, with a message emerging that maybe things weren't what they appeared to be and with my sense that this process was inviting [child] to engage in independent, rather than reflexive-like thinking. On the second day, [child] hugged me. He hadn't done that for 2 years. At the end, he told me he loved me. He hadn't expressed anything like that since the conflict arose. He appeared relieved. He can now demonstrate affection. Most remarkably, he can now open up and talk to others and me about his father and he can refer to "mom" and "dad" in one sentence which he could never do before. He can speak to me about the good things*

*that each of us gives to him, which he could never do before. He can now move between both homes. It is quite incredible when I think of where he was before [Family Bridges]. I don't know quite what I would have done were it not for the good fortune of the opportunity of [Family Bridges' team leaders] to work with us."*

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON
Plaintiff/Petitioner

v.

VIVIAN MARIE LEE HARRISON
Defendant/Respondent

Case No. D-11-443611-D

Dept. Q

**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) _____.

**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: KIRK HARRISON Date 6/27/16

Signature of Party or Preparer _____

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NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

NOTICE OF ENTRY OF
ORDER RE: AUGUST 24, 2016 HEARING

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that a Findings and Orders Re: January 26, 2016 Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Order Re: August 24, 2016 Hearing** and this **Notice of Entry of Order Re: August 24, 2016 Hearing** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.
Gary Silverman, Esq.

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

ORDER RE: AUGUST 24, 2016 HEARING

This matter comes before the Court on Plaintiff's Motion for Reunification Therapy for Minor Children and Father (Jul. 26, 2016) (hereinafter referred to as Plaintiff's "Motion"). A hearing on Plaintiff's Motion is scheduled for August 24, 2016 at 10:00 a.m. On June 27, 2016, Defendant filed a Notice of Appeal (Jun. 27, 2016), appealing this Court's Findings and Orders Re: January 26, 2016 Hearing (May 25, 2016). The Notice of Appeal (Jun. 27, 2016) divests this Court of jurisdiction. *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006). The issues raised by way of Plaintiff's Motion are not "collateral to and independent from the appealed order." *Id.*, 122 Nev. at 855, 138 P.3d at 530. Accordingly, this Court lacks jurisdiction to entertain the matters raised by way of Plaintiff's Motion.

. . .

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Based on the foregoing, and good cause appearing therefor,

It is hereby ORDERED that this Court DEFERS hearing the issues raised by way of Plaintiff's Motion until jurisdiction is remanded to this Court after disposition of the pending appeal. It is further ORDERED that the hearing scheduled for August 24, 2016 at 10:00 a.m. is VACATED.

DATED this 19th day of August, 2016.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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CLERK OF THE COURT

**MOT**
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**Date of Hearing:** 09/28/16
**Time of Hearing:** 10:00am

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

**PLAINTIFF'S MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, MOTION FOR HUNEYCUT CERTIFICATION; MOTION TO AMEND FINDINGS OR MAKE ADDITIONAL FINDINGS, AND; MOTION TO ALTER, AMEND, AND CLARIFY ORDER**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court to reconsider the order, filed August 19, 2016, pursuant to EDCR 2.24(b), or, in the alternative, to enter a *Huneycut* Certification in accordance with *Foster v. Dingwall,* 126 Nev. 49, 228

. . .

P.3d453 2010, and further moves this Court, pursuant to NRCP 52(b) and NRCP 59(e), to amend, make new findings, alter, and clarify the order, filed August 19, 2016.

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

DATED this 30th day of August, 2016.

KAINEN LAW GROUP, PLC

By: _____
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**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 28 day of September, 2016, at the hour of 10:00 A.m., or as soon thereafter as counsel may be heard.

DATED this 30th day of August, 2016.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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*Attorneys for Plaintiff*

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

On June 27, 2016, Vivian filed a Notice of Appeal and appealed "the District Court's **Notice of Entry** of Findings and Orders re: January 26, 2016 Hearing entered on May 25, 2016. . ."[1] (Emphasis added).

Assuming, *arguendo*, the Nevada Supreme Court is willing to pretend that Vivian appealed this Court's order entitled, "Findings and Orders Re: January 26, 2016 Hearing, filed May 25, 2016, Vivian is appealing this Court's denial of Vivian's Counter-motion to modify physical custody, wherein Vivian sought primary physical custody of Brooke.

On August 19, 2016, this Court entered its order, wherein the Court deferred hearing the issues raised by Plaintiff's Motion for Reunification Therapy "until jurisdiction is remanded to this Court after disposition of the pending appeal." In its Order, the Court set forth the following findings and conclusions:

> The Notice of Appeal (Jun. 27, 2016) divests this Court of jurisdiction. *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006). The issues raised by way of Plaintiff's Motion are not "collateral to and independent from the appealed order." *Id.*, 122 Nev. at 855, 138 P.3d at 530. Accordingly, this Court lacks jurisdiction to entertain the matters raised by way of Plaintiff's Motion.

We respectfully disagree.

## II. ARGUMENT

### A. This Court Has Continuing Jurisdiction to Enter Temporary Orders and To Grant the Temporary Relief Sought in Plaintiff's Motion for Reunification Therapy

In *Mack-Manley v. Manley*, the Nevada Supreme Court made it very clear that during the appeal of a custody order, the District Court's jurisdiction to make "temporary adjustments to the parties custody arrangements" is not impinged. P3d at 530. More specifically, the Court found:

---

[1] It is noteworthy that the order Vivian designated as being appealed under NRAP 3(c)(1)(b) is the "District Court's Notice of Entry of Findings and Orders re: January 26, 2016 Hearing entered on May 25, 2016, a copy of which is attached hereto as Exhibit 'A'." Vivian did not appeal this Court's "Findings and Orders Re: January 26, 2016 Hearing, filed on May 25, 2016.

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> Although the district court lacks jurisdiction to revisit a child custody order that is on appeal, the district court's jurisdiction to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security, is not impinged when an appeal is pending.

138 P.3d 530.

Kirk's motion for reunification therapy does not seek to revisit a child custody order that is on appeal. Rather, it is to make a short-term, temporary adjustment to the parties' custody arrangement, on an emergency basis to protect and safeguard Brooke's and Rylee's welfare and is clearly in their best interests. This truly is an emergency situation as Brooke is likely reaching the "point of no return." *See* STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 204, 219-223.

The extremeness of Brooke's behavior and attitude towards Kirk is cause for alarm:

> Mental health professionals agree that to prevent the alienation and its resulting injuries from becoming permanent, **swift decisive action by the courts** is necessary. If the alienation is permitted to continue, the "destructive dynamic" becomes "entrench[ed]" and the children's positions solidified. Appropriate contact between the target parent and the child **must be reestablished quickly** because delays only "consolidate and reward the child's phobic or recalcitrant stance." Unfortunately, all too often, courts are reluctant to take the required action until a child has deteriorated to a dangerous level.
>
> Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the **immediate transfer** of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added) (citations omitted).

Brooke's refusal to comply with the Court ordered sessions with Dr. Ali is cause for alarm and serious concern. Brooke's continuing refusal to comply with the Custody Order, filed July 11, 2012, is also a source of grave concern.

This truly is an emergency situation. Parental alienation is a severe form of child abuse

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and the Court's first priority must be to protect Brooke and Rylee from further damage. "Experts regard the attempt to poison a child's relationship with a loved one as a form of emotional abuse. As with other forms of abuse, our first priority must be to protect children from further damage." RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 8. The emotional damage being caused is just as damaging as physical abuse. "We continue to find that this form of social-psychological child abuse is likely to be as damaging as physical abuse." CHILDREN HELD HOSTAGE, xxvii.[2]

> Parental alienation is not only abusive, but cruel to the child:
>
> A parent who closes off the "avenues of love and support" available from the target is, therefore, being particularly cruel and selfish. But when parents "manipulate the[ir] children into erecting barriers themselves, when they enlist the[ir children] as agents in their own deprivation, they violate their children's trust in a most cruel manner. It is a form of kidnaping: [a] stealing [of their] soul[s]." Mental health professionals, and appropriately the courts too, have, therefore, recognized that parental alienation is a form of child cruelty and abuse.

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 10 (citations omitted).

This Court must act now to avoid long-term catastrophic consequences for Brooke and Rylee. Studies have established that children who are the victims of parental alienation "grow up with warped consciences, having learned how to manipulate people as the result of their parents behavior. Some grow up with enormous rage, having understood that they were used as weapons. Some grow up guilty, with low self-esteem and recurrent depression." DEMOSTHENES LORANDOS et al, PARENTAL ALIENATION – THE HANDBOOK FOR MENTAL HEALTH AND LEGAL PROFESSIONALS (Charles C. Thomas 2013), p. 19. Studies indicate that such children, as adults, have "high rates of low self-esteem to a point of self-hatred, significant episodes of depression . . ., a lack of trust in themselves and in other people,

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[2] The findings contained in CHILDREN HELD HOSTAGE (2nd Ed. 2013) are the result of a thirty-four year research study commissioned by the Family Law Section of the American Bar Association covering approximately 1,000 cases. *Id.* at 409. CHILDREN HELD HOSTAGE is considered the authoritative work on parental alienation.

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and alienation from their own children." Such children, as adults, also "had difficulty trusting anyone would ever love them." [3] PARENTAL ALIENATION, p.19.

Overwhelming evidence shows Vivian has been denigrating Kirk to Brooke and Rylee for more than four years![4] It is alarming that Vivian has been utilizing so many of the programming techniques: "Long periods of programming and brainwashing" The record is replete with Vivian's programming and brainwashing for more than four years; The use of "multiple programming/brainwashing themes/techniques"; The "isolation of the child from the target parent" since July 17, 2015; Kirk's naive unwillingness to "put the child in the middle" and not defend himself all of this time; Being loyal to Kirk means being disloyal to Vivian. Brooke and Rylee are afraid to go to the movies with Kirk for fear Vivian will view it as being disloyal to her; Vivian messaging that she is "Mom" or "Mommy" and their father is "Kirk"[5]; Mom, Brooke and Rylee are "family" and it does not include "Kirk"; Vivian has telephone calls with Brooke and Rylee "frequently during the time they are with the father" and insists they call her each night when they go to bed; "Creating conflict at the time of pickup" Vivian keeps Kirk waiting in the car for 20 to 40 minutes while she visits with Brooke and Rylee; "Mother surrounding herself with a support system to reinforce her programme" It is Kirk's understanding that Heather Atkinson has also told Brooke that "girls are supposed to be with their mommies," and; "Violating court orders." *See* CHILDREN HELD HOSTAGE, p. 219-223.

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[3] Perhaps no one truly lives happily ever after. However, Kirk would at least like Brooke and Rylee to have a chance to truly live happily ever after. The three alternative reunification firms proposed in the pending motion have over a 95% success rate in reunifying families. Without utilizing one of these firm's services, Brooke and Rylee have almost no chance to truly live happily ever after, as they will likely have warped consciences, low self-esteem, recurring depression, and be unable to trust that anyone will ever love them.

[4] For a partial listing of Vivian's acts of parental alienation during the last four years, see Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing, filed 11.2.15, p. 6-24.

[5] The labeling of Kirk by Vivian to the children as "Kirk" rather than "Dad," minimizes his role in their relationship with him. *See* DIVORCE POISON, p. 149-151.

All authorities agree that efforts to re-establish the relationship between Kirk and Brooke will be unsuccessful unless the child and the targeted parent spend a significant amount of time together. *See* CHILDREN HELD HOSTAGE, p. 222; DIVORCE POISON, p. 273-275. "As a general rule, we have found that change of the physical environment and increased social contact with the target parent are the major positive ways to deprogramme a child. The more continuous and regular contact the child has with the programmer and brainwasher, the more likely the process is to continue and damage is to increase." CHILDREN HELD HOSTAGE, p. 229. With Vivian's continued wilful non-compliance with the Custody Order and this Court's other orders, any effort will likely fail until the contact is significantly increased.

Kirk does not seek to have this Court revisit a child custody order that is on appeal. Kirk does not seek to alter or change custody, but rather, merely for a temporary modification to facilitate reunification. The seriousness of the present circumstance cannot be overstated. If this Court defers until after the disposition of the pending appeal, Brooke will likely be 18 years old and the window of opportunity to save her from what will most likely be a terrible fate will be closed.

### B. This Court Has Continuing Jurisdiction to Enforce the Custody Order, filed July 11, 2012, During the Pendency of the Appeal

This Court entered an order denying Vivian's Counter-motion for an order granting her primary physical custody of Brooke. Vivian appealed the notice of entry of that order.

The Custody Order that is in place provides the parties have 50/50 bi-weekly physical custody. Vivian has not filed an appeal regarding the existing Custody Order, agreed to by the parties and ordered by the Court, which has been in place since July 11, 2012. It is this order which Vivian is violating and it is this order which must be enforced. Merely filing an appeal of an order denying a Counter-motion for primary custody, does not deprive this Court of jurisdiction to enforce an existing custody order during the pendency of an appeal.

The Nevada Supreme Court addressed this very issue in *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006). During the pendency of the mother's appeal of the divorce decree awarding joint physical custody, the father "moved the district court to hold Colleen in

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contempt for noncompliance with the decree's custody arrangement." *Id.* at 854. The Nevada Supreme Court ruled the district court did have jurisdiction to rule on the contempt motion:

> Although the district court lacked jurisdiction to alter the custody arrangement, it did have jurisdiction to consider the portion of Terry's motion concerning contempt, because **the district court has the power to enforce custody provisions pending appeal**, that **issue is collateral** to the issues before this court on appeal from the divorce decree.

*Id.* at 858 (emphasis added).

The pending Motion for Reunification Therapy is a motion to enforce custody. During the hearing on September 22, 2015, the Court expressed concern to Kirk that if he forced Brooke to comply with the Custody Order that Kirk would risk being alienated even further from Brooke. Hearing Transcript, 9.22.15, p. 36, l. 1-24; p. 37, l. 1-6. The purpose of the pending motion is to address the very concern expressed by the Court – to obtain full compliance with the Custody Order without risking further alienation. In addition and most importantly, the purpose of the pending motion is to eliminate the alienation entirely for the benefit of Brooke and Rylee, and every other member of the family, including Vivian.

Clearly, under *Mack-Manley*, the issues in the pending motion are collateral to the issues on appeal, as they are the same issues as if the motion had been stylized as a motion for enforcement of the Custody Order. The goal is full compliance with the Custody Order. The fact that the more important goal is to save Brooke and Rylee from a horrible fate in no way makes the pending motion any less collateral.

### C. This Court Has Consistently and Repeatedly Informed Vivian that the Custody Order Will Be Enforced And Vivian Has the Affirmative Responsibility To Ensure Brooke Spends the Time with Kirk Provided in Paragraph 5 of the Custody Order

Vivian has consistently demonstrated no respect for the Orders of this Court whatsoever. Vivian blatantly violated the parent restrictions contained in Paragraph 6 the Custody Order[6]

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[6] Paragraph 6.2 provides in relevant part: "Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible."

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prior to Brooke's 14th birthday and continues to do so. This is despite the fact that this Court appeared to be steadfast in its position that it would enforce those restrictions during the hearing on October 30, 2013:

> MR. KAINEN: – can we expect to have Paragraph 6 which is the restriction on the parents enforced?
> THE COURT: **Absolutely**. They're still orders of the Court.

Hearing Transcript, 10.30.13, p. 38, l. 2-5 (emphasis added).

During the hearing on September 22, 2015, the Court informed Vivian, in very clear terms, that she is responsible for the lack of Brooke's time with Kirk. During the hearing, in reference to Kirk's then motion for an order to show cause, the Court was emphatic that Kirk was not enjoying the joint physical custody to which the parties had agreed and the Court had ordered and it is Vivian's responsibility for the lack of time with Kirk,:

> This is enforcement of a court's order that provides the parties with joint physical custody, and what has happened in the last two months is not joint physical custody, period. And **Mom is ultimately responsible for that lack of time with Dad.**

Hearing Transcript, 9.22.15, p. 13, l. 6-10 (emphasis added).

Later during the same hearing, the Court again reinforced the point that it is Vivian's responsibility to make sure that Brooke is with Kirk when she is supposed to be with Kirk under the terms of the Custody Order, stating:

> Well, again, I go – from an enforcement standpoint, **it's Mom's responsibility to make sure that Brooke is with Dad**.

Hearing Transcript, 9.22.15, p. 56, l. 20-22. (emphasis added).

This Court, in its Order, filed October 1, 2015, again made it very clear to Vivian that it is her responsibility to facilitate Brooke's visitation with Kirk:

> 4. The Court is not making any changes to the Orders and those are what they are. **The Court expects Plaintiff to have his time** and he may pick up the minor children from school. **It is Defendant's responsibility to facilitate VISITATION**.

Order From Hearing, filed 10.1.15 (emphasis added).

Incredulously, as noted in the Motion for Reunification Therapy, Brooke's time with

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Kirk has been significantly less since the Court made these comments with Vivian present in the courtroom and the Court entered its subsequent order. Vivian has continually demonstrated a total lack of respect for the Court and the orders of the Court, no respect for the other parent's custody time with the children, and no sensitivity whatsoever as to what is the best interests of the children.

Vivian is making a mockery of this Court's Custody Order. Kirk "has" 50/50 joint physical custody on a bi-weekly basis. Pursuant to this Court's Custody Order, between August 12, 2015 and June 16, 2016, Brooke was supposed to be with Kirk a total of **165 days**. Despite this Court's repeated statements to Vivian that it is her responsibility to insure the minor children comply with the terms of the Custody Order, Brooke has only been with Kirk a total of **25 days** during that time period. Between April 8, 2016 and June 16, 2016 – **over a two month period**, Brooke spent **less than one day** in Kirk's physical custody.

Vivian has violated the explicit provisions of the Custody Order regarding the division of physical custody between the parties. Vivian is now teaching Brooke to have no respect for the orders of this Court. As a consequence of Vivian's alienating actions, Brooke and Rylee are together only about one-half the time they are to be together under the Custody Order. However, Brooke and Rylee talk about this stuff. Rylee is 13 years old. Unless this Court orders the reunification therapy sought by Kirk, there should be no doubt in anyone's mind that Vivian will teach Rylee that she too is empowered and can knowingly disregard and violate this Court's orders.[7]

The gravamen of Kirk's Motion for Reunification Therapy is to cause Vivian and Brooke to comply with the existing Custody Order. It makes no sense whatsoever, that Vivian's appeal of her Counter-motion to modify custody, in effect, results in her obtaining the requested modification which was denied. That is not the law. Vivian's appeal does not deprive this Court of its continuing jurisdiction to enforce existing orders and to grant the temporary relief

[7] The Court has also noted this as a very important concern. Hearing Transcript, 1.26.16, p. 8, l. 17-24

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sought in the Motion for Reunification therapy.[8]

**D. Alternatively, the Court is Respectfully Requested to Issue a "Huneycutt Certification."**

Kirk respectfully submits this Court has jurisdiction to grant the temporary and critical relief sought in the Motion for Reunification Therapy. Based upon *Mack-Manley*, there are three separate bases which confer jurisdiction upon this Court to grant the pending motion. First, the pending motion is to enforce the terms of the Custody Order. Second, the pending motion only seeks temporary relief. Third, the issues in the pending motion are collateral to the issues in the appeal.

In *Mack-Manley*, the Nevada Supreme Court found, "The proper procedure to be followed when a party seeks to change a child custody order during an appeal challenging the child custody arrangement is a remand under *Huneycutt v. Huneycutt*. Pursuant to the pending motion for reunification therapy, Kirk is clearly not seeking "to change a child custody order." Rather, Kirk is seeking temporary relief to ensure compliance with and enforcement of the existing child custody order.

However, if the Court disagrees, and is still of the opinion that it does not have jurisdiction to hear the Motion for Reunification Therapy pending appeal, then Kirk respectfully requests the Court to hear the pending motion and if the Court is inclined to grant the motion, to certify that inclination to the Nevada Supreme Court in the form of a *Honeycutt* Certification in accordance with *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), *Mack-Manley v. Manley*, 122 Nev. 849, 855-856, 138 P.3d 525 (2006), and *Foster v. Dingwall*,

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[8] In the event this Court is of the opinion that it retained jurisdiction to enforce the existing Custody Order and its order requiring Brooke to participate in therapy sessions with Dr. Ali and Kirk, but, for whatever reason, is of the opinion it does not have jurisdiction to grant the temporary relief sought by the pending Motion for Reunification Therapy, Kirk is contemporaneously filing a motion to enforce Custody Order, filed July 11, 2012. Although very sensitive to the comments of the Court during the hearing on January 26, 2016 regarding forcing Brooke to comply with the Custody Order, and firmly believing the reunification therapy sought in the pending motion will result in the best outcome for Brooke, Rylee and every other member of the family, including Vivian, Kirk cannot fail to do everything possible to save Brooke and Rylee from what will most likely be permanent emotional damage.

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126 Nev. 49, 228 P.3d453 2010.

**E. A Motion To Reconsider and a Motion to Alter, Amend, Clarify, and Add Additional Findings Are Proper Under the Circumstances**

The Court is urged to reconsider its order of August 19, 2016. A motion for reconsideration is proper where the Court has ruled without a hearing. EDCR 2.24(b).

A motion to amend is proper when there has been judicial error in the judgment. NRCP 52(b) provides:

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

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

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

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

As noted previously, the Court entered the following findings and conclusions:

> The Notice of Appeal (Jun. 27, 2016) divests this Court of jurisdiction. *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006). The issues raised

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by way of Plaintiff's Motion are not "collateral to and independent from the appealed order." *Id.*, 122 Nev. At 855, 138 P.3d at 530. Accordingly, this Court lacks jurisdiction to entertain the matters raised by way of Plaintiff's Motion.

It is respectfully submitted that these findings and conclusions should be amended, altered, clarified, and additional findings and conclusions entered as follows:

The Notice of Appeal (Jun.27, 2016) divests this Court of jurisdiction "to rule on a post-judgment motion to modify a child custody arrangement while an appeal is pending and the custody issue is squarely before [the appellate court]." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525 (2006).

The Notice of Appeal (Jun.27, 2016 divests this Court of jurisdiction "to revisit a child custody order that is on appeal. . ." *Mack-Manley* at 856.

This Court "retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order. . ." *Mack-Manley* at 855.

This Court retains jurisdiction and " has the power to enforce custody provisions pending appeal." *Mack-Manley* at 858.

This Court's retained jurisdiction to enforce custody provisions pending appeal is collateral to the issues on appeal. *Mack-Manley* at 858.

The issues raised by way of Plaintiff's Motion are "collateral to and independent from the appealed order." *Mack-Manley* at 855.

This Court retains jurisdiction "to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security." *Mack-Manley* at 856.

Plaintiff's Motion is "to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security" and this Court's jurisdiction to rule on said motion "is not impinged when an appeal is pending." *Mack-Manley* at 856.

This Court retains jurisdiction to enforce the terms agreed to by the parties and ordered by the Court in the Custody Order, filed July 11, 2012. More

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specifically, if one parent is violating the terms of the Custody Order by failing to facilitate the visitation with the other parent, this Court retains jurisdiction to enforce the terms of the custody order. The enforcement of the existing Custody Order is ""collateral to and independent from the appealed order." *Mack-Manley* at 858.

## III. CONCLUSION

Under *Mack-Manley*, this Court retains jurisdiction and " has the power to enforce custody provisions pending appeal." Under *Mack-Manley*, this Court's retained jurisdiction to enforce custody provisions pending appeal is collateral to the issues on appeal. In reading the *Mack-Manley* decision in this regard, it clear that the issues raised by way of Plaintiff's Motion are "collateral to and independent from the appealed order."

Under *Mack-Manley*, this Court retains jurisdiction "to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security." Plaintiff's Motion is "to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security" and this Court's jurisdiction to rule on said motion "is not impinged when an appeal is pending."

This Court, unquestionably, has jurisdiction to address Plaintiff's pending motion. However, if the Court is still of the opinion it does not have such jurisdiction, then, alternatively, the Court is respectfully requested to hear the motion and make a *Huneycut* Certification.

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Finally, the Court is respectfully requested to amend, alter, clarify the findings and conclusions contained in its August 19, 2016 order, and to make additional findings and conclusions as set forth herein.

DATED this 30th day of August, 2016.

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By: _____
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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON
Plaintiff/Petitioner

v.
VIVIAN MARIE HARRISON
Defendant/Respondent

Case No. D-11-443611-D

Dept. Q

**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) _____.

**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: KIRK HARRISON Date 8/30/16

Signature of Party or Preparer _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

KIRK ROSS HARRISON, NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

_____/

# CHILD CUSTODY FAST TRACK STATEMENT

# APPENDIX – VOLUME 8


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Docket 72880 Document 2017-36597

## CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX


| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 1. | Complaint for Divorce | 03/18/11 | 1 | 1-7 |
| 2. | Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence | 09/14/11 | 1<br>2 | 8-220<br>221-361 |
| 3. | Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees | 10/31/11 | 2<br>3 | 362-418<br>419-652 |
| 4. | Answer to Complaint for Divorce and Counterclaim for Divorce | 11/22/11 | 3 | 653-659 |
| 5. | Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees | 01/04/12 | 4<br>5 | 660-907<br>908-929 |
| 6. | Court Minutes [All Pending Motions] | 02/24/12 | 5 | 930-933 |
| 7. | Stipulation and Order Resolving Parent/Child Issues | 07/11/12 | 5 | 934-950 |
| 8. | Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees | 05/10/13 | 5 | 951-984 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 9. | Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 985-994 |
| 10. | Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 995-1009 |
| 11. | Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees | 07/19/13 | 5 | 1010-1044 |
| 12. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees | 09/09/13 | 5 | 1045-1053 |
| 13. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to | 09/11/13 | 5 | 1054-1059 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief | | | |
| 14. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 10/01/13 | 5 | 1060-1080 |
| 15. | Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/17/13 | 5 | 1081-1149 |
| 16. | Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief | 10/21/13 | 6 | 1150-1171 |
| 17. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/23/13 | 6 | 1172-1223 |
| 18. | Order for Appointment of Parenting Coordinator | 10/29/13 | 6 | 1224-1232 |
| 19. | Notice of Entry of Decree of Divorce | 10/31/13 | 6 | 1233-1264 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 20. | Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits) | 11/14/13 | 6 | 1265-1281 |
| 21. | Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision | 11/18/13 | 6 | 1282-1316 |
| 22. | Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees | 12/06/13 | 6 | 1317-1339 |
| 23. | Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees | 12/13/13 | 6 | 1340-1354 |
| 24. | Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions] | 12/17/13 | 6 | 1355-1356 |
| 25. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 04/21/14 | 6<br>7 | 1357-1388<br>1389-1431 |
| 26. | Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions | 05/09/14 | 7 | 1432-1458 |
| 27. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions | 05/14/14 | 7 | 1459-1472 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 28. | Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions | 05/20/14 | 7 | 1473-1518 |
| 29. | Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/13/14 | 7 | 1519-1524 |
| 30. | Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/16/14 | 7 | 1525-1532 |
| 31. | Notice of Appeal | 07/17/14 | 7 | 1533-1593 |
| 32. | Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1594-1601 |
| 33. | Notice of Entry of Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1602-1611 |
| 34. | Amended or Supplemental Notice of Appeal | 10/16/14 | 7 | 1612-1622 |
| 35. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 | 08/21/15 | 8 | 1623-1673 |
| 36. | Order to Appear and Show Cause | 09/01/15 | 8 | 1674-1675 |
| 37. | Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor | 09/14/15 | 8 | 1676-1692 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Child, Emma Brooke Harrison ("Brooke") | | | |
| 38. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") | 09/18/15 | 8 | 1693-1738 |
| 39. | Notice of Entry of Order from Hearing | 10/01/15 | 8 | 1739-1743 |
| 40. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 10/12/15 | 8 | 1744-1758 |
| 41. | Order to Appear and Show Cause | 10/14/15 | 8 | 1759-1760 |
| 42. | Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing | 10/15/15 | 8 | 1761-1851 |
| 43. | Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing | 11/02/15 | 9 | 1852-1879 |
| 44. | Dr. Paglini Letter to Court | 11/23/15 | 9 | 1880-1881 |
| 45. | Notice of Entry of Order from Domestic Court Minutes | 12/02/15 | 9 | 1882-1886 |
| 46. | Supplement to Plaintiff's Motion for an Order to Show Cause Why | 12/10/15 | 9 | 1887-1903 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | | | |
| 47. | Reply to Opposition to Motion for Clarification; Motion to Amend Findings | 12/10/15 | 9 | 1904-1920 |
| 48. | Court Minutes [All Pending Motions] | 12/14/15 | 9 | 1921-1922 |
| 49. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 12/16/15 | 9 | 1923-1942 |
| 50. | Notice of Entry of Order from Domestic Court Minutes | 12/17/15 | 9 | 1943-1947 |
| 51. | Court Minutes [All Pending Motions] | 01/26/16 | 9 | 1948-1949 |
| 52. | Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing | 05/25/16 | 9 | 1950-1958 |
| 53. | Letter from John Paglini, Psy.D. to Court | 05/31/16 | 9 | 1959-1961 |
| 54. | Notice of Entry of Order re John Paglini, Psy.D. Letter | 06/21/16 | 9 | 1962-1963 |
| 55. | Notice of Appeal | 06/27/16 | 9 | 1964-1975 |
| 56. | Plaintiff's Motion for Reunification Therapy for Minor Children and Father | 07/26/16 | 9 | 1976-2076 |
| 57. | Notice of Entry of Order re: August 24, 2016 Hearing | 08/19/16 | 9 | 2077-2079 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 58. | Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order | 08/30/16 | 9 | 2080-2095 |
| 59. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 08/30/16 | 10 | 2096-2196 |
| 60. | Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order | 09/23/16 | 10 | 2197-2206 |
| 61. | Plaintiff's Motion for an Order to Nullify and Void Expert Report | 09/28/16 | 10 | 2207-2292 |
| 62. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 09/30/16 | 10 | 2293-2316 |
| 63. | Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for | 09/30/16 | 10 | 2317-2321 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13 | | | |
| 64. | Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report | 10/18/16 | 10 | 2322-2337 |
| 65. | Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016 | 10/19/16 | 11 | 2338-2358 |
| 66. | Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report | 11/02/16 | 11 | 2359-2381 |
| 67. | Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit | 11/04/16 | 11 | 2382-2423 |
| 68. | Court Minutes [All Pending Motions] | 11/07/16 | 11 | 2424-2426 |
| 69. | Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 12/29/16 | 11 | 2427-2440 |
| 70. | Plaintiff's Pre-Trial Memorandum | 01/17/17 | 11 | 2441-2457 |
| 71. | Prehearing Memorandum | 01/17/17 | 11 | 2458-2477 |
| 72. | Court Minutes [Evidentiary Hearing] | 01/18/17 | 11 | 2478-2479 |


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| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 73. | Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 01/31/17 | 11 | 2480-2489 |
| 74. | Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2490-2507 |
| 75. | Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2508-2512 |
| 76. | Court Minutes [All Pending Motions] | 02/01/17 | 11 | 2513-2514 |
| 77. | Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 02/13/17 | 11 | 2515-2537 |
| 78. | Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 02/13/17 | 11 | 2538-2556 |
| 79. | Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 02/15/17 | 11 | 2557-2563 |
| 80. | Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions | 02/17/17 | 12 | 2564-2595 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 81. | Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 03/06/17 | 12 | 2596-2602 |
| 82. | Defendant's Opposition to Motion to Strike; Countermotion for Sanctions | 03/13/17 | 12 | 2603-2608 |
| 83. | Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/15/17 | 12 | 2609-2617 |
| 84. | Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/16/17 | 12 | 2618-2627 |
| 85. | Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017 | 03/28/17 | 12 | 2628-2634 |
| 86. | Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017 | 04/10/17 | 12 | 2635-2638 |
| 87. | Notice of Appeal | 04/14/17 | 12 | 2639-2649 |
| **TRANSCRIPTS** | | | | |
| 88. | Transcript re: All Pending Motions | 10/30/13 | 12 | 2650-2688 |
| 89. | Transcript re: All Pending Motions | 05/21/14 | 12 | 2689-2744 |
| 90. | Transcript re: All Pending Motions | 09/22/15 | 13 | 2745-2823 |
| 91. | Transcript re: All Pending Motions | 12/14/15 | 13 | 2824-2886 |
| 92. | Transcript re: All Pending Motions | 01/26/16 | 13 | 2887-2928 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 93. | Transcript re: All Pending Motions | 11/07/16 | 14 | 2929-3040 |
| 94. | Transcript re: Evidentiary Hearing - Vol.1 | 01/18/17 | 14 | 3041-3152 |
| 95. | Transcript re: Evidentiary Hearing - Vol. 2 | 01/18/17 | 14<br>15 | 3153-3178<br>3179-3315 |
| | Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [*Confidential*] SEALED | | 15 | 3316-3375 |
| | Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016 | | 15 | 3376-3377 |
| | Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016 | | 15 | 3378-3380 |
| | Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016 | | 15 | 3381-3384 |
| | Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [*Confidential*] SEALED | | 15 | 3385-3387 |
| | Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016 | | 15 | 3388-3389 |
| | Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015 | | 15 | 3390-3392 |
| | Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule | | 15 | 3393-3394 |
| | Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016 | | 15 | 3395-3416 |
| | Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016 | | 15 | 3417-3426 |
| 96. | Transcript re: All Pending Motions | 02/01/17 | 16 | 3427-3640 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| **ADDITIONAL DOCUMENTS[1]** | | | | |
| 97. | Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 | 07/24/17 | 16 | 3641-3647 |
| 98. | Plaintiff's Supplemental Filing | 08/24/17 | 16 | 3648-3666 |
| 99. | Supplemental Notice of Appeal | 08/24/17 | 17 | 3667-3676 |
| 100. | Notice of Entry of Order re: Expert Designation | 10/06/15 | 17 | 3677-3682 |
| 101. | Notice of Entry of Order re: Pending Motions | 01/04/17 | 17 | 3683-3693 |


[1]These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

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CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: 09/22/2015<br>Time of Hearing: 10:00am<br><br>**ORAL ARGUMENT REQUESTED:**<br>**YES XX NO ___** |

**PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 30, 2013**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court, pursuant to NRS 22.010(3), for an Order to Show Cause why Defendant should not be held in contempt for knowingly and intentionally violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's order on October 30, 2013.

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

DATED this 21st day of August, 2015.

KAINEN LAW GROUP, PLC

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

**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 22 day of September, 2015, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 21st day of August, 2015.

KAINEN LAW GROUP, PLLC

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

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

### A. Vivian Has Severely Disparaged Kirk To Brooke and, Once Again, Has Erroneously Convinced Brooke that She is Empowered to Determine Her Own Physical Custody

Through no fault of Kirk whatsoever, a medical bill for Brooke incurred by Vivian was recently sent to collection. There was an exchange of emails between Vivian and Kirk in late July of 2015, wherein it became very evident that Vivian was telling Brooke that Kirk did not want to pay his own daughter's (Brooke's) medical bills and that Kirk was unwilling to do anything to rectify the situation. Vivian convinced Brooke, who just turned sixteen years old, that as a consequence of Kirk's supposed bad behavior and lack of action that Brooke had to telephone the insurance company and, with Vivian, speak to a supervisor and, as a result, **Brooke**, with Vivian, is now "**working directly with them for reimbursement.**"

In truth, Kirk pays for over 90% of Brooke's and Rylee's medical bills, and Kirk reimbursed Vivian for his share of this bill in compliance with Section 10.6 of the custody agreement. In truth, within 6 minutes of being advised the matter went to collection, Kirk contacted his insurance agent, Becky Palmer, via email, and requested her to speak to the insurance company as soon as possible to determine why the matter went to collection. In truth, within 33 minutes of being advised the matter went to collection, Kirk advised Vivian, via email, that the insurance agent will contact Sierra Health to determine the status as soon as possible. Kirk responded responsibly, quickly and appropriately in an effort to address the issue as expeditiously as possible.

Under these circumstances, there was no justification or reason whatsoever for Vivian to have even broached the matter with Brooke. Instead, it is clear that Vivian not only told Brooke about the issue, but told her that her Dad did not want to pay her medical bills, was not doing anything to rectify the situation and Vivian's credit was about to be ruined, and Brooke had be involved because Vivian is not on the medical policy. As later noted by the insurance agent, "There is no reason for a child to have to call an insurance company about a claim. Ever."

At about the time Vivian was erroneously telling Brooke that Kirk did not want to pay Brooke's medical bills, both Brooke and Rylee stopped responding to Kirk's texts altogether. Within days

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thereafter, while still in Vivian's custody and when Kirk was out of town with Joseph (Brooke's brother), Brooke came to Kirk's home and removed all of the clothes from her closet and emptied most of her clothes from her dresser drawers. On Wednesday morning, August 12, 2015, Kirk was to obtain custody of Brooke and Rylee at 9:00 a.m. Kirk obtained custody of Rylee. However, Brooke sent a text to Kirk that she is not going to switch houses anymore. Kirk has not seen or spoken to Brooke since Vivian told Brooke that Kirk did not want to pay her medical bills. Vivian, and Vivian alone, has created this problem by telling Brooke she is empowered to determine her own custody schedule and by enraging Brooke by disparaging Kirk to Brooke.

The Court will recall that a similar incident occurred shortly after Brooke's fourteenth birthday when Brooke, after an extended period of time with Vivian, announced she was going to live with Vivian full time. The circumstantial evidence then, as now, was overwhelming that Vivian had improperly influenced Brooke and convinced Brooke that she was empowered to determine her own custody schedule. The Court then made it very clear that the parties had agreed to joint physical custody, there was now a presumption that joint physical custody is in the children's best interests, and the Court was unwilling to change the agreed to custody schedule.

Brooke turned sixteen on June 26, 2015 and Vivian gave her a 2011 Toyota Avalon for her birthday. As a consequence of the summer vacation provision of the custody order, Vivian had Brooke and Rylee for the uninterrupted period of July 13, 2015 until August 12, 2015. Just as she did two years ago, in direct violation of the custody order, this Court's previous ruling when Brooke turned fourteen, and EDCR 5.03, Vivian has convinced Brooke that she is empowered to determine her own custody schedule and has caused Brooke to announce, yet again, she is living with Vivian full time.

Kirk respectfully urges the Court to send a resounding message to Vivian that the custody schedule to which she agreed and this Court ordered shall be enforced and Vivian's disparagement of Kirk to Brooke will not be tolerated, by issuing an order to appear and show cause why Vivian should not be held in contempt.

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## II. STATEMENT OF FACTS

### A. The Court was Unequivocal in it Prior Ruling, When Vivian Previously Convinced Brooke that She was Empowered to Determine Her Own Custody Schedule, that there was No Basis to Change the Joint Physical Custody Schedule Agreed To By the Parties.

Brooke's 14th birthday was on June 26, 2013. Kirk had *never* even broached the subject of custody with Brooke. Vivian had uninterrupted custody of Brooke and Rylee from June 26, 2013 through July 16, 2013. The very day Brooke was returned to Kirk, on July 17, 2013, Brooke told both Kirk and her older sister, Whitney, that "*since I am now 14 years old, I am independent, and can decide where I live.*"

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

Right after Brooke's return, on August 3, 2013, crying and emotionally distraught, Brooke announced to Kirk that she was going to live with Vivian full time. Brooke told Kirk that she had not yet told Rylee that she wanted to live with Vivian full time, which would mean she would live without Rylee for one-half the time. Kirk asked Brooke why she wanted to live with Vivian full-time. Brooke initially responded that "girls are supposed to live with their mommies." *See* Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief, filed October 1, 2013, p. 4 & 5.

During the hearing on this motion on October 30, 2013, the Court was unequivocal that the joint physical custody Stipulation and Order would not be changed merely based upon the wishes of a minor:

> "I don't need a child interview. The less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process. **The parties agreed that it was in the best interest of the children to exercise joint physical custody**. I don't want this to become a situation **where it is just a matter of time**, where as soon as you turn fourteen you get to decide where you want to live. That's – that's not how it works and **under NRS 125.490, there is a presumption now because you agreed to joint physical custody, there is a presumption that joint physical custody is in the best interest of the children.**
>
> And to overcome that. I -- I don't find – let's say an interview came forward and that's – that's what I hear, that there's a desire to – to live primarily with Mom. If – if that is

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> – I – I find -- I would be hard pressed to find that the expressions standing alone, of a fourteen year old child, would be sufficient to overcome that presumption.

Hearing Transcript, 10.30.13, p. 32 &33 (emphasis added).

It is noteworthy that during the October 30, 2013, Kirk's counsel, in Vivian's presence, referenced the local rule prohibiting a parent from discussing issues, proceedings, pleadings or papers on file with a minor child. Hearing Transcript, 10.30.13, p. 35. *See* EDCR 5.03.

**B. Under Strikingly Similar Circumstances, Vivian Again Convinced Brooke that She is Empowered to Determine Her Own Custody and By Falsely Disparaging Kirk, Vivian Motivates Brooke to Exercise that False Power**

Despite this Court's unequivocal ruling, only two years after that ruling and soon after Brooke's 16th birthday, Vivian has again falsely convinced Brooke that she is empowered to determine her own custody and Vivian then falsely severely disparaged Kirk in Brooke's eyes so she would exercise that power. What Vivian has obviously told Brooke is false and Vivian's intimate involvement of Brooke in discussions with the insurance company was unnecessary and entirely inappropriate.

Within the last 60 to 90 days, Brooke told Kirk that after she is 18 years old, she would like to live with Vivian full time. Kirk responded that if Brooke still feels that way when she is eighteen years old, it would certainly be a decision she could make at that time. Brooke clearly indicated to Kirk during that conversation that she understood that she does not have the power to determine where she is going to live until after she is 18 years old.

The following sequence of events reveals what happened to not only cause Brooke to falsely believe she is now empowered to determine her own custody, but for her to also falsely believe that Kirk doesn't care enough about her to pay her medical bills, was unwilling to do anything to determine why the matter went to collection, and was unwilling to do anything to obtain reimbursement, and, thus, motivated Brooke to exercise that false power.

Kirk's insurance agent, Becky Palmer, obtained new medical insurance for Brooke, Rylee, Joseph and Kirk on January 1, 2015 with Sierra Health and Life, a United Healthcare Company. Soon thereafter, Kirk contacted Becky Palmer and requested that she provide Vivian with the necessary medical insurance information for Brooke and Rylee as soon as possible. On January 8, 2015, Becky Palmer sent an email to Kirk providing, "I emailed a pdf version of the two girls ID cards directly to

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Vivian. I also ordered an extra ID card to be mailed to your house for the girls. Just letting you know." Attached hereto collectively as Exhibit "1" is that email, together with a copy of the "pdf version" of the insurance coverage and insurance cards for Brooke.

On January 18, 2015, when Vivian was in California with Brooke and Rylee, Kirk received a text from Vivian advising him that Brooke had awakened the prior morning with a bad stomach ache and, within hours, Brooke had a headache, neck ache, fever, etc. Vivian took Brooke to the emergency room and it appeared Brooke had the flu that had been going around. Vivian also advised that Brooke was doing much better by the next morning. Kirk responded that he appreciated Vivian letting him know of Brooke's condition and advised he had seen something on television about an outbreak of measles at Disneyland.

Sometime in mid-April of 2015, Kirk opened his mailbox to find three medical invoices for Brooke, which were addressed to Vivian with a note from Vivian for Kirk to forward to the insurance company.[1]

On April 24, 2015, Kirk scanned and emailed the three invoices to his insurance agent, who forwarded the invoices to Sierra Health the same day. One of the invoices provided, "Second Request" and another one provided, "Final Notice." These notations were on the bills which Kirk was provided for the first time in mid-April of 2015. The insurance agent expressed concern whether Vivian had provided the insurance information to the providers and made a co-pay at the time the services were rendered. The parties oldest daughter, turned thirty in April of this year. So for over 30 years, Vivian, just like every other parent, has known it is necessary to provide health insurance information at the time the medical services are provided and to make a co-pay if requested. If Vivian, for whatever reason, did not have Brooke's insurance information with her in California, then in response to the first invoices, Vivian could have simply called the telephone numbers on each of the invoices and provided

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[1] As Brooke's mother, Vivian could have submitted the invoices directly to the insurance company. Kirk pays 100% of Brooke's and Rylee's medical insurance. The co-pay for most medical services is 80/20. Kirk and Vivian split the 20% co-pay. Therefore, Kirk pays 90% of Brooke's and Rylee's medical costs. In addition, Kirk receives and pays numerous final bills from providers after the insurance has fully paid for which he does not seek reimbursement from Vivian. As a consequence, Kirk is actually paying in excess of 90% fo Brooke's and Rylee's medical bills.



A.App. 1629

the necessary insurance information. As a consequence, Kirk was hesitant to ask Vivian if she made a co-pay. Nevertheless, Kirk sent Vivian an email that same day asking, "Did you pay anything at the time the services were rendered?" Exhibit "2" is a copy of that email to Vivian with copies of the scanned invoices attached. Vivian never responded. Kirk assumed he had offended Vivian with the question and did not think any more about it.

On July 20, 2015, at 5:45 p.m., Vivian sent an email to Kirk with an invoice from the California Business Bureau, Inc. advising Vivian a matter had been assigned for collection and she owes $666.66.[2] Just 6 minutes later, at 5:51 p.m., Kirk forwarded the email to Becky Palmer, and wrote, "**Becky, Please check on this asap and find out why it went to collections. Thanks. Kirk**" (Emphasis added). Kirk then sent an email to Vivian just 33 minutes after her email to him, at 6:18 p.m., wherein Kirk wrote, "**Becky will contact Sierra Health to determine the status as soon as possible.**" (Emphasis added).

Despite the foregoing email to Vivian advising the insurance agent was going to contact Sierra Health as soon as possible, Vivian had Brooke talking with and working with the people at Sierra Health shortly thereafter: "**Brooke and I just spoke to supervisor Kim C. At Sierra.**" And later, "**Brooke and I Are working directly with them for reimbursement.**" *See* Exhibit "3", Vivian's email to Becky Palmer and Kirk on July 22, 2015 at 1:52 p.m. Vivian also was soon, baselessly attacking Kirk and Becky Palmer, writing, "GET ABSOLUTELY NO HELP, SUPPORT OR ASSISTANCE FROM KIRK OR YOU (No calls on my behalf to repair credit. . . .no help in paying bill, No attempt to resubmit invoices for payment no phone calls to hospital or collections agency–NADA, NOTHING— (Heck not even important enough for the policy holder to telephone member services to ask them directly as to why his daughters clams haven't been paid)"[3] *See* Exhibit "3", email on July 24, 2015, at 2:54 p.m.

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[2] As a consequence of this email, there are several emails between July 20, 2015 and July 25, 2015 between and among Vivian, Kirk, and insurance agent, Becky Palmer. There are also later emails between and among Kirk, Becky Palmer, and the medical providers. All of these emails are collectively attached hereto as Exhibit "3."

[3] Kirk was out of town with the parties' son, Joseph, from July 25, 2015 until August 2, 2015. Soon after his return, Kirk continued his efforts to determine what happened. Kirk called the telephone



A.App. 1630

In this same email on July 24, 2015, at 2:54 p.m.,Vivian wrote, "**Kirk just can't quite understand why he should have to pay any part of his daughters medical bills.**" (Emphasis added). Based upon this statement and statements in other emails from Vivian that Brooke and she are working directly with the insurance company, it was very apparent to Kirk that Vivian had told Brooke that her Dad did not want to pay her medical bills and was unwilling to help to obtain reimbursement from the insurance company and, as a consequence, **Brooke** and Vivian had to talk to and work with the insurance company to obtain reimbursement. In truth, Kirk did everything he could to determine what happened and to rectify the situation and he continues to do so,[4] and, as noted, Kirk willingly pays over 90% of Brooke's and Rylee's medical bills. In Kirk's email to Vivian on July 24, 2015 at 4:08 pm, Kirk wrote, "Despite these irrefutable facts, **there is absolutely no doubt in my mind whatsoever that you are lying to Brooke and telling her that her Dad doesn't want to pay her medical bills**, i.e., "Kirk just can't quite understand why he should have to pay any part of his daughters medical bills." (Emphasis added). And further, "[Y]ou are . . . accusing me of bad faith and telling my kids that I don't want to pay their medical bills." In Kirk's email to Vivian on July 24, 2015 at 10:17 p.m., Kirk wrote,

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numbers on each of the three final invoices that had been sent to Vivian and given to Kirk in mid-April. Emails between Kirk and each of the providers, including the hospital, are included in Exhibit "3." It is fairly evident that Vivian did not give the hospital sufficient insurance information at the time the services were rendered. It also appears that Vivian later failed to provide sufficient insurance information, although the file notes indicate that she was going to do so. As a consequence of not providing the necessary insurance information, the providers identified the billing matters as "self-pay" rather than insurance matters. When Vivian did not respond to the hospital's invoices of March 10, 2015 and April 9, 2015, the matter was sent to collection on July 6, 2015. The hospital has indicated that since the bill was paid in full, there was no damage caused to Vivian's credit. In speaking with a representative from Sierra Health, it is Kirk's understanding that Norma from Sierra Health, likely the same person that contacted the other two providers, placed telephone calls to the hospital that were not returned. Kirk has reimbursed Vivian for one-half of the $666.66 she paid the collection agency in accordance with Section 10.6 of the Custody Order, despite the fact that it appears the primary reason the matter went to collection was because Vivian did not provide the necessary insurance information.

[4] *See* Exhibit "3" – email from Kirk to Vivian, 7.21.15 at 11:01 pm; email from Kirk to Vivian, 7.24.15 at 4:08 pm; email from Kirk to Vivian, 7.24.15 at 10:17 pm; email from Kirk to Gemma Garcia (hospital), 8.4.15 at 2:25 pm; email from Kirk to Carrie Dunlap (physician group), 8.12.15 at 3:28 pm; email from Kirk to Andrea France (pathology lab), 8.12.15 at 3:45 pm; email from Kirk to Ceasar Guevara (hospital), 8.18.15 at 10:29 am.



A.App. 1631

**"I strongly believe you have told Brooke that her Dad does not want to pay her medical bills."** *See* Exhibit "3." (Emphasis added).

Upset by what she was witnessing in Vivian's emails, in an email to Kirk the next morning, on July 25, 2015, at 6:57 a.m., Becky Palmer wrote, "There is no reason for a child to have to call an insurance company about a claim. Ever. Hopefully with time and maybe when Emma [Ms. Palmer used Brooke's given first name] has her own children, she will understand better the situation. Becky."

It was about this same time, on July 23, 2015, that both Brooke and Rylee stopped responding to Kirk's texts.

As noted previously, as a consequence of the summer vacation provision of the custody order, Vivian had Brooke and Rylee for the uninterrupted period of July 13, 2015 until 9:00 a.m. on August 12, 2015. Kirk was out of town with the parties' son, Joseph, from July 25, 2015 until August 2, 2015. When Kirk returned home, he discovered that Brooke had removed all of her clothes from her closet and most of the clothes from her dresser drawers. This occurred right after the emails and Vivian's and Brooke's telephone calls to the insurance company between July 22, 2015 and July 24, 2015. This was not a coincidence.

On the day custody was to be transferred on August 12, 2015, Brooke sent Kirk a text telling him she is no longer going to switch houses. Kirk later sent a text to Brooke that simply said he loved her. The message failed. Kirk tried to send the same message two more times. Each time the message failed.

## III. ARGUMENT

### A. Vivian's Disparagement of Kirk to Brooke Was So Severe It Caused Brooke to Move Her Clothes Out of the Home She Shares with Kirk and Rylee and Take the Position She is Not Switching Houses Anymore.

NRS 22.010(3) provides as follows:

> **Acts or omissions constituting contempt.** The following acts or omissions shall be deemed contempts:
>
> 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

Section 2.11 of the Parenting Order, dated July 11, 2012, provides in relevant part, "Neither parent shall disparage the other in the presence of either child, nor shall either parent make any comment

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of any kind that would demean the other parent in the eyes of either child." Vivian has obviously severely disparaged Kirk in the eyes of Brooke. The disparagement was so severe – Kirk doesn't want to pay is own daughter's (Brooke's ) medical bills and is unwilling to help her mother obtain reimbursement from the insurance company, so Brooke had to become intimately involved in the effort – that Brooke moved her clothes out of the home she shares with Kirk and Rylee, and is taking the position she is not switching houses anymore. Vivian's disparagement of Kirk to Brooke is a knowing and intentional violation of Section 2.11, and is therefore, grievous contemptuous conduct.

Section 5 of the Stipulation and Custody Order of this Court, dated July 11, 2012, provides:

> 5. *Weekly Division of Time with Minor Child:* The parties shall share joint physical custody of the minor children. VIVIAN shall have the children in her care each Monday from after school, or Monday at 9:00 a.m. when the children are not in school (subject to the provisions of paragraph 7.6), until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. KIRK shall have the children in his care from Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school, until Friday after school, or Friday at 9:00 a.m. when the children are not in school. . The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school.

Vivian knowingly and intentionally violated Section 5 when she wrongfully empowered Brooke and caused Brooke to move her clothes out of her home with Kirk and Rylee and to take the position that she is no longer switching houses. Vivian should be held in contempt for what is clearly grievous contemptuous conduct.

Finally, Vivian was present when the Court made its unequivocal ruling and order on October 30, 2013. Despite this clear order, Vivian falsely empowered Brooke and caused Brooke to move her clothes out of her home with Kirk and Rylee and take the position she is not switching houses anymore in direct violation of this Court's order. Therefore, Vivian should also be held in contempt for knowingly violating this order as well.

## IV. CONCLUSION

Two years ago, Vivian knowingly and wrongfully empowered Brooke to take the position she was going to live with Vivian full time. In its ruling and order during the hearing on October 30, 2013, this Court was unequivocal that the wishes of a minor are not a sufficient basis to modify custody.

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Despite this Court's order, Vivian has knowingly and wrongfully empowered Brooke yet again. In addition, it is evident that Vivian has knowingly and wrongfully severely disparaged Kirk to Brooke to motivate Brooke to exercise this false and wrongful empowerment. Under the false pretense that Kirk did not want to pay his own daughter's (Brooke's) medical bills and Kirk was unwilling to do anything to rectify the situation, Vivian wrongfully and unnecessarily involved Brooke in speaking with and **"working directly with"** the insurance company "for reimbursement." Such callous manipulation of minor children by one parent against another parent cannot be condoned or tolerated.

Kirk respectfully urges the Court to send a resounding message to Vivian that the custody schedule to which she agreed and this Court ordered, which was previously enforced by this Court under strikingly similar circumstances, shall be enforced again by this Court, and that Vivian's severe disparagement of Kirk to Brooke will not be tolerated.

The Court is respectfully requested to issue forthwith an order to appear and show cause as to why Vivian should not be held in contempt.

DATED this 21st day of August, 2015.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
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Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Motion for an Order to Show Cause are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 21st day of August, 2015.

NOTARY PUBLIC in and for said County and State

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. May 17, 2016

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# EXHIBIT “1”

**Kirk Harrison**

**From:** Becky Palmer [becky.palmer26@gmail.com]
**Sent:** Thursday, January 08, 2015 9:53 AM
**To:** Kirk Harrison
**Subject:** extra ID cards for kids

Hi Kirk-
I emailed a pdf version of the two girls ID cards directly to Vivian. I also ordered an extra ID card to be mailed to your house for the girls. Just letting you know.
thanks Becky/ Premier Insurance Group

**Kirk Harrison**

**From:** Becky Palmer [becky.palmer26@gmail.com]
**Sent:** Monday, August 17, 2015 10:09 PM
**To:** Kirk Harrison
**Subject:** copy of Emma health ins ID card

Kirk-
I requested an ID card be sent to your email address just now, it will be an email from "donotreply@uhc.com".
This is so you can see the actual electronic version of the ID card I generated for Vivian in January 2015.
It will come on a separate email from UHC directly. thanks Becky

--
Click here to upload your file securely.

Thank you, Becky Palmer / BEP Consulting LLC dba Premier Insurance Group

**Kirk Harrison**

**From:** DoNotReply@uhc.com
**Sent:** Monday, August 17, 2015 10:06 PM
**To:** kharrison@harrisonresolution.com
**Subject:** @YourService - Member ID Card
**Attachments:** HARRISON_EMMA.pdf

@YOURSERVICE℠

UnitedHealthcare®

Health Plan of Nevada/ Sierra Health and Life member HARRISON, EMMA has forwarded a copy of their health coverage ID card to you via email. Please see the attachments. The eligibility details are displayed below for your convenience.

**Medical - I14PS100**

**Benefit Group:** SHL Nevada-Non-Medicare
**Benefit Code:** I14PS100
**Benefit Description:** IND NX PPO 2014 My Solutions Silver 1
**As of Date:** 01/01/2015
**Term Date:**
**Group #:** 10003502
**Subgroup #:** 1001

**Dental - D4INSPD5**

**Benefit Group:** SHL Nevada-Non-Medicare
**Benefit Code:** D4INSPD5
**Benefit Description:** SHL 2014 IND NX PPO 3500/6250/80/50 Ped Dental
**As of Date:** 01/01/2015
**Term Date:** 06/30/2018
**Group #:** 10003502
**Subgroup #:** 1001

**Vision - V4INSPV1**

**Benefit Group:** SHL Nevada-Non-Medicare
**Benefit Code:** V4INSPV1
**Benefit Description:** SHL 2014 NX Individual PPO Pediatric Vision 50%
**As of Date:** 01/01/2015
**Term Date:** 06/30/2018
**Group #:** 10003502
**Subgroup #:** 1001

**Pharmacy - PPS09100**

**Benefit Group:** SHL Nevada-Non-Medicare
**Benefit Code:** PPS09100
**Benefit Description:** IND NX RX PPO 2014 My Solutions Silver 1
**As of Date:** 01/01/2015
**Term Date:**
**Group #:** 10003502
**Subgroup #:** 1001

For any questions or issues, please contact an appropriate health plan representative.



A.App. 1639

Please do not reply to this automated message.

Regards,
@YourService

---

This message was created by @YourService UnitedHealthcare Nevada Market.

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

SIERRA HEALTH AND LIFE
A Cigna HealthSpring Company

**MySHL SOLUTIONS**
**INDIVIDUAL PPO PLAN**

Health Plan (80840) 911-76342-01

Member ID: 140194689-01 Group Number: 100035021001

Member:
EMMA B HARRISON

Benefit Code:

| | |
|---|---|
| Medical | I14PS100 |
| Rx | PPS09100 |
| Dental | D4INSPD5 |
| Vision | V4INSPV1 |

Copay: Office /Spec
In Plan $15 /$30

Payer ID
76342

Effective Date
01/01/2015

OptumRx

Rx BIN: 610279
Rx GRP: UNEVADA
Rx PCN: 9999
Rx Cost share tiers: I / II / III / IV
Rx Cost shares: $20/$40/$70/$250
Rx Deductible may apply.

DOI-0501

Underwritten by Sierra Health and Life Insurance Co., Inc.

In a life-threatening emergency, call 911 or go to an emergency room. Printed: 01/09/15

Card does not guarantee coverage. Obtain prior authorization or verify benefits at www.mySHLonline.com or call Member Services.

| | | |
|---|---|---|
| Member Services: | 702-242-7700 | 800-888-2264 |
| 24 Hour Advice Nurse: | 702-242-7330 | 800-288-2264 |
| Mental Health/Substance Abuse: | 702-384-1484 | 800-873-2246 |

For Providers: www.mySHLonline.com 800-888-2264
Medical Claims: SHL Claims, PO Box 15645, Las Vegas, NV 89114-5845

UnitedHealthcare Choice Plus Network Outside Nevada

SHL Plan Provider Network
Within Nevada & Surrounding Areas

Pharmacy Claims: OptumRx, PO Box 29044, Hot Springs, AR 71903
For Pharmacists: 800-443-8187



A.App. 1641

**EXHIBIT "2"**

## Kirk Harrison

**From:** Kirk Harrison [kharrison@harrisonresolution.com]
**Sent:** Friday, April 24, 2015 4:07 PM
**To:** 'Vivian Harrison'
**Cc:** Becky Palmer
**Subject:** invoices for insurance reimbursement
**Attachments:** Scan0214.pdf

Vivian,

Did you pay anything at the time the services were rendered?

Kirk

**MAKE CHECKS PAYABLE TO:**

CENTENNIAL EMERGENCY PHY INC
PO BOX 661387
ARCADIA CA 91066-1387

HOURS:Mon – Fri 8:00 AM - Noon
1:00 PM to 5:00 PM, P.S.T.

**FOR BILLING INQUIRIES CALL: 855 736-2787**

Patient Services is closed for lunch from 12:00 noon until 1:00 PM, P.S.T.

CREDIT CARD CHOICES: ☐ VISA ☐ MASTERCARD ☐ DISCOVER ☐ AMEX

CARD NUMBER | AMOUNT

SIGNATURE | EXP. DATE

| CLIENT | ACCOUNT NUMBER | DUE DATE | ACCOUNT BALANCE |
|---|---|---|---|
| WMA | 100073210 | 02/23/2015 | $334.00 |

A SERVICE FEE WILL BE CHARGED FOR ANY CHECK RETURNED UNPAID.
MINIMUM $50.00 PAYMENT OR AMOUNT DUE

**Pay at www.erstatement.com**

**ADDRESSEE:**

EGG2202A MIXED AADC 926
70000011 01.0004.0150 1178 1

VIVIAN L HARRISON
1514 SUNRISE CIR
BOULDER CITY NV 89005-4210

**REMIT TO:**

CENTENNIAL EMERGENCY PHY INC
PO BOX 661387
ARCADIA CA 91066-1387

WMA000100073210020220150000000334006

☐ PLEASE CHECK BOX IF ADDRESS OR INSURANCE HAS CHANGED. INDICATE CHANGE(S) ON REVERSE SIDE. DETACH AND RETURN WITH PAYMENT

**STATEMENT**

Payments for less than full balance shall not constitute payment in full. For Disputes, send documentation of dispute to Director of Compliance, PO Box 6612595, Arcadia, CA 91066-1295.

Unless this bill is paid in full by the due date, the provider reserves the right to seek all available insurance coverage and sources to expedite payment.

| CLIENT | ACCOUNT NO. | STATEMENT DATE | PATIENT NAME | TAX ID NO. | DATE OF LAST PAYMENT |
|---|---|---|---|---|---|
| WMA | 100073210 | 02/02/15 | [redacted] | 274085464 | |

| DATE | RP | PS | EXAM CODE | SERVICE DESCRIPTION | DIAGNOSIS CODE | CHARGE AMOUNT |
|---|---|---|---|---|---|---|
| 01/17/15 | 1 | 23 | 99283 | EMERGENCY PHYSICIAN SERV | 487.1 | $ 334.00 |

***IMPORTANT NOTICE - THIS IS THE ONLY ITEMIZED STATEMENT OF SERVICES YOU WILL RECEIVE, PLEASE RESPOND NOW***
***Unless you have a qualified Financial Hardship Discount, this bill must be paid in full within 90 days of the date of this statement or your bill will be deemed delinquent and assigned to a collection agency. Partial payments less than $50.00 will not extend the delinquency date of your account.***

**To pay online go to www.erstatement.com - Your password is: 3C3C844603**

IF YOU HAVE INSURANCE PLEASE PROVIDE US YOUR POLICY INFORMATION SO A CLAIM MAY BE FILED WITH YOUR INSURANCE COMPANY. OTHERWISE PAYMENT IS DUE UPON RECEIPT.

| CURRENT MONTH | OVER 1 MONTH | OVER 2 MONTHS | MINIMUM $50.00 PAYMENT OR AMOUNT DUE | ACCOUNT BALANCE |
|---|---|---|---|---|
| 334.00 | .00 | .00 | DUE DATE: 02/23/2015 | |

RP 1 - REN, DAAN MD
RENDERING PROVIDERS

PS 23 - EMERGENCY ROOM
PLACES OF SERVICE
WESTERN MEDICAL CENTER

**$334.00**

PAGE 1 of 1

**If you are uninsured or have high medical bills, you may qualify for a discount. See reverse for details.**

CENTENNIAL EMERGENCY PHY INC **PRIMARY INS:** *** NO INSURANCE ***

**FOR BILLING INQUIRIES CALL: 855 736-2787**

OFFICE HOURS: **Mon – Fri 8:00 AM - Noon**
**1:00 PM to 5:00 PM, P.S.T.**

THIS DOCUMENT CONTAINS PROTECTED HEALTH CARE INFORMATION AND IS SUBJECT TO PRIVACY REGULATIONS PURSUANT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS INFORMATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL DOCUMENT TO US AT THE ADDRESS LISTED BELOW, VIA U.S. POSTAL SERVICE. THANK YOU FOR YOUR COOPERATION. FOR MORE INFORMATION REGARDING YOUR PRIVACY RIGHTS, PLEASE WRITE TO: DIRECTOR OF COMPLIANCE, P.O. BOX 661295, ARCADIA, CALIFORNIA, 91066-1295.

## QUALIFIED FINANCIAL DISCOUNT

If you received a financial hardship or charity discount from the Hospital, you qualify for a discount from your Doctor, which may not equal the amount of the Hospital discount. Simply send a copy of the Hospital Confirmation of your charity discount with this completed statement stub. Your next statement will reflect your discount and any balance still outstanding.

To qualify without a Hospital Confirmation, you must be uninsured and your family's income below 350% of the Federal Poverty Level or if you have insurance, your out of pocket medical costs for the prior 12 months must exceed 10% of your family's annual income. Fax page one and page two of your most recent Federal Tax Form 1040 and the front page of the statement to our secured fax line at, (626) 623-1246. Do not mail financial information.

If you are uninsured or have high medical costs, please contact Billy Joe at (877) 346-2455 for information on discounts and programs for which you may be eligible, including the Medi-Cal program. If you have coverage, please tell us so that we may bill your plan.

## PATIENT'S NEW INSURANCE INFORMATION

Insurance Co.:_____ Claim Office Address: _____

Policy #:_____ Group #:_____ Name of Insured:_____

Date of Birth of Insured:_____ Social Security #:_____

Employer of Insured:_____ Relationship of Patient to Insured:_____

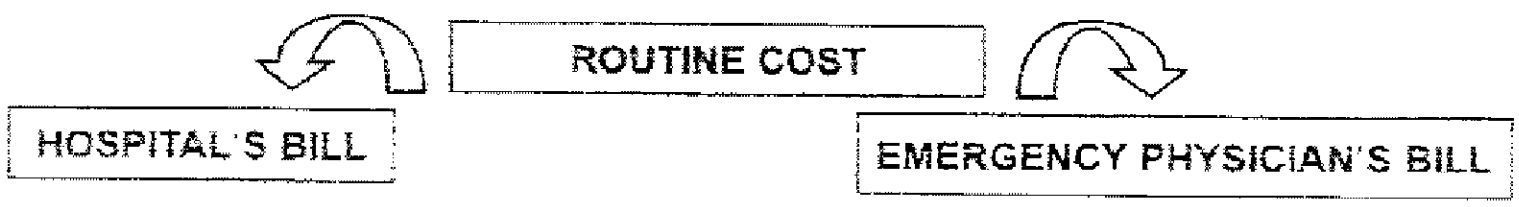
## PATIENT'S NEW MAILING ADDRESS

Street:_____ Apt.#_____ P.O. Box:_____

City:_____ State:_____ Zip:_____ New Phone #:(  )_____

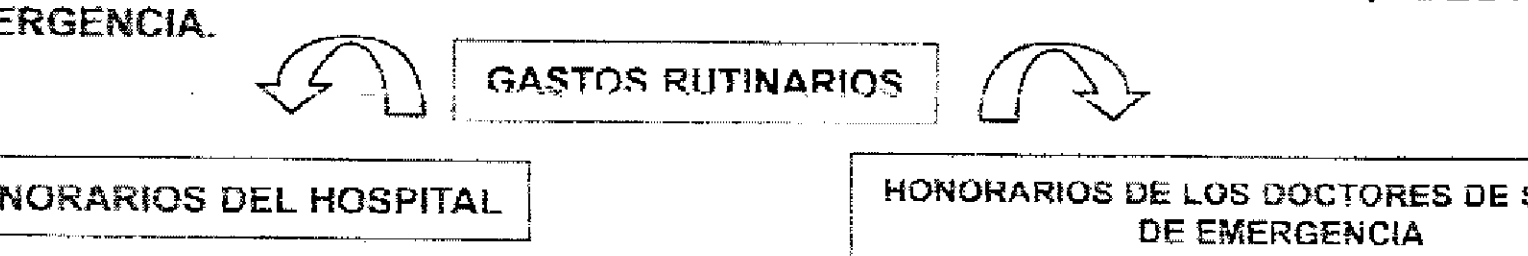
Payment is requested at the time this bill is rendered. The patient (or guarantor) is responsible for payment of this account. Patients who have private healthcare insurance should be reminded that professional services are rendered and charged to the patient and not the insurance. We will bill the patient's insurance when provided with the correct information. We cannot accept responsibility for collection of the patient's insurance claim or negotiating a settlement on a disputed claim.

## ARE YOU WONDERING WHY YOU RECEIVED MULTIPLE BILLS FOR YOUR EMERGENCY ROOM VISIT? THE HOSPITAL'S BILL IS SEPARATE FROM THE EMERGENCY PHYSICIAN'S BILL.




The routine cost for emergency services has a minimum of two components. Each component is billed separately by the provider of the services. The hospital's fee(s) cover the cost of providing the nurses, technicians, space, equipment and supplies. The physician's fee(s) are for their medical care rendered in the emergency department. The emergency physician is an independent physician, not an employee of the hospital, and therefore bills separately for his/her service. You may receive additional bills from other entities who provided services during your visit.

## ¿ESTA USTED CONFUNDIDO PORQUE HA RECIBIDO VARIOS COBROS POR SU VISITA AL SERVICIO DE EMERGENCIA? LA CUENTA DEL HOSPITAL ES SEPARADA A LA CUENTA DEL DOCTOR QUE LO ATENDIO EN LA SALA DE EMERGENCIA.




Los servicios de emergencia rutinarios tiene por lo menos dos honorarios. Cada provedor de servicios le enviará el cobro por sus servicios. Los honorarios del hospital cubren los gastos de las enfermeras, técnicos, equipo y articulos necesarios para su servicio. Los honorarios de los doctores son por el tratamiento rendido en el Departamento de Emergencia. El doctor del Departamento de Emergencia es independiente del hospital y sus cobros son enviados por separados. Es possible que usted reciba cobros de otras organizaciones que prestaron sus servicios durante su visita.

## PRIVACIDAD Y DERECHOS DEL PACIENTE

LA INFORMACIÓN DE SALUD PERSONAL CONTENIDA EN ESTE DOCUMENTO ES PROTEGIDA Y EXPUESTA A LOS REGLAMENTOS DE PRIVACIÓN DE EL ACTO DE SEGUROS DE SALUD DE 1996. SI USTED NO ES LA PERSONA INDICADA PARA RECIBIRLA, SE LE NOTIFICA QUE ESTA PROHIDO LEER, COPIAR, O DISTRIBUIR EN CUALQUIER FORMA LA INFORMACIÓN CONTENIDA. SI USTED NO ES LA PERSONA INDICADA, FAVOR DE NOTIFICARNOS INMEDIATAMENTE POR TELEFONO Y REGRESAR EL DOCUMENTO ORIGINAL POR CORREO A LA DIRECCIÓN INDICADA. GRACIAS POR SU COOPERACIÓN. PARA MAS INFORMACIÓN RELACIONADA A SUS DERECHOS DE PRIVACIDAD, FAVOR DE DIRIJIRSE A: DIRECTOR OF COMPLIANCE, P.O. BOX 661295, ARCADIA, CALIFORNIA, 91066-1295.

PLEASE NOTE: There will be a collection charge for checks that are returned or not honored by your bank. Also there may be a service charge added to past due accounts.

ER-01 Rev. 07/11

IHH
1301 N. TUSTIN AVE.
SANTA ANA, CA 92705

For questions or to request an itemized statement
Please Call Patient Follow-up Services
SE HABLA ESPAÑOL
**Phone: 800.735.5930**
Fax: 714.628.8828

# Patient Statement

Emma Brooke Harrison
1514 SUNRISE CIR
BOULDER CITY, NV 89005-4210

March 10, 2015

**SECOND REQUEST**

Thank you for choosing WESTERN MEDICAL CENTER ANAHEIM for your health care needs. This is your statement of balance owing. Please keep this copy for your records.

## Account Information for this Emergency Visit

| Admit Date | Patient Name | Visit ID Number | Balance Forward | Adjustments | Amount Paid | Past Due |
|---|---|---|---|---|---|---|
| 01/17/15 | Emma Brooke Harrison | 100073210-0001 | $635.69 | $0.00 | $0.00 | $635.69 |

See Reverse Side For More Information Regarding Payment Options.

**Total amount now due** Payment due upon receipt **$635.69**

**Please Call or Remit Payment**

- Use the payment slip below to send payment by mail.
- Call our patient follow-up department at 800-735-5930 to pay by phone or discuss your payment options with an account representative.

Founded on a legacy of caring, Western Medical Center Anaheim is a locally owned health care system dedicated to providing exceptional health care for our family, friends and neighbors.

## Your Health, Our Passion!

IH2 - 500569 - 00000011

✂ Detach Bottom Portion And Return With Payment ✂

IHH - WESTERN MEDICAL CENTER ANAHEIM
PO Box 846744
Los Angeles, CA 90084-6744

VIVIAN L HARRISON
EMMA BROOKE HARRISON
1514 SUNRISE CIR
BOULDER CITY NV 89005-4210

| IF PAYING BY CREDIT CARD FILL OUT BELOW | | |
|---|---|---|
| ❑ VISA ❑ MC ❑ DISC ❑ AMEX | | |
| CARD NUMBER | CVV CODE | TOTAL BALANCE |
| SIGNATURE | | EXPIRATION DATE |
| PATIENT NAME: Emma Brooke Harrison | | |
| Patient Visit ID Number 100073210-0001 | STATEMENT DATE March 10, 2015 | PAYMENT AMOUNT |

WESTERN MEDICAL CENTER ANAHEIM
PO Box 846744
Los Angeles, CA 90084-6744

| Pay This Amount | SHOW AMOUNT PAID HERE | $ |
|---|---|---|
| $635.69 | | |

**TO OUR PATIENTS:**
Thank you for making WESTERN MEDICAL CENTER ANAHEIM your provider of choice for your healthcare needs: our mission is to provide high quality of care with care and compassion.

If you have medical insurance, please forward a copy (front and back) of your coverage identification card in the envelope provided. If you are uninsured, you may be entitled to financial assistance with payments of this hospital bill. Dependent on specific income criteria, you may be eligible for government sponsored insurance programs, discounts, or charity care under the Hospital Fair Pricing Policies - Assembly Bill 774. For Further Information regarding your alternatives, please contact our Patient Follow-Up Office at (800) 735-5930 and ask about your options. If you believe you are financially qualified, you may be asked to submit a confidential financial statement or provide verification of your family annual income. You will receive a patient balance reminder letter after thirty days.

Si usted tiene seguro medico por favor envie una copia (delante y reves) de su tarjeta de identificacion de cobertura en el sobre proporcionado. Si usted no tiene seguro medico, usted puede tener derecho a asistencia financiera con pago de esta factura del hospital. Depende en el criterio especifico de ingresos, usted puede llenar los requisitos para un programa patriconado por el gobierno, descuentos o asistencia de caridad de acuerdo con el proyecto de lay Hospital Fair Pricing Policies - Assemble Bill 774. Para mas informacion respecto a su alternativia, por favor contactar al departamento de resolucion del paciente al (800) 735-5930 y pregunte por departamento de elgibilidad. Si usted cree que califica, se le pedira presentar su estado financiero confidencial o presentar verificacion de su ingreso familiar anual recibira un recordatorio de balance dentro de treinta dias.

HOSPITAL BILL:
The hospital bill consists of charges for supplies, equipment, and services such as nursing care, therapists, or technicians provided during your visit. You have a right to receive a detailed copy of your bill. For a copy of your bill or any questions concerning your hospital bill please call our Patient Follow-Up Office between 8:00am - 4:30pm, Monday through Friday at (800) 735-5930.

PHYSICIAN BILL:
Physicians are independent contractors, not agents or employees of our Hospital. Therefore, you will be receiving a separate bill for Physicians or professional services provided to you since these are NOT included in your Hospital bill. These services included but are not limited to examinations/consultation, laboratory or radiology's interpretations. Professional services bills such as: Emergency Room Physician, Pathologist, Radiologist, Cardiologist, Pediatrician, Surgeon, etc. Should you have any questions concerning any physician billings, please contact them directly at the numbers provided on their collection notices.

FACTURA DEL HOSPITAL :
La factura del hospital consiste en los gastos de suministros, equipo, y servicios tales como atención de enfermería, terapeutas, o técnicos proporcionados durante su visita. Usted tiene el derecho a recibir una copia de su factura detallada. Para una copia de su factura o cualquier pregunta relacionada con su cuenta del hospital, por favor llame a nuestra Oficina entre 8:00am - 4:30pm, de lunes a viernes al (800) 735-5930.

FACTURA DEL MÉDICO.
Los médicos son contratistas independientes, no agentes o empleados de nuestro Hospital. Por lo tanto, usted estará recibiendo una factura separada de los médicos o servicios profesionales que se le ofrecieron ya que estos no están incluidos en la factura del Hospital. Estos servicios incluyen, pero no están limitados a exámenes/consulta, laboratorio o radiología; interpretaciones, etc.. Facturas de servicios profesionales tales como: médico de urgencias, patólogo, radiólogo, cardiólogo, pediatra, cirujano, etc.. Si tiene cualquier pregunta relativa a la facturación de cualquier médico, por favor contáctelos directamente en los números proporcionados en sus avisos de colección.

500569 00000011

PATIENT'S CHANGE OF MAILING ADDRESS

Address: _____
City: _____
State: _____ Zip: _____
New Phone #: (_____) _____
Social Security #: _____

PATIENT'S UPDATED INSURANCE INFORMATION

Insurance Co.: _____
Claim Office Address: _____
Policy #: _____ Group #: _____
Name of Insured: _____
Relationship of Patient to Insured: _____
Employer Name: _____
Employer Address: _____
Medicare #: _____

**Authorization for Release of Medical Information:**
I authorize any holder of Medical Information about me to release to Medicare, Medicaid and any insurance, as well as the provider of this service, any information or documentation in their possession needed to determine these benefits or the benefits payable for related services, whether in the past, now or in the future.

_____
Signature of Patient or Guardian

008261

| ACCOUNT NUMBER | DATE OF STATEMENT | PAYMENTS AFTER THIS DATE WILL APPEAR ON YOUR NEXT STATEMENT | BALANCE | AMOUNT DUE |
|---|---|---|---|---|
| 2641*100073210.1 | 03/09/2015 | | | **$98.56** |

PATIENT NAME

EMMA B HARRISON

***FINAL NOTICE - We have sent invoices, however your bill remains unpaid. If we do not receive payment or you do not contact us within 30 days of this notice, we may place your account with an outside collection agency.***

Place of Service: WESTERN MED ER/CP ANAHEIM
Referring Doctor: DAAN REN MD

MAKE CHECKS PAYABLE TO:

WESTERN PATHOLOGY MEDICAL ASSOC.
PO BOX 1400
GREENVILLE TX 75403-1400
800/236-6698

SEE REVERSE SIDE FOR IMPORTANT BILLING INFORMATION



| Date | Doctor | Code | Description | Amount |
|---|---|---|---|---|
| 01/17/2015 | KHALIL SHEIBANI,MD | 87804 | INFLUENZA B | 49.28 |
| 01/17/2015 | KHALIL SHEIBANI,MD | 87804 | INFLUENZA A IA DIR | 49.28 |

Access account at http://www.PerYourHealth.com ID: **2641-100073210** Access Key: **CGG677**

For questions call 800/236-6698 and when prompted enter your identification number as follows 2641*100073210*1
OFFICE HOURS-8:00 A.M. TO 4:00 P.M. PACIFIC TIME

PLEASE DETACH AND RETURN THE BOTTOM PORTION WITH PAYMENT

**WESTERN PATHOLOGY MEDICAL ASSOC.**
**PO BOX 1400**
**GREENVILLE TX 75403-1400**

Temp-Return Service Requested

| ACCOUNT NUMBER | PATIENT NAME |
|---|---|
| 2641*100073210.1 | EMMA B HARRISON |
| STATEMENT DATE 03/09/2015 | AMOUNT DUE **$98.56** |

SCPM*13*100073210.1

2641

MED560.A4PP3D000537.JOIFVG.008261 008261

**VIVIAN L HARRISON**
**1514 SUNRISE CIR**
**BOULDER CITY NV 89005-4210**

**MAKE CHECK PAYABLE AND REMIT TO:**

**WESTERN PATHOLOGY MEDICAL ASSOC.**
**PO BOX 1400**
**GREENVILLE TX 75403-1400**

** MEDICAL ASSISTANCE IS ALSO KNOWN AS DPA, PUBLIC ASSISTANCE, WELFARE, MEDI-CAL, TENNCARE, ALACAID, AHCCCS OR MEDICAID. OTHER NAMES MAY APPLY

FOR NON-CONTRACTED COMMERCIAL INSURANCE

IT IS POSSIBLE THAT YOUR PHYSICIAN OR MEDICAL PROVIDER MAY NOT PARTICIPATE WITH YOUR COMMERCIAL INSURANCE PLAN. IF THIS IS THE CASE YOU MAY NEED TO FILE A CLAIM DIRECTLY WITH YOUR INSURANCE CARRIER.

YOU ARE RESPONSIBLE FOR THE PAYMENT OF THESE CHARGES. YOU WILL CONTINUE TO RECEIVE BILLS UNTIL PAYMENT IS MADE.

IF YOU WERE SEEN AT THE HOSPITAL
THE PHYSICIAN'S BILL WILL BE SEPARATE FROM THE HOSPITAL BILL

The doctor sending this bill may be a private physician who works in association with the hospital. You may or may not have met the billing physician depending upon the type of service you received. Although your contact may have been with a technologist, all services were either performed by or directly supervised by the doctor. Depending on the circumstances of the services rendered, results may have been provided either verbally or in writing to you or your physician shortly.

Your bill from the hospital may include a separate charge for use of its equipment, supplies and technical personnel.

If you have any questions concerning your bill please call our billing office and we will be happy to assist you.

PAYMENT ON ACCOUNT

1. Payment is due within 10 days from receipt of this statement.
2. You are responsible for payment on your account regardless of your insurance claim, settlement or disputed insurance claims or settlement of court cases, etc.
3. It is essential for you to notify our billing office of any address changes. Undeliverable statements may be turned over to our collection agencies immediately.
4. If you have any questions regarding this statement on your account, please call our billing office.

IF YOUR MEDICAL BILLS ARE COVERED BY ONE OF THE FOLLOWING, PLEASE COMPLETE THE STUB BELOW AND RETURN TO OUR BILLING OFFICE FOR PROCESSING: BLUE CROSS/BLUE SHIELD, MEDICARE, MEDICAL ASSISTANCE, WORKER'S COMPENSATION, HMO, PPO, TRICARE, ACTIVE DUTY MILITARY, INSURANCE OR OTHER BASIC HEALTH INSURANCE.

DETACH HERE AND RETURN THE BOTTOM STUB

AUTHORIZATION TO RELEASE INFORMATION: I HEREBY AUTHORIZE THE PHYSICIAN NAMED ON THIS STATEMENT TO RELEASE INFORMATION ACQUIRED IN THE COURSE OF MY EXAMINATION OR TREATMENT FOR THE PURPOSE OF OBTAINING INSURANCE BENEFITS. PROCEDURE AND DIAGNOSIS CODES, TAX IDS AND OTHER INFORMATION ON THIS STATEMENT ARE CONSISTENT WITH STANDARD DEFINITIONS, WHICH MAY DIFFER FROM THOSE REQUIRED BY SOME INSURANCE COMPANIES.

ASSIGNMENT: IN THE EVENT THAT PHYSICIAN ACCEPTS ASSIGNMENT, I HEREBY AUTHORIZE THE PAYMENT DIRECTLY TO THE PHYSICIANS OR GROUP PRACTICE NAMED ON THIS STATEMENT FOR THE BENEFITS OTHERWISE PAYABLE TO ME. I UNDERSTAND I AM FINANCIALLY RESPONSIBLE TO THE PHYSICIAN FOR THE CHARGES NOT COVERED BY THIS AUTHORIZATION. SPECIAL PROVISIONS PERTAINING TO MEDICARE ASSIGNMENT OR BENEFITS APPLY

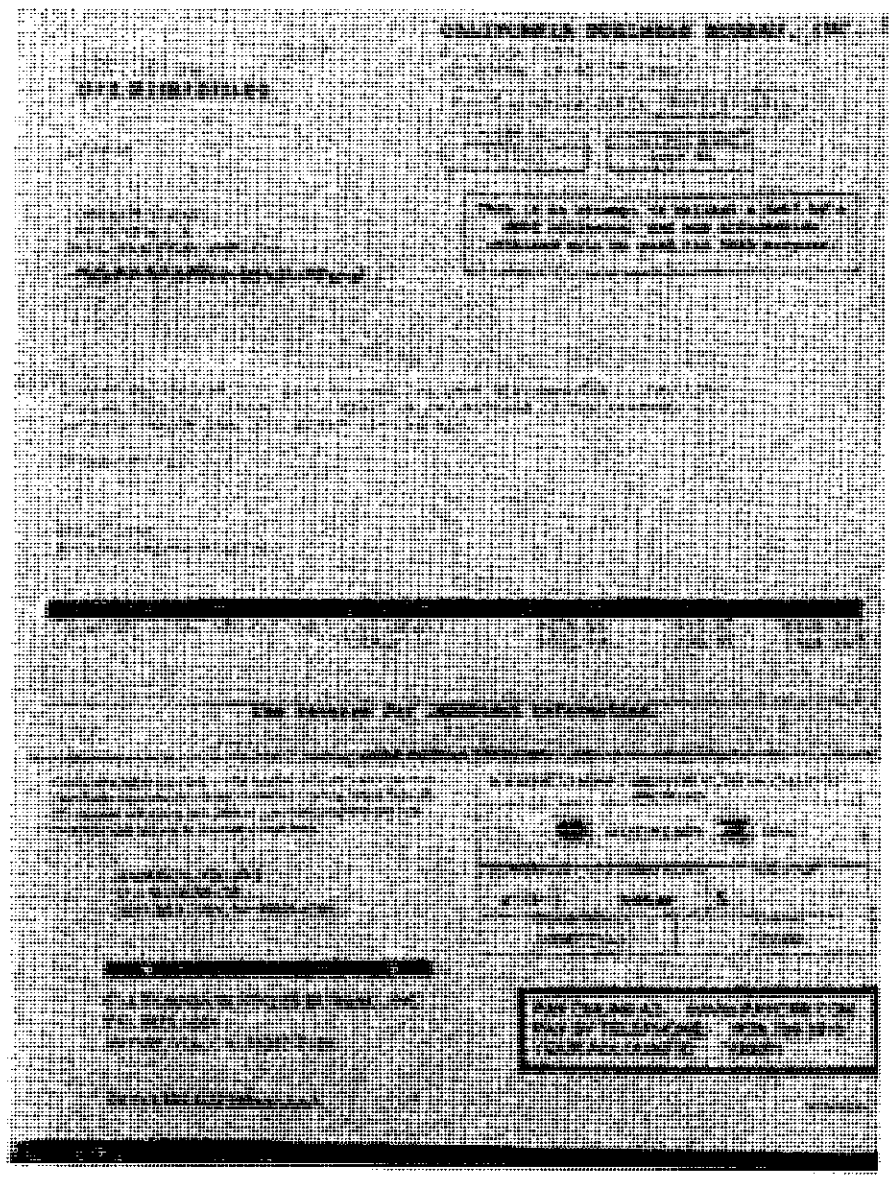
| | | | | | |
|---|---|---|---|---|---|
| UNIT: | POLICY OWNER: | | DATE | DIAGNOSIS CODE(S) | |
| PATIENT | | | | | |
| | | | | | |
| | | | | | |
|

# EXHIBIT “3”

**From:** "Kirk Harrison" <kharrison@harrisonresolution.com>
**Date:** April 24, 2015 at 4:07:12 PM PDT
**To:** "'Vivian Harrison'" <vivianlharrison@aol.com>
**Cc:** "Becky Palmer" <becky.palmer26@gmail.com>
**Subject: invoices for insurance reimbursement**
Vivian,

Did you pay anything at the time the services were rendered?
Kirk

**From: Vivian Harrison** [mailto:vivianlharrison@aol.com]
Sent: Monday, July 20, 2015 5:45 PM
To: Kirk Harrison
Subject: Unpaid insurance claim



**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Monday, July 20, 2015 5:51 PM
To: Becky Palmer
Subject: FW: Unpaid insurance claim

Becky, Please check on this asap and find out why it went to collections. Thanks. Kirk

**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Monday, July 20, 2015 6:18 PM
To: 'Vivian Harrison'
Subject: RE: Unpaid insurance claim

Vivian,

I cannot find any prior emails where you have provided me these bills. My recollection is that sometime in mid-April, you placed three invoices in my mailbox: (1) Western Medical Center Anaheim "Patient Statement" "SECOND REQUEST" dated March 10, 2015, in the amount of $635.69; (2) Centennial Emergency Phy Inc invoice, dated February 23, 2015, in the amount of $334.00, and; (3) Western Pathology Medical Assoc "FINAL NOTICE" dated, March 9, 2015, in the amount of $49.28.

I emailed these invoices to Becky Palmer on April 24, 2015. Upon receipt of these invoices, Becky questioned me as to whether you paid any money at the time services were rendered with respect to any of these invoices. On April 24, 2015, I sent you an email asking, "Did you pay anything at the time the services were rendered?" I don't believe you ever responded to this email.

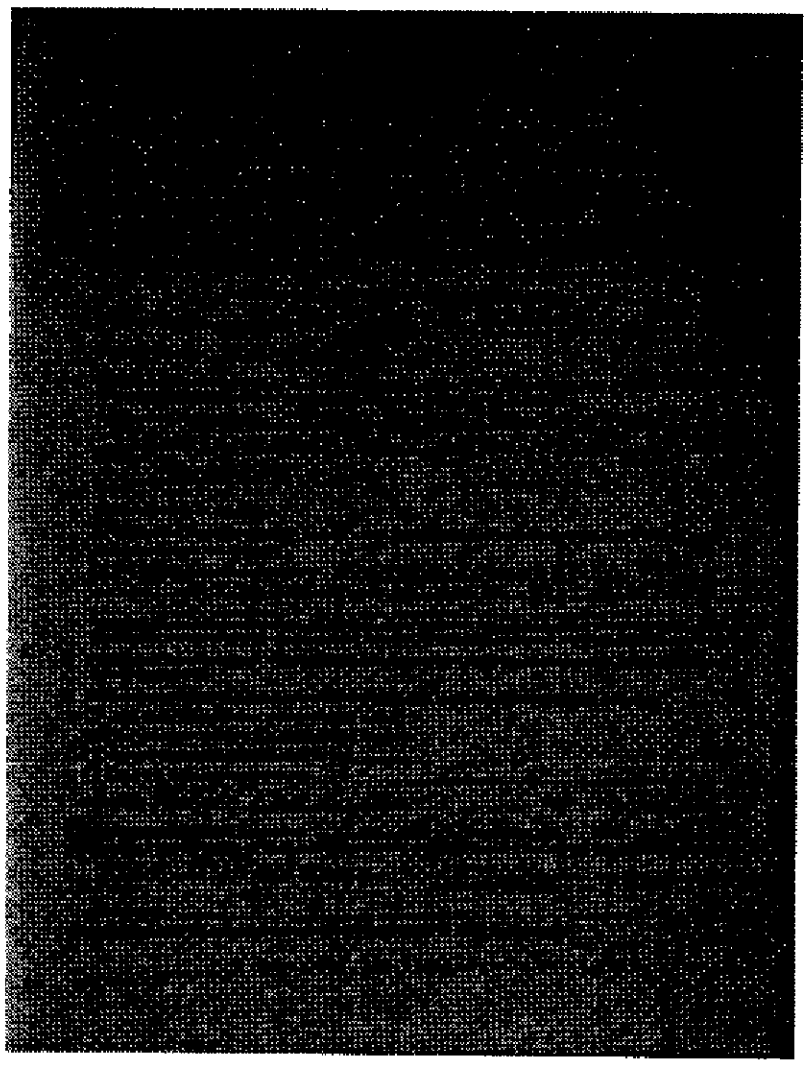
I just spoke to Becky and she confirmed she forwarded the invoices to Sierra Health promptly upon her receipt from me. Becky will contact Sierra Health to determine the status as soon as possible.

Kirk

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Monday, July 20, 2015 7:52 PM
**To:** Kirk Harrison
**Subject:** Fwd: invoices for insurance reimbursement

Sent from my iPhone

**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Monday, July 20, 2015 8:16 PM
To: Becky Palmer
Subject:



**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Monday, July 20, 2015 11:29 PM
To: 'Vivian Harrison'
Subject: RE: invoices for insurance reimbursement

Why did you send me the email I sent you on April 24, 2015?

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Tuesday, July 21, 2015 7:39 AM
**To:** Kirk Harrison
**Subject:** Re: invoices for insurance reimbursement

If not resolved today, I need s check by tomorrow morning for your 1/2 because I'll be paying bill in its entirety then so not to damage my credit any further than what has been done already. Once in collections very bad on credit.

Also, need rest of money for Brooke's eye dr reimbursement I requested from you months ago. It's been way past thirty days.

Sent from my iPhone

**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Tuesday, July 21, 2015 7:05 PM
To: 'Vivian Harrison'
Subject: RE: invoices for insurance reimbursement

You sat on those bills for months before providing to me to forward to the insurance company. Why would I be responsible for one-half?

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Tuesday, July 21, 2015 9:37 PM
**To:** Kirk Harrison
**Subject:** Re: invoices for insurance reimbursement

Given your response, In order to protect my credit from further damage, I have no alternative. I'm forced to to pay the emergency visit for Brooke. Please reimburse me for 1/2 of the amount within 30 days of my payment for her services which is today's date per court Order.

Sent from my iPhone

**From**: Kirk Harrison <kharrison@harrisonresolution.com>
**To:** 'Vivian Harrison' <vivianlharrison@aol.com>
Sent: Tue, Jul 21, 2015 11:01 pm
Subject: RE: invoices for insurance reimbursement
Vivian,

I truly feel bad about this situation. I don't want your credit hurt in any way. However, I don't know what else I could have done. You apparently received invoices month after month, which you ignored. Then, after getting final notices and second requests for payment in mid to late March, you waited until mid April to finally give them to me to forward to the insurance company. I forwarded them to Becky. When Becky informed me it was important to know whether you made partial payments at the time the services were rendered, I immediately sent you an email posing that question. You never responded.

Based upon everything I know to date, it appears the current problem was primarily caused by your non-response for several months. However, we still don't know the status with the insurance company. I don't know why the insurance company did not pay between the time when they finally received the invoices and now. As soon as I hear from Becky, I will let you know. I am hopeful this will be resolved in a reasonable amount of time. My best guess is the insurance company will pay whatever amount they are supposed to pay and you and I will split the balance.

If this were a situation where you and I did everything we were supposed to do when we were supposed to do it, but the insurance company dropped the ball, then I would gladly pay one-half the total amount. However, that does not appear to be the situation.

Kirk

**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Wednesday, July 22, 2015 7:48 AM
To: 'Vivian Harrison'
Subject: RE: invoices for insurance reimbursement

Vivian,

In connection with reimbursement for Brooke's and Rylee's eye examinations and glasses, please reference my email to you on May 4, 2015. I paid you in full accounting for my payment for Brooke's prior appointment and my anticipated payment for her scheduled appointment with Dr. Shin. Brooke subsequently decided to cancel her scheduled appointment with Dr. Shin. As a consequence of that cancellation, I owe you an additional $48.00. I am mailing you a check (check #1734) today in the amount of $48.00.

Kirk

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Wednesday, July 22, 2015 8:46 AM
**To:** kharrison@harrisonresolution.com
**Subject:** Re: invoices for insurance reimbursement

Kirk,

I called insurance company and as suspected, wouldn't give me information because I'm not on policy. Brooke just got off telephone authorizing me to speak with company. I spoke with two people, Channel and Tanisha. The insurance company CONFIRMED that NO claim has been submitted for that day-- ANAHEIM GLOBAL MEDICAL CENT for 635.69 the one that currently sent to collections. No surprise (that's why not been paid).

Now- Service was Jan 17. You new she was in emergency because I informed you of such. I didn't give you first bill received in Feb. that is true. I was waiting for all to come in to give you all at once, which I did. When I received all of them, I gave you most current invoice which was dated one month later March. I hardly think 30 days is sitting on them. I gave you them in March.
THAT WAS OVER 4 MONTHS AGO..... BILL HAS YET TO BE SUBMITTED

I paid 666.66 for Brookes medical care and you need to reimburse 1/2. If insurance company, once you decide to submit, reimburses you you need to then reimburse me 1/2 of that amount. Actually, under the circumstances, I believe at this point you should pay for the entire amount and then YOU deal with unsubmitted claims and once YOU resolve then I'll pay the apportioned amount. I'm not asking for that....

**From:** "Kirk Harrison" <kharrison@harrisonresolution.com>
**Date:** July 22, 2015 at 9:29:05 AM PDT
**To:** "Becky Palmer" <becky.palmer26@gmail.com>
**Subject: FW: invoices for insurance reimbursement**
Please check into this ASAP! Seems contrary to your communications with Sierra Health.

**From: Kirk Harrison** [mailto:kharrison@harrisonresolution.com]
Sent: Wednesday, July 22, 2015 9:39 AM
To: 'Vivian Harrison'
Cc: 'Becky Palmer'
Subject: RE: invoices for insurance reimbursement

Vivian,

I have forwarded your email to Becky. My understanding is that Becky forwarded the invoices to Sierra Health soon after I emailed them to her on April 24, 2015. This is, obviously, totally inconsistent with what Sierra Health told you this morning. I will get back to you as soon as I hear back from Becky.

Kirk

**From:** Becky Palmer [mailto:becky.palmer26@gmail.com]
**Sent:** Wednesday, July 22, 2015 9:39 AM
**To:** Gonzales, Stephanie
**Cc:** Kirk Harrison
**Subject:** January 2015 claim for Emma Harrison

Stephanie- the mother of Emma Harrison ( the member /parent is Kirk Harrison) said she spoke to Sierra health and that no claim was ever submitted. See email below. I emailed it to you in April and I need confirmation from you of the date you sent the claim to the claims department please. Thank you Becky / Premier Ins Group

Sent from my iPhone

**From: Gonzales, Stephanie** <stephanie.gonzales@uhc.com>
Date: Wed, Jul 22, 2015 at 9:56 AM
Subject: RE: January 2015 claim for Emma Harrison
To: Becky Palmer becky.palmer26@gmail.com
The claim was forwarded to Customer Service on 4/29. In the future I would recommend the member work directly with member services in regards to claims. Stephanie Gonzales / Sierra Health

**From:** Becky Palmer [mailto:becky.palmer26@gmail.com]
Sent: Wednesday, July 22, 2015 10:20 AM
To: Kirk Harrison; Vivian Harrison
Subject: January 2015 claim for Emma Harrison

Hello- Please read below. The claims for Emma were sent to the claims dept. at Sierra Health on 4/29/2015. The claims were most likely denied for timely filing (meaning the provider nor member did NOT file a claim within 90 days of the date of service). Which would explain why Vivian was told there is no claim in the system. My suggestion is for Vivian to write a letter (I will do a quick example below) to Sierra Health which I can forward, explaining the emergent situation at the time she took Emma for treatment in January 2015. I have found that when claims are denied, I have been successful in getting the claims reprocessed due to the emergent nature. Please, Vivian print out and write a letter explaining why Emma was taken (where/when) and for what symptoms so I can get claim reprocessed. If this seems unnecessary, all I can tell you is that this has worked for me in the past to get claims reprocessed.
Thank you, Becky/ Premier Insurance Group
EXAMPLE
TO: Sierra Health
FROM: Vivian Harrison -mother of Emma Harrison
RE: Treatment on 1/17/2015 & bills from Western Medical Center/Anaheim & Centennial Emergency Physicians
I took my daughter Emma Harrison on 1/17/2015 to _____ for symptoms of _____. (please explain what transpired). I am not covered on the Sierra Health plan, my ex-husband covered with my children. I wanted to explain the reason for the emergent nature of treatment on that date. Thank you, Signed and dated by VIVIAN

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
Sent: Wednesday, July 22, 2015 1:52 PM
To: Becky Palmer
Cc: Kirk Harrison
Subject: Re: January 2015 claim for Emma Harrison

Ms Palmer and Kirk,

Brooke and I just spoke to supervisor Kim C. At Sierra. She confirmed earlier conversations I had with member services department. The claim was never submitted. That's three different people now confirming same story. She said had one been submitted it would show on their system even if claim was denied for ANY reason. No claim was submitted!! She said an EOB would have been generated explaining benefits even if it was a denied claim. She said had it been a claim that was submitted untimely it would have been denied and an EOB would have been generated and would indicate reason for denial. Still would be in their system.

Also, she said 90 days late timely filing was untrue. She said they accept claims up to one year and they consider them timely.

Brooke and I Are working directly with them for reimbursement. According to them I don't need to write a letter. I just need to submit invoice and proof of payment and they'll issue Brooke a check for benefits. That simple, that's it.

Thanks for your time

Vivian

Sent from my iPhone

**From:** Becky Palmer [mailto:becky.palmer26@gmail.com]
**Sent:** Wednesday, July 22, 2015 2:31 PM
**To:** Vivian Harrison
**Cc:** Kirk Harrison
**Subject:** Re: January 2015 claim for Emma Harrison

Hi Vivian I am glad that you are communicating directly with Sierra to get the claim processed now. I only have access to submitting claims thru my Sierra rep as I am not allowed to submit claims directly with the claims dept. My source told me the bills were forwarded to the claims dept. I try to assist in the manner which has best accomplished getting the claims paid, which is either a letter from the insured or the insured person (or parent) can directly contact Sierra as you did. If you want me to follow up on any of the claims at a later date please let me know. Best wishes, Becky / Premier Ins Group
Sent from my iPhone

**From: Becky Palmer** [mailto:becky.palmer26@gmail.com]
Sent: Wednesday, July 22, 2015 4:07 PM
To: Kirk Harrison
Subject: Fwd: Timely filing of claim

Hi Kirk - please read below. There are some provider contracts that require the provider to bill within 90 days of treatment. I use that as a tight rule of thumb. I did not find out specifically on Emma's 1-17-2015 providers of their UHC contract . All is good, now hopefully Vivian will take an active role in the medical care of the children. Becky

Sent from my iPhone

Begin forwarded message:

**From:** "Watkin, Wendie" <Wendie.Watkin@uhc.com>
**Date:** July 22, 2015 at 3:57:48 PM PDT
**To:** 'Becky Palmer' <becky.palmer26@gmail.com>
**Subject: RE: Timely filing of claim**

Becky
It depends on the contract. If the provider has the 90 day filing limit and we have not received the claim within that time, claim will be denied and provider would have to write it off.

Wendie Watkin |Account Executive, Small Business
Phone 702.304.6927| Fax 702-880-0804| E-mail: wendie.watkin@uhc.com
Health Plan of Nevada| A UnitedHealthcare Company

Our Mission: To help people live healthier lives. Better Information, Better Decisions, Better Health
■ Integrity ■ Compassion ■ Relationships ■ Innovation ■ Performance
***PLEASE NOTE*** Due to the high volume of calls and emails, I will respond within two working days. Should you need immediate assistance, please contact Amy Cruden at 702-632-5643 or amy.cruden@uhc.com

-----Original Message-----
From: Becky Palmer [mailto:becky.palmer26@gmail.com]
Sent: Wednesday, July 22, 2015 3:27 PM
To: Watkin, Wendie
Subject: Timely filing of claim

Don't the providers need to bill in 90 days for timely filing? What is the contractual agreement for HMO and PPO providers now ? Thanks Becky / Premier Ins Group

Sent from my iPhone

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**From:** Becky Palmer [mailto:becky.palmer26@gmail.com]
Sent: Friday, July 24, 2015 11:16 AM
To: Kirk Harrison
Cc: Vivian Harrison
Subject: Re: January 2015 claim for Emma Harrison

Hi Kirk and Vivian- Please see below, I have added my response to your questions. Becky / Premier Insurance Group

On Thu, Jul 23, 2015 at 9:38 AM, Kirk Harrison <kharrison@harrisonresolution.com> wrote:
Becky,

Based upon all of the recent emails, there are some fairly significant questions for which we still need answers.

1. We have an email from Stephanie Gonzales to you wherein she represents the invoices were submitted to the Sierra Health Customer Service on April 29, 2015. However, we have Kim C, Channel and Tanisha telling Vivian that no claim was ever submitted to Sierra Health. There is an obvious inconsistency. Either you or I should contact Stephanie Gonzales and, perhaps, Kim C., who is a supervisor, to determine what happened here. I received a call from Stephanie Gonzales at Sierra Health on Wednesday afternoon July 22, 2015 regarding this issue. Stephanie said she had been very concerned about this so she researched on her end, and found that the claims (there was more than one claim) for Emma for 1/17/2015 and Stephanie had sent them to the claims dept. for processing when we received them in April 2015. She asked claims dept. and they advised her that the claims were received and one claim was processed June 5 and one claim was not processed. She asked why member services told Vivian the claims were never received. The claims dept. said that member services did not look at all claims for the date of 1/17/2015. Member services should have advised Vivian that multiple claims were received however only one claim was processed. Member services was going to call either Vivian or Kirk (she was not sure which parent would be called on the phone) and told that member services gave inaccurate information about the claims not being received. The claims were received however one claim was not processed so it did not show in their system.

2. So that we do not have problems like this in the future, I want to make sure I clearly understand what happened versus what should have happened. Please verify whether my current understanding is correct: These were emergency medical services provided to Brooke in California while she was with Vivian. Despite the fact it was in California, it seems fairly apparent that Vivian, as the parent present at the time the minor child received the medical services, should have provided the insurance information to the providers at the time and, if requested, paid co-pays at that time. CORRECT Further, if Vivian failed to provide the insurance information at the time the services were rendered, for whatever reason, when Vivian received the invoices, Vivian should have immediately contacted the providers and provided them the insurance information. CORRECT this would have addressed any billing issues from the provider for overcharges. If for whatever reason, Vivian chose not to give the providers the insurance information, Vivian should have submitted those invoices directly to Sierra Health. Just an FYI on submitting bills to the insurance company directly, if the provider did not bill the insurance company, submitting any invoices from providers would require that Vivian make sure the bills include procedure codes. Often times, the invoices do not reflect the services rendered and include procedure codes. When submitting bills, claims will only be processed if the bills include type of treatment and include procedure codes so the insurance company knows how to process and for what procedure/treatment to process the claim(s).

Despite the fact I pay for all of Brooke's and Rylee's health insurance, there does not seem to be a reason for Vivian to have involved me in the submittal process, other than, as a courtesy, Vivian should have emailed me a copy of whatever she submitted directly to Sierra Health. That is up to you guys as to if you want to be copied on any claims /bills being submitted to Sierra Health. The process should be streamline if the insurance ID card is presented to the provider who is providing the medical treatment, and if the provider is willing to bill the insured's insurance company. If the process works as it should, the end result would be an EOB - Explanation of Benefits which is sent by the insurance company AFTER the claim is processed, which then tells the primary insured (or parent) what the balance of charges are, after the insurance company has applied the patient's payment at time of service and after the insurance company has applied the PPO discount to the charges. The PPO discount varies based on the contractual arrangement the insurance company has with each provider (doctor, lab, diagnostic facility, surgical center, hospital, etc. ).

3. For all the years you were the agent for Harrison, Kemp & Jones, whenever there was a medical insurance problem, I would contact you and work with you to resolve the problem. Based upon Stephanie Gonzales email of July 22, 2015 to you, my understanding is that in the future, if there is a problem, whichever parent is present when the medical services are rendered to the minor child, should deal directly with Sierra Health member services. Is this correct? You can certainly contact the insurance company directly to discuss specific claims and dates of treatment at any time. When I as the broker am asked to assist, I have to get medical release form to get information on claims & I ask for letter(s) explaining what occurred/what symptoms were present so I can be an advocate on behalf of the insureds & I forward the letter to the insurance company explaning the emergent nature of the treatment needed. This is the only time I ask for letters is due to emergency treatment situations, to enable the claim to get processed more quickly on my end. When the insured or parent contacts the insurance company directly, you guys are able to discuss treatment that is needed, or that occurred directly with the insurance company whereas I cannot do so without some written backup legally enabling me to advocate for the claim(s) to be paid and why.

4. Vivian has represented that she has now paid the Western Medical Center, Anaheim claim in full. Assuming Sierra ultimately pays its portion of this claim, to whom will Sierra Health write the check? Would it be to Western Medical Center, Anaheim, who would in turn reimburse Vivian for the overpayment? Would it be to Vivian since she has now paid the amount in full? If the check is given to Vivian, would I be apprised of that payment? Would it be to me, since I pay for the policy? If Vivian paid in full any balance owed, without the insurance company processing the claim If the provider is a United HC PPO contracted provider, UHC will apply the PPO discounted rate to the treatment first, which will reduce the cost of the treatment. The provider then is bound by the insurance contract to reduce the cost of the treatment and the provider would need to reimburse Vivian if the provider was overpaid by Vivian. There are 2 other claims however and I do not know if Vivian has made any payment to the other 2 providers for their charges. There were 3 separate claims, one for Western Pathology $ 98.56, one for Western Medical Center $ 635.69 and one for Centennial Emergency Physicians for $334.00. If she was treated at an emergency room the charges all apply to the annual deductible. Once the PPO discounted rate is applied it should reduce the balance to close to 50% of the originally billed charges potentially for all 3 separate providers billing. Thank you, Becky / Premier Insurance Group

Thank you for all of your help in this matter.
Kirk

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Friday, July 24, 2015 2:54 PM
**To:** becky.palmer26@gmail.com
**Cc:** kharrison@harrisonresolution.com
**Subject:** Re: January 2015 claim for Emma Harrison

With all do respect,

This whole situation is incredulous and the emails are getting more and more bizarre. I naively was Hoping to Get some Help and Resolution. Instead, what I got a was a whole lot of more.....Talk about scurrying, posturing, pointing fingers, and skirting ANY responsibility. (textbook) It's one thing to try to escape any fault or blame but, quite another to point finger at me and infer its ALL my fault by saying I acted inappropriately and irresponsibly and therefore caused the problem myself.....

According to the emails I've read, I ACTED WRONGFULLY & ITS ALL MY FAULT BECAUSE:

1) I did not provide insurance info to hospital
2) I caused untimely filing and therefore thats why claim was denied
3) I should not have given Kirk invoices to submit to his insurance company on his daughters behalf (except as a courtesy-this one makes me smile :0)

Lets be serious....

To reiterate, 1) IM NOT THE POLICY HOLDER, OR ON POLICY ( I took the insured to the hospital for Medical Care)

2) IM NOT THE PATIENT OR THE MEMBER

1) BOTH of you are somehow under yet again another misconception. For some reason, you're under the impression that I didn't provide the hospital with insurance info. AGAIN you're BOTH wrong (see attachment of email sent to hospital) I emailed them the same electronic insurance information you provided me with while I was there on site in emergency room on the service date while Brooke was receiving medical attention per their instruction.

2) In addition I also informed Kirk, policy holder, Brooke was in the emergency room and for what.

3) Somehow this little detail just keeps getting lost::::::IM NOT ON POLICY- IM NOT POLICY HOLDER-I CANT GET ANY INFO FROM INSURANCE COMPANY- : SO I therefore provide Kirk, policy holder, with the hospital, dr, pathology invoices etc, when I received ALL OF THEM in late Mar showing they have not been paid (According to you guys I shouldn't have done this except for the heck of it)... (Again-Not even close to untimely) Also gave another copy two months ago

4) 4 MONTHS AFTER I GAVE KIRK( POLICY HOLDER) INVOICES I GET NOTICE IM IN COLLECTIONS & HAVE INCURRED MULTIPLE FEES NOT TO MENTION- (credit damage)

5) I REACH OUT YET AGAIN AND GET ABSOLUTELY NO HELP, SUPPORT OR ASSISTANCE FROM KIRK OR YOU (No calls on my behalf to repair credit....no help in paying bill, No attempt to resubmit invoices for payment no phone calls to hospital or collections agency--NADA, NOTHING--- (Heck not even important enough for the policy holder to telephone member services to ask them directly as to why his daughters claims haven't been paid) (If the invoices were submitted by you to the insurance company in april and not processed and paid some 3 months later-that alone should have been worth some effort in trying to help me resolve) I got Just finger pointing, criticism, wild accusations,a whole lot of misinformation and wild speculation all aimed at ME ....

At wits end I had no choice but to have my minor child call (UNFORGIVABLE) (twice no doubt) phone insurance company so I can get some HELP from someone to try and repair my credit and get her insurance claim paid.....-.They of course inform me claim never filed-(you say they now are taking the position they were filed but not processed and placed in system-In some unexplainable limbo so to speak)-Yet both of you criticize me....

I THEREFORE HAD TO PAY ENTIRE HOSPITAL BILL INCLUDING LATE & COLLECTION FEES ALL MYSELF (Kirk just can't quite understand why he should have to pay any part of his daughters medical bills-see email) & NOW HAVE DAMAGED CREDIT TO SHOW FOR IT...

Kirks the policy holder, you're the insurance expert,and the insurance company you sold policy for and Kirk holds (according to you chose not to process and put in system for no explainable reason whatsoever) ....AND you both have the audacity to point finger at me. Tell me I acted irresponsibly and inappropriately?..... UNBELIEVABLE!!!!

Thanks for ALL your support and assistance in resolving, You've all been a such a huge help.....

Sent from my iPhone

**From: becky.palmer26@gmail.com** [mailto:becky.palmer26@gmail.com]
Sent: Friday, July 24, 2015 3:02 PM
To: Vivian Harrison
Cc: Kirk Harrison
Subject: Re: January 2015 claim for Emma Harrison

Vivian- I was not aware you provided the insurance ID card to the hospital. I apologize as I did not read that in prior emails. In any case, my understanding from what I was told by the insurance company is that the claims were processed as provided by my Sierra rep and not billed by the hospital. It happens that quite often the hospital bills a couple of months after the date of service however Sierra had no record of receiving the claims from the hospital.
Best wishes, Becky / Premier Insurance Group

Sent from Surface

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Friday, July 24, 2015 4:08 PM
To: 'Vivian Harrison'; 'becky.palmer26@gmail.com'
Subject: RE: January 2015 claim for Emma Harrison

Vivian,

I have never hesitated to pay my children's medical bills. I pay numerous bills from providers without ever seeking payment from you. When you have presented me with medical bills, I have consistently paid one-half, in addition to paying 100% of their medical insurance. There are only two times I have not done so immediately. The first was in connection with Dr. Mallinger (there is a whole series of emails regarding that fiasco) and, as you are well aware, I ultimately paid one-half of that one. The second one is this incident, and if you read my previous emails, I fully intend and will pay one-half the balance. Despite these irrefutable facts, there is absolutely no doubt in my mind whatsoever that you

are lying to Brooke and telling her that her Dad doesn't want to pay her medical bills, i.e., " Kirk just can't quite understand why he should have to pay any part of his daughters medical bills."

During the divorce, you demanded that I reimburse you for about $10,000.00 in bills, which I had already paid! I paid your medical insurance for a year after we were divorced, and you continue to refuse to reimburse me. I paid your car insurance for about a year after we were divorced, and you continue to refuse to reimburse me. I continue to pay the association dues and real property taxes on the property we still own together, which you continue to refuse to reimburse me for your half. The problem is not with me and it is not with Becky Palmer.

When something goes wrong, your first reaction is to accuse someone else. If there has been a problem created for your credit rating, it must be my fault and, therefore, I must pay one-half immediately with no questions asked. If I don't pay one-half immediately, you go directly to our minor children and tell them, "Your Dad is refusing to pay your medical bills." If just one time, you would accept even partial responsibility when something goes wrong, you might not make everyone who has to deal with you so defensive. If you had just the slightest loyalty to fairness and consistency, you might be moved to reimburse me for your medical insurance and your car insurance. You might have a whole lot more credibility by doing that, than responding that you did not get sick and, therefore, did not use the medical insurance and did not get in an accident and, therefore, did not use the car insurance. Instead, you are playing a game of let's pretend all of this is not going on and, ironically, accusing me of bad faith and telling my kids I don't want to pay their medical bills.

The primary reason I am still pursuing the questions with Sierra Health is to learn the facts. It is important to know what you are talking about before you start pointing fingers and blaming people. Your position is clear -- you blame me, Becky Palmer, and Sierra Health for your credit issue, and you, of course, have no responsibility for this circumstance whatsoever. All I did was scan and forward the invoices you left in my mailbox to Becky to submit to Sierra Health. You claim you gave me prior invoices, when you did not. I know Becky emailed the invoices to Sierra Health the same day I emailed them to her, because I have seen the emails.

As I wrote previously, I feel bad about this situation -- regardless of who or what caused it -- and do not want your credit rating hurt in any way. I will continue to attempt to determine what happened with Sierra Health. If your primary concern is your credit rating, then I think this is the optimal course of action. If on the other hand, your primary goal is to bad mouth me to Brooke and Rylee, there is not a lot I can do about that.

Kirk

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Friday, July 24, 2015 7:08 PM
**To:** Kirk Harrison
**Cc:** <becky.palmer26@gmail.com>
**Subject:** Re: January 2015 claim for Emma Harrison

Are you speaking about after the divorce was final and you forgot to take me off your policys? I had gotten my own insurance policies and used them. It's Not that I didn't get sick and didn't use yours it's because I had my own. You're right Kirk, I'm so sorry I made a mistake and included wrongfully a verizon bill which I thought didn't get paid in my final accounting to the court. Oops! My bad! Kirk that was three years ago. You never reimbursed me for those 10k bills which the separation decree said should have been community but I let it go. Apparently you haven't.

I Blamed no one-it was the just the opposite. You said why should you pay not me!

More importantly, I haven't talked to the girls about medical bills. I had to have brooke call and that's unfortunate. I told her claim wasn't paid. I don't bring up negativity with them. Therefore we don't bring you up at all! Sorry :(

Sent from my iPhone

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Friday, July 24, 2015 10:17 PM
To: 'Vivian Harrison'
Subject: RE: January 2015 claim for Emma Harrison

Vivian,

Your version of events is contrary to the truth. I did not forget to take you off any policy. The divorce was very emotional and I thought I was doing the right thing by allowing you time to get your own separate policies, but assumed, obviously naively, you would reimburse me for paying for your insurance after the divorce. However, you were obviously in no hurry. You did not have car insurance from another company and you did not have medical insurance from another company. You still owe me $11,280.30 for the payment of your medical insurance and, by the way, you did use this insurance. You owe me $1,169.44 for the payment of your auto insurance.

I was never to reimburse you for anything that I haven't already reimbursed you. It wasn't just a Verizon bill. You demanded I pay for bills totaling $15,241.96, which I had already paid!

You still owe me the money for everything I referenced. I am curious as to what the reason could possibly be that you will not pay half of the money for real estate taxes and association fees for the Lido property, the Oak Grove parcel, and your share of the Measo Associates -- all of which I continue to pay, i.e., I just wrote a check for $150.00 for the current association fees for the Lido lot. As of May of 2014, I had paid $1,048.94 for the Lido property, $941.58 for the Oak Grove property, and $341.73 for the Measo Associates. All of these amounts have likely more than doubled by now.

I strongly believe you have told Brooke that her Dad does not want to pay her medical bills. Please, for just a moment, put the payment of medical bills in an accurate perspective. The co-pay on insurance is generally 80%. I pay 100% of their medical insurance. You and I split the 20%, however, as I mentioned, I pay many of the balances after insurance has paid without seeking payment from you. As a consequence, I am paying **over 90%** of Brooke's and Rylee's medical bills. Under these circumstances, it is truly outrageous that you are telling Brooke that I do not want to pay her medical bills.

Life is not supposed to be and does not have to be this adversarial.

If the reason the billing went to a collection agency is the fault of Sierra Health, we need to make that determination. If so, Sierra Health can write a letter to the collection agency and remove whatever was negatively caused. If the reason the billing went to a collection agency is the fault of an overzealous provider or providers, we need to make that determination for the same reason. This is especially true if you provided the insurance information to them at the time the services were rendered. Under such circumstances, they should have billed Sierra Health. At this point, however, I don't know who is responsible. I will continue to pursue this.

However, I do know that I forwarded the invoices as you asked me to do and Becky forwarded them as I asked her to do. My memo to Becky was not meant to be an attack on you. You had never written in any prior email that you had provided the insurance information to the providers at the time the services were rendered. Since the provider took the action it did, I assumed this not to be the case, as I wrote, "it seems fairly apparent." If you provided the insurance information at the time, then we need to determine why the provider sent the matter to collection.

Kirk

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Friday, July 24, 2015 10:53 PM
**To:** Kirk Harrison
**Subject:** Re: January 2015 claim for Emma Harrison

Wow..FYI....all future emails will be forwarded and reviewed by a third party. I will not read. They will sensor read review alert me if there is any immediate response needed by me or critical info regarding girls. Legal issues will be forwarded to Radford! FYI

Sent from my iPhone

**From: Becky Palmer** [mailto:becky.palmer26@gmail.com]
Sent: Saturday, July 25, 2015 6:57 AM
To: Kirk Harrison
Subject: emma

There is no reason for a child to have to call an insurance company about a claim. Ever. Hopefully with time and maybe when Emma has her own children, she will understand better the situation. Becky

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Tuesday, August 04, 2015 2:25 PM
To: 'Gemma.Garcia@ihhioc.com'
Cc: Becky Palmer
Subject: Medical Services rendered on January 17, 2015 -- Emma Brooke Harrison -- 100073210-0001

Gemma,

As we discussed, Emma Brooke Harrison is my daughter. Her birth date is June 26, 1999. She has medical insurance from Sierra Health and Life, a UnitedHealthcare Company. Her Member ID is 140194689-01. The website contact for Providers is: www.mySHLonline.com. The mailing address for Providers is: SHL Claims, P. O. Box 15645, Las Vegas, Nevada 89114-5645. Please let me know if there is anything else you need to process this claim.

You advised me that insurance information for Emma Brooke was not provided at the time the services were rendered, nor was insurance information provided at any subsequent time. Would you kindly confirm this via an email to me. Thank you.

Kirk Harrison

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Tuesday, August 04, 2015 2:30 PM
To: Becky Palmer
Subject: contact info

I just sent an email to the hospital, which was copied to you. The name of the hospital is Anaheim Global Medical Center, the telephone number is 800-270-0702, and the person I spoke with is Gemma Garcia.

**From:** Garcia, Gemma [mailto:Gemma.Garcia@IHHIOC.Com]
Sent: Thursday, August 06, 2015 2:52 PM
To: Kirk Harrison
Cc: Becky Palmer
Subject: RE: Medical Services rendered on January 17, 2015 -- Emma Brooke Harrison -- 100073210-0001

Good afternoon Mr. Harrison,

We have submitted the claim to Sierra Health. Also, insurance information was not provided at time services were rendered. We did not receive insurance information until I received your phone call.

Have a good day!

Gemma Garcia
Reconciliation Specialist
KPC Health - Central Business Office
Anaheim Global Medical Center
Chapman Global Medical Center
Orange County Global Medical Center
South Coast Global Medical Center
Phone: 714.953.3500 ext. 2056
Fax: 714.953.3429
Email: gemma.garcia@ihhioc.com

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Wednesday, August 12, 2015 3:28 PM
To: 'carried@emergencygroupsoffice.com'
Subject: Centennial Emergency Phy Inc. invoice in the amount of $334.00 for services rendered to Emma Brooke Harrison

Dear Carrie,

I telephoned the number listed on the above referenced invoice (855 736-2787) and spoke to you a few moments ago.

This shall again confirm that I am Emma Brooke Harrison's father and that her date of birth is June 26, 1999.

You checked your records and confirmed to me that no insurance information was provided at the time services were rendered on January 17, 2015. You also confirmed that the first time any insurance information was provided to your office was when Nora from Sierra Health telephoned your office on April 27, 2015. If you would kindly confirm this in a responsive email, it would be sincerely appreciated.

Thank you,

Kirk

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
Sent: Wednesday, August 12, 2015 3:45 PM
To: 'andrea.france@mckesson.com'
Subject: Western Pathology Medical Assoc. invoice of $98.56 for services rendered to Emma Brooke Harrison on January 17, 2015

Andi,

I just telephoned the telephone number on the above referenced invoice (800 236-6698) and spoke with you. I informed you that Emma Brooke Harrison is my daughter and her date of birth is June 26, 1999.

You informed me that no insurance information was provided at the time services were rendered on January 17, 2015 and this matter was therefore identified as a "self-pay." As a consequence of the self-pay status, invoices were sent to Vivian Harrison on January 30, 2015, February 2, 2015, and March 9, 2015. On July 22, 2015, your office was contacted by Norma of Sierra Health when you were provided insurance information for the first time and the status of the account was changed from self-pay to insurance. Norma of Sierra Health contacted your office again on August 6, 2015. I would sincerely appreciate it if you would kindly send me a return email confirming this.

Thank you,

Kirk

**From:** France, Andrea [mailto:Andrea.France@McKesson.com]
**Sent:** Wednesday, August 12, 2015 3:46 PM
**To:** Kirk Harrison
**Subject:** RE: Western Pathology Medical Assoc. invoice of $98.56 for services rendered to Emma Brooke Harrison on January 17, 2015

Kirk,

The below stated is true, to the best of my knowledge.

Please feel free to contact me if you need anything further.

Thanks,

Andrea "Andi" France
Operations
903.453.2500 ext.2675 telephone

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
**Sent:** Wednesday, August 12, 2015 3:45 PM
**To:** France, Andrea
**Subject:** Western Pathology Medical Assoc. invoice of $98.56 for services rendered to Emma Brooke Harrison on January 17, 2015

Andi,

I just telephoned the telephone number on the above referenced invoice (800 236-6698) and spoke with you. I informed you that Emma Brooke Harrison is my daughter and her date of birth is June 26, 1999.

You informed me that no insurance information was provided at the time services were rendered on January 17, 2015 and this matter was therefore identified as a "self-pay." As a consequence of the self-pay status, invoices were sent to Vivian Harrison on January 30, 2015, February 2, 2015, and March 9, 2015. On July 22, 2015, your office was contacted by Norma of Sierra Health when you were provided insurance information for the first time and the status of the account was changed from self-pay to insurance. Norma of Sierra Health contacted your office again on August 6, 2015. I would sincerely appreciate it if you would kindly send me a return email confirming this.

Thank you,

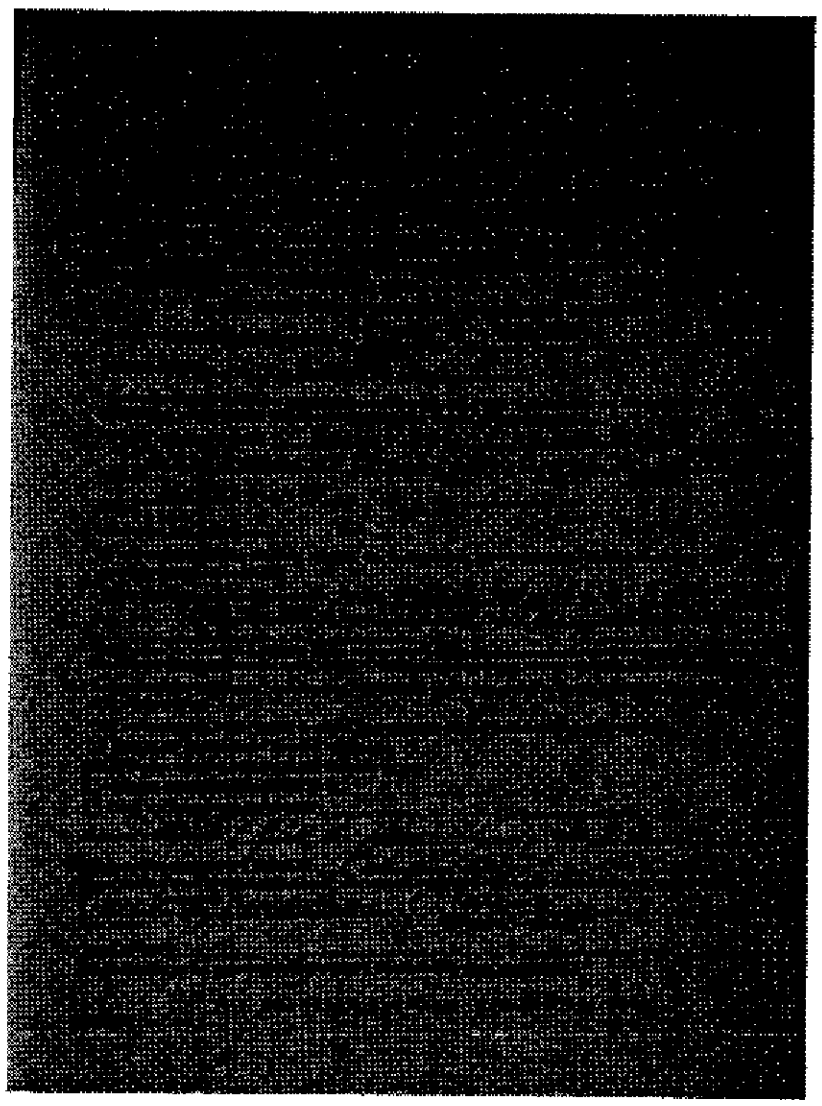
Kirk

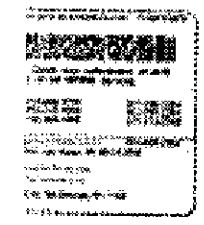
**From:** Becky Palmer [mailto:becky.palmer26@gmail.com]
**Sent:** Tuesday, August 18, 2015 7:10 AM
**To:** veronica.gomez@ihhioc.com
**Subject:** Emma Harrison 1 17 2015 hospital bill

Hi Veronica-
I am the insurance agent for Emma Harrison, a child in the hospital January 17 2015. Please find attached a medical release from the parent and policyholder. I am also sending you a copy of Emma Harrison Sierra Health medical ID card. Do you have record of receiving this insurance information back in January ? Please find attached copy of an email to you in January. The hospital billing department stated they had not received the insurance information and therefore the bill went into collections. Please advise. Thank you kindly, Becky

--
Click here to upload your file securely.

Thank you, Becky Palmer / BEP Consulting LLC dba Premier Insurance Group





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https://www.google.com/_/scs/apps-static/_/js/k=gmail.main.en.[illegible]

Verizon 12:33 PM 65%

Sent (25)

To: veronica.gomez@inhsoc.com Hide

From: Vivian Harrison

**Fwd: @YourService - Member ID Card**

January 17, 2015 at 2:53 PM

Sent from AOL Mobile Mail

-----Original Message-----
From: DoNotReply <[redacted]>
To: vivianharrison <[redacted]>
Sent: Thu, Jan 8, 2015 [redacted] AM
Subject: @YourService - Member ID Card

@YourService UnitedHealthcare

Health Plan of Nevada/ Sierra Health and Life member HARRISON, Emma has forwarded a copy of their health coverage ID card to you via email. Please see the attachments. The eligibility details are displayed below for your convenience.

**Medical - I14PS100**

| | |
|---|---|
| Benefit Group: | [illegible] |
| Benefit Code: | [illegible] |
| Benefit Description: | [illegible] |

1 of 1

[illegible]/2015 8:38 AM

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
**Sent:** Tuesday, August 18, 2015 10:29 AM
**To:** 'ceasar.guevara@ihhioc.com'
**Cc:** 'becky.palmer26@gmail.com'
**Subject:** FW: Emma Harrison 1 17 2015 hospital bill

Ceasar,

Pursuant to our conversation this morning, I am forwarding an email from my insurance agent, Becky Palmer, to Veronica Gomez this morning at 7:10 a.m. There are three separate attachments to this email: ( 1) the authorization from me to Becky Palmer; (2) a copy of the front and back of my daughter's insurance card, which Becky Palmer attached separately, and; (3) a copy of the email Vivian Harrison sent to Veronica Gomez on January 17, 2015. If you print this email, you will see there are three distinct separate attachments.

You were kind enough to confirm the following to me: There is a note in the file on January 17, 2015 providing: "Unable to verify eligibility with information provided by mother. No card provided. Waiting for email of card." There is also a second note in the file on January 17, 2015 providing: " No card available. Information provided not valid. Patient's mother will call insurance company for coverage."

You also confirmed that invoices were sent to Vivian Harrison on March 10, 2015 and on April 9, 2015. The matter was assigned to the collection agency on July 6, 2015. You advised that since the invoice has been paid in full there will be no adverse consequence to Vivian Harrison's credit rating. Your office is submitting the billing to Sierra Health and I have advised you that any sums received from Sierra Health should be paid to Vivian Harrison.

We still need answers to the following questions: (1) Did Veronica Gomez of your office receive the email from Vivian Harrison on January 17, 2015, which is the third attachment referenced above? (2) Assuming your office did receive this email, was there any information included in the email other than what is depicted in the third attachment? (3) Did your office make any effort to contact either Sierra Health or United Healthcare to obtain the necessary insurance billing information? (4) Do you have any record that the patient's mother contacted you after she called the insurance company for coverage?

Thank you for your assistance in this matter. It is sincerely appreciated.

Kirk

**From:** Carrie Dunlap [mailto:carried@emergencygroupsoffice.com]
**Sent:** Tuesday, August 18, 2015 2:44 PM
**To:** Kirk Harrison
**Subject:** RE: Centennial Emergency Phy Inc. invoice in the amount of $334.00 for services rendered to Emma Brooke Harrison

I can confirm this information I provided is correct.

> **From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
> **Sent:** Wednesday, August 12, 2015 3:28 PM
> **To:** Carrie Dunlap
> **Subject:** Centennial Emergency Phy Inc. invoice in the amount of $334.00 for services rendered to Emma Brooke Harrison
>
> Dear Carrie,
>
> I telephoned the number listed on the above referenced invoice (855 736-2787) and spoke to you a few moments ago.
>
> This shall again confirm that I am Emma Brooke Harrison's father and that her date of birth is June 26, 1999.
>
> You checked your records and confirmed to me that no insurance information was provided at the time services were rendered on January 17, 2015. You also confirmed that the first time any insurance information was provided to your office was when Nora from Sierra Health telephoned your office on April 27, 2015. If you would kindly confirm this in a responsive email, it would be sincerely appreciated.
>
> Thank you,
>
> Kirk

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK HARRISON
Plaintiff/Petitioner

v.

VIVIAN HARRISON
Defendant/Respondent

Case No. D-11-443611-D

Dept. Q

**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) _____.

**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: KIRK HARRISON Date 8/21/15

Signature of Party or Preparer _____

Electronically Filed
09/01/2015 04:27:23 PM

CLERK OF THE COURT

**EPMT**
EDWARD KAINEN, ESQ.
Nevada Bar No. 5029
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
PH: (702) 823-4900
FX: (702) 823-4488
Service@KainenLawGroup.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK HARRISON,

Plaintiff,

vs.

VIVIAN HARRISON,

Defendant.

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

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

RECEIVED
AUG 27 2015
FAMILY COURT
DEPARTMENT Q

**ORDER TO APPEAR AND SHOW CAUSE**

IT IS HEREBY ORDERED that said Defendant, VIVIAN HARRISON, shall appear on the 22nd day of SEPTEMBER, 2015, at the hour of 10:00 a.m., before the above-entitled Court, and show cause, if any she has, why she should not be held in contempt for: (1) severely disparaging Kirk to Brooke in violation of Section 2.11 of the Custody Order, filed July 11, 2012; (2) convincing Brooke that she is empowered to determine her own custody and enraging Brooke to exercise that false power in violation of Section 5 of the Custody Order, filed July 11, 2012, and; (3) convincing Brooke, yet again, that she is empowered to determine her own custody and enraging Brooke to exercise that false power in violation of this Court's ruling and order during the hearing on October 30, 2013.

IT IS FURTHER ORDERED that Defendant may be served with this Order to Appear and Show Cause through her attorney of record.

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

IT IS FURTHER ORDERED that Defendant must appear personally. Defendant also has the right to file affidavits on her behalf and may appear with an attorney, and has the right to present testimony on his behalf at the time of hearing.

IT IS FURTHER ORDERED that, if the Defendant fails to appear, he shall be deemed to have waived her right to the hearing and that in such case the Court may take such other and further action deemed necessary or appropriate.

DATED this 1st day of ~~August~~ September, 2015.

DISTRICT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
EDWARD KAINEN, ESQ.
Nevada Bar No. 5029
ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorneys for Plaintiff

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com



A.App. 1675

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SEP 15 2015

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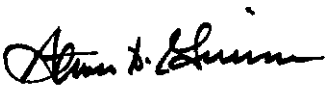

CLERK OF THE COURT

**OPP**

RADFORD J. SMITH, ESQ.
RADFORD J. SMITH, CHARTERED
Nevada State Bar No. 002791
2470 St. Rose Parkway, Suite 206
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T: (702) 990-6448
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GARY R. SILVERMAN, ESQ.
SILVERMAN, DECARIA, & KATTLEMAN
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6140 Plumas St. #200
Reno, NV 89519
T: (775) 322-3223
F: (775) 322-3649
Email: silverman@silverman-decaria.com
Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

D-11-443611-D

CASE NO.: ~~D-11-44361-D~~

DEPT.: Q

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 30, 2013**

**COUNTERMOTION FOR MODIFICATION OF CUSTODY OF MINOR CHILD, EMMA BROOKE HARRISON ("BROOKE")**

DATE OF HEARING: September 22, 2015
TIME OF HEARING: 10:00 a.m.

COME NOW, Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), through her attorney Radford J. Smith, Esq., of Radford J. Smith, Chartered, submits the following points and authorities to

support her Opposition identified above, and requests that the Court deny Plaintiff, KIRK ROSS HARRISON's ("Kirk") Motions. Further, Vivian requests this Court's order:

1. Temporarily modifying the timeshare of the parties daughter Emma Brooke Harrison ("Brooke"), born June 26, 1999 (age 16 years) by granting Vivian primary physical custody of Brooke subject to Kirk's specific visitation;

2. Permitting this Court to interview the parties' minor daughters Brooke and Rylee; and,

3. Finding adequate cause for hearing on the issue of custody of Brooke.

Dated this 14 day of September, 2015.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant*

## I.

## VIVIAN HAS NOT VIOLATED ANY PORTION OF THE PARENTING PLAN

Kirk has moved for an order directing Vivian to show cause why she should not be held in contempt for violation of the Stipulation and Order Resolving Parent/Child Issues ("Parenting Plan") filed on July 11, 2012. Kirk claims that Vivian has violated the visitation provisions of the parenting plan by discouraging Brooke from going to Kirk during Kirk's custodial time. Kirk's Motion focuses on his allegation that Vivian alienated Brooke by advising her that Kirk failed to pay his portion of an approximately $650 medical bill. Kirk's argument demonstrates a lack of understanding of the problems that have existed in his relationship with Brooke for years (*See, e.g.*, Defendant's Amended Opposition, and Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody

Issues, For an Interview of the Minor Children, and for Attorney's Fees and Sanctions, filed October 17, 2013).

**A. Vivian has not Disparaged Kirk to Brooke:**

Brooke, by word and action, has expressed her desire to live primarily with Vivian. Brooke has chosen to forgo time with Kirk; Vivian has not encouraged her to do so. Brooke has a driver's license, can facilitate her own contact with Kirk – she chooses not to. Vivian has never indicated to Brooke that Brooke is free to choose or alter her custody.

Vivian has not disparaged Kirk to Brooke. Kirk's citation to Vivian's efforts regarding the payment of a medical bill is both inaccurate and misleading. In that portion of Kirk's characterization of that event that is relevant to his motion, Vivian did not involve Brooke by having her speak to the insurance company about payment. Vivian wanted to remove Brooke from any part of the issue, but she had to have Brooke provide her authorization to speak to the insurance company representative because the insurance is in Brooke's name. All of that took about 45 seconds; that is the extent of Brooke's involvement in the issue. It was a small issue, and Brooke has never suggested to Vivian that she feels any resentment toward her father as a result of the issue. Kirk, as has been his custom in the past, has provided no evidence of any statement by Brooke supporting his contention; he asks the Court to rely on what he claims Brooke has said.

Vivian has not discouraged Kirk's relationship with Brooke, Kirk has by undermining the mechanism designed to repair it. At the time of the parties' divorce, Brooke stated she did not want to spend equal time in Kirk's care. At Vivian's prompting, the parties agreed on a "Teenage Discretion" provision that was designed to appease both Brooke and Rylee's fears that they would be precluded from spending special time with Vivian. Even though Brooke exercised the provision consistent with its

terms and intent[1], Kirk filed three separate post-trial motions to undermine Brooke's exercise of time under the provision, and has now filed an appeal designed to strike the provision to the Nevada Supreme Court. Upon information and belief, Kirk has repeatedly told Brooke that the provision would be overturned by a court (presumably the Nevada Supreme Court). Kirk's actions have had their intended effect – Brooke has been reluctant to, and has not, exercised teenage discretion since the filing of the appeal.

The parties also agreed upon the appointment of a Parenting Coordinator ("PC"). Kirk has undermined that process by post-trial motions complaining about the Court's order appointing the PC, and now with an appeal to the Nevada Supreme Court. Vivian engaged Margaret Pickard as PC and paid her a $2500 retainer. To this date, Kirk has not signed a retainer with Ms. Pickard.

The parties also set up confidential counseling with Dr. Jamal Ali for Brooke and Rylee so each would have a safe place to air their thoughts, worries, and concerns about their interaction with their, or between their, parents. Kirk undermined that process, in violation of the parenting plans prohibition of either parent engaging with the therapist[2] by demanding and engaging in a private meeting with Dr. Ali. He has also sent at least one email communication to Dr. Ali.

Kirk's allegations are particularly hollow in light of his continued disparagement of Vivian to the parties' daughters and anyone else who will listen to him.

**B. Vivian Cannot Force Brooke to Engage in Visitation with Kirk**

Brooke is 16 years old with a driver's license and a car. Vivian has advised her that she should comply with the visitation plan, but Brooke has, for the reasons expressed below and her own reasons, has not done so. Vivian has not advised Brooke that Brooke can ignore the Court's order. Vivian,

[1] In its order dated September 29, 2014, this Court stated: "Although the Court expressed its concern about the two day incident described in the papers, it does not view the "teenage discretion" provision as having been abused by Brooke."

[2] The Parenting Plan, at Section 3, reads: "Neither party shall directly contact the therapist in the absence of a written agreement to that effect."

however, cannot pick Brooke up and take her to Kirk's home, and physically forcing Brooke to engage in visitation would not be in Brooke's best interest.

**C. Brooke is a Mature and Intelligent 16 year old Whose Preference Regarding Visitation should be Determined by the Court:**

Brooke has stated to Vivian that Brooke believes that having a stable residence with Vivian will aid Brooke in her schoolwork. Vivian understands that Brooke has a difficult relationship with her father, but does not know the extent of the issues. Vivian has seen and heard, however, the severe emotional distress that Brooke has evidenced during and after visits with her father.

Brooke is now attending college courses. She has maintained a nearly "A" average in school, and consistently challenges herself academically. She has been student of the year at her school. She has remained involved in extracurricular activities, including advanced dance classes, voice and piano lessons. Under NRS 125.480, she is undeniably a child of sufficient age and maturity to form an intelligent preference to her custody.

**II.**

**KIRK HAS FAILED TO STATE A BASIS FOR ISSUANCE OF AN ORDER TO SHOW CAUSE**

An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. *Cunningham v. Eighth Judicial Dist. Court*, 102 Nev. 551, 560-561, 729 P.2d 1328, 1333 (1986). NRS 22.030(2) provides in relevant part: "When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt [. . .]"

**1. Kirk has not provided facts, he has argued conjecture, and thus has not stated a basis for a claim of contempt, or the requisite issuance of an Order to Show Cause**

Kirk claims Vivian is brainwashing Brooke, and thus causing her to violate the Parenting Plan. Kirk's support of his claim is pure conjecture. His motion is based upon his assumptions (which, of course, blame Vivian) regarding what is causing Brooke's behavior. At the core of his motion is his statement:

> Vivian wrote, "Kirk just can't quite understand why he should have to pay any part of his daughter's medical bills." Based on this statement and statements in other emails from Vivian that Brooke and she are working directly with the insurance company, ***it was very apparent to Kirk*** that Vivian had told Brooke that her Dad did not want to pay her medical bills and was unwilling to help to obtain reimbursement from the insurance company, and as a consequence, Brooke and Vivian had to talk to and work with the insurance company to obtain reimbursement."

*See* Kirk's Motion for an Order to Show Cause, page 9, Lines 3-7 (Emphasis supplied). As has been the case throughout the tortured litigation history of the case, Kirk's view is that if he believes something, it is a fact. The only fact that is demonstrated by his statements in his motion is that he has no understanding of Brooke or her motivations. Kirk refuses to accept that Kirk's poor relationship with Brooke is caused by his own behavior. Kirk's claim is that Brooke's entire view of Kirk is shaped by whether he paid his portion of a medical bill, and Vivian informing her of that is the entire basis for her actions. His claims are delusional – Brooke's issues with Kirk are longstanding, and his actions that have led to her actions are well documented in the motions before this Court. (*See*, e.g., Defendant's Amended Opposition, and Countermotions [etc.], filed October 17, 2013)

The only fact that Kirk alleges that is relevant to his present motion is his claim that Vivian directly involved Brooke in the issue of the bill payment in an effort to disparage Kirk.[3] The premise for that allegation is false – Brooke's only involvement was to speak to her insurance representative to authorize

---

[3] Vivian's account of the issue regarding the payment is contained in her Unsworn Declaration to rebut what are the allegations upon which Kirk bases his Motion, but Vivian submits the specifics of the billing issue have nothing to do with why Brooke desires to spend more time in Vivian's home.

Vivian to speak to the agent and investigate the claim. That was not an attempt to alienate, it was designed to take Brooke out of the middle of the issue.

Kirk has not stated any factual basis upon which this Court can find that Vivian's actions have been contemptuous of any order. The Court should deny Kirk's motion.

## III.

## VIVIAN SEEKS AN ORDER GRANTING HER PRIMARY PHYSICAL CUSTODY OF BROOKE

**1. Vivian should be granted primary physical custody of Brooke because it would be contrary to Brooke's best interest to physically force her, at 16 years old, to spend time with Kirk:**

Kirk wants Vivian to be jailed and or fined as a matter of addressing his relationship with Brooke. He apparently believes such an order would coerce Brooke to choose to spend time with him. His remedies are as flawed as his motion.

Kirk, or the Court, could force Brooke to some level of visitation by force. Vivian submits that such action would not be in her best interest. This is particularly true about Brooke, who is a bright, successful, and hard-working young lady. Vivian has ensured that Brooke got counseling to deal with her issues with Kirk through Dr. Ali, but Kirk has attempted to undermine that counseling. Vivian envisioned a PC process where the parties could discuss issues with a PC like Brooke's relationship with Kirk to help her work through issues, but instead Kirk has undermined that process. Their current communication is usually highlighted by Kirk demeaning Vivian.

The process to address Brooke's problems with Kirk should be therapeutic, not force.[4] The Court itself should interview Brooke to get to the bottom of her concerns. Because Vivian has not pried into Brooke's issues, she does not propose any particular action at that point. What she does understand,

---

[4] The Parenting Plan calls for a series of therapeutic measures to address either child's desire to change custody. *See* Parenting Plan, paragraph 6 at pages 6 and 7. Part of that provision was the recognition of the right of the parties to address the children's desire to modify custody with the Court.

however, is Brooke's relationship with Kirk is causing Brooke immense stress at a time where she is already placing significant stress on herself based upon her desire to excel at school, activities, and ultimately college.

NRS 125.510 provides:

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section, NRS 125C.100 to 125C.185, inclusive, and chapter 130 of NRS:
>
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
> (b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.
> The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

*See* also *Truax v. Truax*, 110 Nev. 437, 874 P.2d 10 (1994), *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).

In order to justify a change of custody, Vivian must establish that the change would be in the child's best interests. *Truax v. Truax*, 110 Nev. 437, 874 P.2d 10 (1994).

NRS 125.480 requires findings based on specified factors. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

> (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody;
>
> (b) Any nomination by a parent or a guardian for the child;
>
> (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent;
>
> (d) The level of conflict between the parents;
>
> (e) The ability of the parents to cooperate to meet the needs of the child;
>
> (f) The mental and physical health of the parents;.
>
> (g) The physical, developmental and emotional needs of the child;
>
> (h) The nature of the relationship of the child with each parent;

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child; and,

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

The factors under NRS125.480 that are applicable in this case are (a), (g), and (h). Each of those factors are analyzed in detail below.

**2. The Court should give great weight to Brooke's preference based upon her intelligence, maturity, and age in deciding to modify the current parenting plan**

Brooke, who is now 16 years old, has expressed a desire to be with Vivian. Vivian requests that the Court interview Brooke to allow her to express her desire to the Court. Brooke is a smart and gifted child. She is in Advance Placement classes in school, with an average Grade Point Average of 3.876. She has set high academic goals for herself and took college classes in the summer at CSN and UNLV and attained an "A" grade. Brooke is in the Nevada State High School's Dual Credit Program. The program allows her to attend college classes at CSN & UNLV her Junior and Senior Year of high school. At the end of the senior year, she will have an Associate's Degree along with her Nevada High School diploma. Brooke was awarded the "Student of the Year" prize and was elected the "Student of the Quarter" three times. She was one of the nominees of the Garret JH Principal's award. She has participated in the Intensive Dance Group. She auditioned for and received the lead role in the "Two Worlds" play. Brooke takes piano and voice lessons.

Brooke participated in a DECA, Inc. competition. As an integral part of the classroom curriculum, DECA's industry-validated competitive events are aligned with the National Curriculum Standards in the career clusters of marketing, business management and administration, finance, and hospitality and tourism. DECA's flagship evaluation process involves students in both a written component such as an exam or report and an interactive component with an industry professional

serving as a judge. DECA's competitive events directly contribute to every student being college and career ready when they graduate from high school. *See* DECA, Inc. website at http://www.deca.org/high-school-programs/ . Brooke was placed third in State Competition and went on to National level to compete.

Brooke has demonstrated that she is a responsible and mature person, and has made good decisions for herself. She has put herself in a position to succeed in college, and avoid some of its time and cost. It is unquestionable that she is the type of person that the legislature envisioned when directing the Court to weigh the preference of child of "sufficient age and maturity."

Vivian has a good, loving and stable relationship with Brooke. She continues to be an active parent who Brooke relies on for encouragement in her pursuits. Vivian has treated Brooke with more anonymity and trust as Brooke has gotten older. Brooke has indicated that she desires to spend more time with Vivian because she feels more comfortable at her home, and she does not have the same types of disputes and arguments with Vivian that she has with Kirk. Brooke has also stated that she no longer wanted to live "out of a suitcase"; she has found the travel back and forth to be disruptive, cumbersome and distracting. While she will advise the Court of any other reasons, these constitute a reasonable basis for her desire to spend more time in Vivian's care.

## IV.

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

Kirk's motion, on its face, is defective and could not be granted even if it were unopposed. He has not established *facts* that show that Vivian did anything justifying a request to hold her in contempt. The Court may grant attorney's fees under EDCR 7.60 when a party files a frivolous claim, or "unnecessarily multiplies the proceedings" in a case. Kirk's repeated filings and attacks on Vivian

evidence why Vivian requested a system of counseling and parenting coordination in the Parenting Plan. Kirk seemingly knows only how to address problems through litigation. He did not propose to Vivian counseling or any other therapeutic measure to address his problems with his relationships with both Brooke and Rylee. Instead, he just blamed her and sought to hold her in contempt.

Vivian thought she was agreeing to a mechanism by which she could resolve day-to-day issues without having to constantly answer numerous motions, address opinions from experts, and avoid the continued cost of being involved in a case with Kirk. Instead of promoting that mechanism, Kirk has filed yet another motion only supported by his uncorroborated allegations or opinions to justify why he believes his relationship with Brooke is poor. Instead of acknowledging that his behavior has anything to do with the children's, and especially Brooke's, desire to spend more and more time away from him, Kirk blames Vivian.

Vivian requests that the Court order Vivian to pay the attorney's fees and costs she has incurred, or will incur, in Opposing his motion.

Dated this 14 day of September, 2015

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Vivian Harrison*



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**UNSWORN DECLARATION OF VIVIAN HARRISON**

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

VIVIAN HARRISON, states as follows:

1. I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I am the Defendant in *Harrison v. Harrison*, case number D-11-44361-D, in the Eighth Judicial District Court, Clark County, Nevada. I submit this affidavit in support of my Opposition and Countermotions to which it is attached as an exhibit.

2. Since before our divorce, Brooke has indicated to me that she does not want to spend equal time with her father. I have stated for the Court my understanding of those reasons in previously filed documents. I note that Kirk has always avoided having Brooke or Rylee interviewed in this case, but that has not stopped him from placing words in their mouths or speculating about things he claims I have told them, or conversations he claims I've had with them. I have continuously requested that this Court interview them, the Parenting Coordinator speak with them, and I requested that the results of their interview with Dr. Paglini be published.

3. Brooke is now 16 years old. Brooke is a remarkable, funny, intelligent and insightful young person. She seems wise beyond her years. She is bluntly honest, and I would again request that the Court interview her to form its own impression of her intelligence and maturity, and hear her reasons for her not spending time with Kirk in the same amount as set forth in the Parenting Plan.

4. Kirk's claim that I have undermined Brooke's relationship with him is false. I do not speak poorly about Kirk to Brooke or Rylee. Brooke's views on her timeshare are, in fact, not entirely related to just her relationship with Kirk – she wants a timeshare the causes her less stress, not increases it. She is taking college courses for dual high school / college degree, and she understands the focus required to complete those courses successfully.



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5. I have not encouraged Brooke to not exercise contact with Kirk. I have encouraged her to follow the timeshare, but she is just too old for me to physically force her to go. Frankly, forcing her at this point would be, in my view, not in her best interest. It will only cause resentment and stress when she does not need more stress. Contrary to Kirk's contention, I have never told Brooke that she had the right to choose her visitation. I tried to set up mechanisms (counseling, a parenting coordinator) that would help Brooke improve her relationship with her father, but Kirk has undermined that process through numerous and repeated motions, and by filing appeals. He has further undermined that process by demanding a meeting with Brooke's counselor, Dr. Jamal Ali, and then meeting with him.

6. The premise for Kirk's motion is false. While the medical bill he complains of has nothing to do with Brooke's decision to not spend as much time with Kirk, I feel compelled to set the record straight.

7. On January 18, 2015, I had to take Brooke to the emergency room in California when she complained of bad stomach ache, neck ache, headache and fever. I gave the hospital the insurance information that Kirk provided. I also informed Kirk at that time that Brooke was in the emergency room and why.

8. In March, 2015, I received an invoice from the California hospital reflecting that the bill had not been paid. Because Kirk is the policy holder, I immediately provided a copy of the invoice to Kirk. Having done so, I believed Kirk would forward the invoice to the insurance company who would then take care of the claim.

9. In May 2015, (3 months thereafter), I received another notice that the invoice had not been paid. I forwarded to Kirk. In June 2015, (4 months thereafter,) I received a collection notice that the invoice had been submitted to a collections agency because of non-payment for six months. The notice also stated that my credit might be affected by non-payment. I sent Kirk the collection notice to

Kirk. When I received a response from Kirk and the insurance agent, Becky Palmer, it was accusatory and not helpful. Because I was extremely afraid of my credit being ruined, I contacted the insurance company myself to attempt to resolve the problem and prevent further damage to my credit. Since Kirk is the policy holder, the insurance company refused to speak to me. I tried to explain that I was the mother of the child who received the treatment and that I was the one who took her to the hospital and I was the one the hospital was billing, but they still refused to speak to me. The insurance company said I needed Brooke to give them permission since she was the patient to speak with me. When I did not get anywhere with the insurance company, I asked Brooke if she would give permission to insurance company to speak with me. The only thing that I told Brooke about why I was asking her to speak to the insurance company was that the insurance company hadn't paid the bill and the policy was under Kirk's name and I wasn't on the policy, so the insurance company needed the authorization of her as the patient to allow me to speak with them about her care. I placed the phone call, the agent received Brooke's authorization to speak with me and Brooke was on the phone less than 45 seconds and NEVER discussed any details about billing or her visit.

10. When I did not get all the help necessary from the insurance company during the first call, I called again. Brooke again verified with the agent that she was the patient and gave permission to talk to me, again about 45 seconds. I finally received all the pertinent information needed regarding the claim, including the fact that it had not been submitted for payment, and received instructions on how to pay the claim with the collections agency. I paid the claim with the collections agency including the late fee and collections fee. I was told that the reimbursements for bill would be sent directly to Kirk once proof of payment was sent to insurance company. When Kirk's emails began to be accusatory and off subject, I cut off communication with him.

11. I did not tell Brooke any of the other things Kirk has attributed to me saying to her, and Brooke, to my knowledge, was not upset at Kirk or the insurance company regarding any medical bill.

12. Brooke is not spending the time with Kirk that is outlined in the Order. I would ask that the Court interview Brooke, and the Court find that there is adequate cause for hearing on the issue of custody of Brooke. To the extent I have not addressed every fact in this declaration that is contained in the foregoing Opposition, I incorporate those facts as true and correct.

13. I declare under penalty of perjury that the foregoing is true and correct.

VIVIAN HARRISON
Dated: 9-14-15

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Radford J. Smith Chartered ("the Firm"). I am over the age of 18 and not a party to the within action.

I served the foregoing document described as: DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 30, 2013 AND COUNTERMOTION FOR MODIFICATION OF CUSTODY OF MINOR CHILD, EMMA BROOKE HARRISON ("BROOKE") on September 14, 2015, to all interested parties as follows to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

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

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F: (702) 823-4488
Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

0001

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition : ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 30, 2013 AND COUNTERMOTION FOR MODIFICATION OF CUSTODY OF MINOR CHILD, EMMA BROOKE HARRISON ("BROOKE")

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

***NOTICE:***

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this ___day of September, 2015

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer



A.App. 1692

**RPLY**
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Co-counsel for Plaintiff

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CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: 09/22/2015
Time of Hearing: 10:00 A.M.

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ____**

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER ON OCTOBER 30, 2013**
**and**
**OPPOSITION TO COUNTERMOTION FOR MODIFICATION OF CUSTODY OF MINOR CHILD, EMMA BROOKE HARRISON ("BROOKE")**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH NAIMI LAW GROUP, and hereby submits his Reply in support of Plaintiff's Motion for an Order to Show Cause why Defendant should not be held in contempt for knowingly and

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intentionally violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's order on October 30, 2013 and his Opposition to countermotion for modification of custody of minor child, Emma Brooke Harrison ("Brooke").

DATED this 18 day of September, 2015.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. ARGUMENT

#### A. Introduction

Two years ago, Vivian exhibited no respect for the order of this Court by manipulating Brooke and falsely empowering her to determine her own custody and live with Vivian full time. This Court sent an unequivocal message that this Court's order must be respected and obeyed. Despite these undeniable facts, just two years later, Vivian has again knowingly violated this Court's order of October 30, 2013, Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, as well as EDCR 5.03, and has again manipulated Brooke to remove her clothes from the home she shares with Rylee and Kirk, to live with Vivian full time.

Unless Vivian is sent a strong message that this Court's orders must be respected and not violated, then Vivian will continue to manipulate Brooke and Rylee.

#### B. Vivian Makes Critical Representations of Fact Which are Contrary to Known Facts

Remarkably, Vivian represents to the Court that , "Vivian has never indicated to Brooke that Brooke is free to choose or alter her custody." Opp., p. 3, l. 7-8. As noted in the moving papers, after spending three weeks with Vivian during the summer of 2013, on the very day of her return to Kirk, Brooke announced that "*since I am now 14 years old, I am independent, and can decide where I live.*" Then after spending another two weeks with Vivian, Brooke announced she was going to live full time

with Vivian stating, "Girls are supposed to live with their mommies." *See*, Motion, p. 5, l. 5-20. Common sense indicates that these thoughts did not originate with Brooke. Vivian continues to make material representations that are patently false.

Vivian now represents to the Court that the extent of Brooke's involvement with the insurance company took about 45 seconds. Opp., p. 3, l. 16-17. Vivian also represents to the Court that, "Vivian did not involve Brooke by having her speak to the insurance company about payment." These current representations to the Court are that Brooke's only involvement was to talk to the person at the insurance company long enough to get Vivian on the telephone. Directly contrary to this assertion to the Court, are the assertions in Vivian's own email to Becky Palmer and Kirk: "**Brooke and I just spoke to supervisor Kim C. At Sierra.**" And later, "**Brooke and I Are working directly with them for reimbursement.**" *See* Exhibit "3" to Motion, Vivian's email to Becky Palmer and Kirk on July 22, 2015 at 1:52 p.m. The truth is that in addition to the introductory call, both Brooke and Vivian later spoke to a supervisor and Brooke and Vivian "are working directly with them for reimbursement." Respectfully, speaking to the insurance company for reimbursement is "speak[ing] to the insurance company about payment." Vivian now describes the insurance issue as a "small issue." The Court's review of Vivian's scathing accusatory emails to Beck Palmer and Kirk readily confirm it was not a small issue to Vivian at the time. Vivian's embroilment of Brook in this issue is inexcusable and was used to foment Brooke's hatred of Kirk.

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### C. Contrary to Vivian's Allegations, Kirk Has Always Agreed To Execute An Agreement With the Parenting Coordinator that Is Consistent with this Court's Order Appointing Parenting Coordinator, filed October 29, 2013 and Vivian Met with Dr. Ali, with Vivian's Counsel's Full Knowledge and Approval, Before Kirk met with Dr. Ali.

Vivian's attempts, throughout this case, to make Kirk the "bad guy" are continued with respect to the parties' dealings with Margaret Pickard and in connection with communications with Dr. Ali.

Kirk has also paid Margaret Pickard a $2,500.00 retainer. On January 30, 2015, Ed Kainen sent a letter to Radford Smith which addressed the outstanding issues between the parties.[1] The following

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[1] A true and correct copy of this January 30, 2015 letter is attached hereto as Exhibit "1." Upon review of this letter, the Court will readily see that in addition to Vivian wilfully violating Section 2.11 and Section 5 of the Custody Order, although they pale in comparison in importance, Vivian has also

portion of that letter addressed the issue of the parenting coordinator:

> Appointment of Parenting Coordinator
>
> The position we have set forth in prior letters has never changed. Kirk is willing to execute an agreement with Margaret Pickard that is "strictly in accordance with the Court's Order." That is the position set forth in my letter to you, dated March 25, 2014, and it has never changed. Consistently, as noted in my letter to you, dated October 27, 2014, "Our objection to Ms. Pickard's proposed agreement is that it went beyond the scope of Judge Duckworth's Order."
>
> It should be noted that our position is totally consistent with the Findings and Orders Re: May 21, 2014 Hearing, filed September 29, 2014. That Order provides, "The authority of the Parenting Coordinator is defined in the Order Appointing Parenting Coordinator (Oct. 29, 2013), together with the limitations imposed therein. Neither party should be compelled to sign any agreements that exceed the Parenting Coordinator's authority as defined in the Order Appointing Parenting Coordinator. (Oct. 28, 2013)." The Court's statements during the hearing are also consistent with our position, "I would not expect any agreements to be signed that are – with the parenting coordinator that go beyond the function and role that I specifically identified in my order appointing parenting coordinator. Ms. Pickard's role and function must be narrowly limited to those issues. "

The primary issue between the parties was whether this Court's Order Appointing Parenting Coordinator, filed October 29, 2013, authorized the Parenting Coordinator to interview the minor children. Kirk's position was and continues to be the same position articulated by this Court, namely, "I don't need a child interview. **The less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process.**" *See* Hearing Transcript, 10.30.13, p. 32 &33 (emphasis added). Kirk's position is also consistent with EDCR 5.06, which provides that minor children should only be interviewed in "**exceptional cases.**" Margaret Pickard was amenable to not having the power to interview the children. However, Vivian insisted the children be interviewed by the parenting coordinator. The only language in this Court's Order upon which Vivian had to argue the parenting coordinator was authorized to interview the children is paragraph 4.7, which authorizes the parenting coordinator to interview "third parties." Kirk respectfully submits that if this Court intended for the parenting coordinator to embroil the minor children in the process, this Court would have identified this

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wilfully violated explicit provisions of the Divorce Decree, including, refusing to progress selling the Oak Grove Parcel (p. 25) and the Lido Parcel (p. 25); refusing to provide the photographs and videos of the children (p. 26-27), and; refusing to progress the reimbursement for community expenses (p. 28).

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as an "exceptional case" and specifically authorized such power. It did not. Paragraph 4.7 is telling on this point as it enumerates a number of third parties, but does not list the minor children:

> 4.7 The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others.

Kirk suspects that one of the reasons there has never been a response to Mr. Kainen's January 30, 2015 letter to Mr. Smith is that without the ability to embroil the minor children in the process with the parenting coordinator, Vivian no longer wanted a parenting coordinator.

In connection with communications with Dr. Ali, Vivian's counsel made the initial contact and arrangements with Dr. Ali. Thereafter, Vivian, with Vivian's counsel's full knowledge and approval, met with Dr. Ali. After Vivian had met with Dr. Ali, Kirk met with Dr. Ali. Both parties' communications with Dr. Ali are addressed in detail on pages 4 and 5 of Exhibit "1."

**D. All Authorities are in Agreement that Minor Children – Specifically Including Those From 14 to 18 Years of Age – Should Not Be Empowered To Make A Decision About What is in Their Best Interests**

The American Bar Association published the second edition of, "A Judge's Guide: Making Child-Centered Decisions in Custody Cases. Published in 2008, this guideline ("Judge's Guide") was a joint project of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law.[2] The Judge's Guide is a comprehensive overview of literature involving the judicial administration and review of child custody cases. A portion of the Judge's Guide is organized by the different developmental ages of children. One of the developmental periods in the Judge's Guide is adolescents between the ages of 14 and 18 (pages 73-78). The adolescent between 14 and 18 years of age may be allowed to express her views.[3] However, the Judge's Guide emphasizes the importance of the Court making it very clear to adolescents between the ages of 14 and 18, that it is not their

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[2] The Judge's Guide may be located at: http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf.

[3] When this Court made the custody determination in this case, there was a stipulation between the parties wherein they stipulated to joint physical custody. In addition, Brooke had just turned 13 and Rylee was 9. As this Court has noted, there is now a presumption that joint physical custody is in the best interests of Brooke and Rylee.

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responsibility to make a decision about what is in their best interests, such as determining their own custody:

> At the same time, however, you should make clear that **it is not their responsibility to make a decision about what is in their best interests**. Respect the adolescent's cognitive ability and independence, yet understand that it is a vulnerable time and the adolescent still needs significant protection. (Emphasis added).

In blatant violation of this Court's Order and EDCR 5.03, Vivian has convinced Brooke, once again, that it is Brooke's responsibility to make a decision about what is in her best interests and to determine her own custody. As noted in the moving papers, within the last 60 to 90 days, Brooke clearly indicated to Kirk her understanding that she did not have the ability to determine where she lived until she is 18 years old. Motion, p. 6, l. 14-18. That suddenly changed after Vivian's embroilment of Brooke in the medical bills/insurance company fiasco.

A parent is not acting in the best interests of her children when she actively interferes with her children's relationship with their father. A parent is not acting in the best interests of her children, when she manipulates an older sister to leave her younger sibling for one half the time, especially in light of the close relationship between Brooke and Rylee, and her father for what is, essentially, all of the time.

It is noteworthy that the Judge's Guideline does not distinguish between a child that is 14 and a child that is 16 or 17. It is also noteworthy, that adolescents between the ages of 14 and 18 are at a "vulnerable time and the adolescent still needs significant protection." It would be an untenable situation for this Court to condone Brooke's highly influenced decision and for Brooke, later in life, to deeply regret that decision and how it hurt her relationship with Rylee and Kirk.

Brooke has not suffered emotional stress while with Kirk. Kirk's relationship with Brooke is not plagued with "disputes and arguments." Although more distant, there are never raised voices or arguments when Brooke is with Kirk. There are pleasant conversations about school, life, goals, and dreams. However, these conversations never take place soon after returning from Vivian's house. The stress Brooke is suffering from is caused by Vivian's alienating tactics of cruel and emotional abuse of Brooke.

Vivian's assertions of Brooke's academic success are absolutely correct. Brooke does maintain nearly an "A" average, Brooke has been student of the year (Rylee was student of the year this past

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academic year), and has been taking advanced dance classes, voice and piano lessons. A fact that, certainly, has not been lost on the Court, is that Brooke (and Rylee) have done all of this while spending one-half of their time in the home they share with Kirk. Another fact that also is undoubtedly not lost on the Court is that from February 1, 2006, when Rylee had just turned 3 on January 24, 2003 and Brooke was 6 years old, until mid-September of 2011, when Rylee was 8 and Brooke was 12 years old, Kirk was, for all practical purposes, the only parent Brooke and Rylee had on a day to day basis. During this time period, Brooke and Rylee also exhibited superior academic performance and extensive involvement in extracurricular activities.

The case law is in accord that empowering minors to determine their own custody is a very bad idea.[4] In *Parker v. Parker*, 112 So. 2d 467 (Ala. 1959), the trial court gave a child the sole right to determine, for at least half of each month, which parent should have his custody. In reversing, the Alabama Supreme Court held:

> **There seems to be little need to catalogue the reasons why such a provision is inappropriate**. It is sufficient to say that it places on this young child the exclusive responsibility of determining, **from time to time**, which parent should have custody. **Thus, a decision as to what is best for the child is made by the child himself and not by the court**.

112 So. 2d at 471 (emphasis added).

Similarly, in *Moore v. Moore*, 331 So. 2d. 742 (Ala. App. 1976), the trial court ordered visitation of the father only if expressly desired by the children. The appellate court found this to be an abuse of discretion and serious error, ruling:

> Certainly there was no reason in the evidence to require that the perpetuation of the relationship of parent and child depend upon the 'expressed desire' of the children. The responsibility for the cultivation of that relationship should rightfully be upon the father, and the mother, not upon the child. **To so place it is to probably destroy it, not protect it.**

331 So. 2d. at 744 (emphasis added).

The *Moore* court could see that to place the responsibility for the perpetuation of the parent/child relationship upon the child would probably destroy that relationship. Similarly, in light of Vivian's

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[4] The Alabama courts appear to be the only courts in the country that have addressed the issue of empowering a minor to determine their own custody.

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obvious manipulation, if Brooke is empowered to determine her own custody, her relationship with her own father will likely be destroyed. Similarly, in *H.H.J. v. K.T.J*, 114 So.3d 36 (Ala. App. 2012), the appellate court found that allowing a 16 year old to determine the father's visitation was not in the 16 year old child's best interest and reversed the trial court's judgment that allowed the 16 year old child to determine visitation. 114 So. 3d at 44. In *Milligan v. Milligan*, 149 So.3d 623 (Ala. App. 2014) the appellate court found the trial court exceeded its discretion when it allowed teenagers (18 and 14 years old) to determine whether they would visit her father.

Vivian's position that Brooke is 16, wants to live with Vivian full time, has a car, and this Court and her parents are powerless to do anything about it is nonsense. Vivian, like any custodial parent, has an affirmative obligation to see the minor children comply with the custody schedule. Brooke took an English class during the first summer semester at CSN. Kirk drove Brooke to this class. Kirk then drove to Henderson and picked her up when the class was over. If this Court again orders that its Orders must be obeyed and there is a presumption now that joint physical custody is in the children's best interests, and adds there will be significant adverse consequences to Vivian if the Court's orders are not obeyed, Brooke will do what Vivian tells her to do. Vivian also has the power to take back the keys to the car that Vivian gave to her.

**E. NRS 125.480(4)(a) Was Never Intended to Empower A Child to Decide What Is In Their Best Interests by Deciding to Permanently Modify the Regular Custody Schedule**

Under NRS 125.480(4)(a), the "wishes of the child" is merely one of the factors **the Court considers** in determining custody. As previously noted, children who are 14, 15, 16 or 17 years old, are at "a vulnerable time and the adolescent still needs significant protection." Vivian's position that at 14, 15, 16 or 17 years of age, Brooke is empowered with the responsibility to determine what is in her best interests and to a significant extent, what is in Rylee's best interests, is not only contrary to all authority, but common sense as well. This position indicates a total absence of empathy and compassion for the children.

The meaning of Section 6 of the Stipulation and Order Resolving Parent/Child Issues, filed July11, 2012, and whether it should be voided in its entirety is currently the subject of a pending appeal. Therefore, it is respectfully submitted it would be inappropriate for this Court to rule on the meaning

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of Section 6. *Mack–Manley v. Manley*, 138 P.3d 525 (Nev. 2006) It should be noted, however, that Section 6 provides, "Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations." Section 6 does not negate the presumption that joint physical custody is now in the children's best interests. Tom Standish negotiated the terms of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012. *See* Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision, filed 11.18.13, Exh. 4, ¶3. Mr. Standish's testimony is unequivocal regarding Section 6 that "it was never intended that a child could assert control over their own timeshare merely because they have reached the age of 14 years." *Id.* at ¶6.

Vivian's position is that the parties agreed that once Brooke and Rylee each turned 14, 15, 16 or 17 years old, that they could determine what is in their best interests and permanently modify the regular custody schedule. We know this is Vivian's position, because after being with Vivian for several weeks, Brooke said that she was empowered to decide where she lives after she turned 14. Common sense reveals that Brooke did not pull that thought out of thin air. Since Brooke acknowledged to Kirk within the last few months that she can not decide where she lives until she is 18, it is obvious that Vivian has again convinced Brooke she is empowered to decide where she lives. First, that is not what the parties agreed. Second, if that was Vivian's desire, then why did she not propose language that expressly provided, "Once a child reaches the age of 14, 15, 16 or 17, the child has the responsibility to determine what is in her best interests and may permanently modify the regular custody schedule. Once the child makes such a determination, the parents, attorneys, and the Court will rubber stamp the child's decision." However, Vivian chose not to propose such a provision. More importantly, however, such a provision, if it had been proposed, would clearly be contrary to the best interests of the children because they are still at "a vulnerable time and the adolescent still needs significant protection."

**F. Kirk Wants To Address Brooke's Concerns And Eliminate the Multiple Custody Exchanges During the Middle of the School Week.**

Brooke has purportedly stated that she no longer wants to live "out of a suitcase" and that she "has found the travel back and forth to be disruptive, cumbersome and distracting." Opp. p. 10, l. 16-18. Brooke has told Kirk that it is stressful to be switching houses multiple times during the school week because of her school and dance schedule. This does not justify ignoring the presumption that joint

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physical custody is now in the best interests of the children. The concerns expressed by Brooke all arise from the multiple custody exchanges each school week between Monday and Friday. This occurs as a consequence of the 2-2-5 joint physical custody schedule to which the parties agreed. Kirk wants to address Brooke's legitimate concerns and is amenable to changing the joint physical custody schedule to an alternate week joint physical custody schedule (7-7) with the once a week custody transfer being made at a time that does not interfere with Brooke's school and dance schedule.

Children sometimes do not adapt as well to a visitation schedule with frequent transitions between households. *See* JANET R. JOHNSTON ET AL., IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT (Free Press 1999), Chapter 7.

**G. Vivian Has Falsely Portrayed Herself to Brooke as an Innocent Victim in the Divorce and Wrongfully Empowered Brooke With the Responsibility to Come to Vivian's Rescue and Save Her From Kirk Who Is Being Falsely Portrayed As Being Solely Responsible for the Break Up of the Family.**

Vivian has told Brooke that Kirk is solely responsible for the divorce and the break up of the family, and the only reason for the divorce is that Kirk did not like Vivian caring for the street children in India.[5] Motion to Modify Custody Order, filed 10.1.13, p. 5, l. 21-23. In front of Brooke, Vivian told Kirk she was filing for divorce. When Kirk responded that Vivian should do what she thinks she should do, Vivian turned to Brooke and said, "You heard him, he gave me permission to file for divorce. **It is his fault**." Motion for Custody, filed 9.14.11, Exh. 1, ¶118 (emphasis added). Vivian has falsely portrayed herself to Brooke as an innocent victim of Kirk's actions and continues to do so, as amply demonstrated in connection with the recent medical billing issue, which, ironically, was primarily caused by Vivian.

As evidenced by what occurred when Brooke turned 14 years old and more recently when Brooke turned 16 years old, Vivian has wrongfully empowered Brooke with the responsibility to make

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[5] Brooke does not know the truth. Brooke does not know of Vivian's prolonged prescription drug abuse (confirmed by Vivian's own medical records), drug induced delusional pursuit of young men in Ireland, violence upon Brooke's older siblings, rejection of and emotional and physical abandonment of Brooke and Rylee for years, etc. Kirk has never told Brooke about the reasons for the divorce. Kirk has consistently told Brooke and Rylee that they should always respect their mother. Contrary to Vivian's allegations, Kirk does not demean Vivian to Brooke. Kirk has also advised each of the three adult children, who do know the history, not to discuss the reasons for the divorce with Brooke and Rylee.

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decisions she clearly should not be empowered to make. Empowered with this false decision making responsibility, Vivian has motivated Brooke to align herself with Vivian and against Kirk and to "save" Vivian, who, allegedly, continues to be victimized by Kirk's alleged actions or lack of action. This is too much responsibility and stress to place on a child, who just turned 16 years old. As noted in the Judge's Guide, *supra*, for the 14 to 18 year old, "it is a vulnerable time and the adolescent still needs significant protection."

Vivian has created an environment where Brooke feels she is disloyal to Vivian, if she is loyal to Kirk. There is no question that Vivian's desire to continue the battle, as recently demonstrated by her conduct regarding the medical billing, is unquestionably contrary to the best interests of the children. Vivian must be made to understand that her continuing the battle or winning the battle means that Brooke and Rylee lose now and for the rest of their lives.

When Brooke first returns to Kirk's custody, she is distant. After a day or two, Brooke usually warms up and their relationship is very pleasant. There are times, including recently, that Brooke and Kirk have very candid positive personal conversations when Brooke discusses what is important to her, her goals, etc. However, Kirk has observed a trend in their relationship where Brooke is becoming more distant. Although for many years, Kirk would take Brooke and Rylee to see a movie during the weekends, Brooke, most of the time, now refuses to go to the movies. Several times Brooke has responded that she cannot go to a movie because she promised Vivian that she would go with her.

The Court may recall that Kirk would take Brooke and Rylee to Lagoon each summer. The day after Brooke advised Kirk that she wanted to live with Vivian full time in 2013, Kirk drove Brooke and Rylee to Layton, Utah for their annual Lagoon trip. During dinner that night they talked about going to Lagoon the next morning and both Brooke and Rylee were excited. However, Brooke exchanged texts with Vivian that night, and the next morning Brooke refused to go to Lagoon. Rylee was upset and wanted to go. The three of them stayed in the hotel room that day. That evening Kirk told Brooke that he was taking Rylee to Lagoon the next day and he hoped Brooke wanted to go, but, if not, she could stay in the hotel room while Rylee and Kirk were at Lagoon. Brooke decided to go and they all had a great time at Lagoon and the rest of the trip. Reply re Motion to Modify Custody Order, filed 10.23.13, p. 25-28.

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Unfortunately, since that trip, Brooke has developed a distorted view and has complained to Kirk that he plans trips without first talking to her. Since that time Kirk has attempted to get Brooke's input for any trip and has repeatedly told Brooke that he is happy for Brooke to choose where she wants to go and Kirk will take she and Rylee. There came a time when Whitney and her husband, Sean, needed to move form Phoenix to Austin, Texas, and had little time to load their belongings. Whitney telephoned Kirk and asked if Kirk, Brooke and Rylee could come help. Kirk explained the situation to Brooke and Rylee. Kirk, Brooke and Rylee drove to Phoenix on January 1, 2015 and helped them move. They all pitched in and went to dinner at several places of Brooke's choosing, based upon Whitney's recommendations. During the drive home on January 3, 2015, Brooke acknowledged she was glad they helped Whitney and Sean, and that she also had a good time. However, later, Brooke pointed to this trip in her discussions with Kirk, as Kirk making trip plans without adequately consulting Brooke. Because of Brooke's summer class, Kirk, Brooke and Rylee had limited days for vacation time together this summer. However, when Kirk tried to plan a trip with Brooke and Rylee, Brooke said she would rather just stay home. Kirk, Brooke, Rylee, Tahnee, Whitney, and Sean did make the annual trip to Tuacahn this summer to see the Disney plays. Kirk, Brooke and Rylee also went to Newport Beach for a few days.

When Kirk obtains custody now, Brooke goes into her bedroom, shuts the door, and spends time using her telephone. As previously noted, after a day or two she warms up to Kirk and they have nice conversations. There are no arguments. Kirk has seen schedules that Vivian has prepared for Brooke and Rylee. On those schedules, Vivian is referred to as "Mom." On the other hand, Kirk is referred to as "Kirk" rather than "Dad." Vivian has convinced Brooke and Rylee that Kirk has no authority over them. Vivian has convinced Brooke and Rylee that they have the power to decide if and when they want to do anything with Kirk. On the day that custody is transferred, Kirk drives Brooke and Rylee to Vivian's house to pick up their things. Vivian continues to keep Brooke and Rylee (recently, just Rylee) in the house for 20 to 30 minutes, sometimes more, talking with them, while Kirk waits in a hot car. There have been a couple of times when Brooke has been hypercritical of Kirk concerning very trivial issues. Brooke has simply expressed an opinion. Again, there are no arguments or harsh words. Kirk is not aware of anything he has done to cause this behavior.

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**1. Vivian is Motivated by Revenge**

Kirk strongly believes that Vivian is motivated to separate Brooke and Rylee from Kirk because of her need to seek revenge against Kirk and based upon her ill-founded belief that she is entitled to possession and ownership of the girls. Vivian is vindictive and cannot separate her own need for revenge from Brooke's and Rylee's needs and rights to be with Kirk. The following excerpt accurately describes what has occurred in this family:

> Often, the underlying motivation for programming/brainwashing is revenge against the other parent. Revenge is one of the most common and powerful reasons for these behaviors, and it often emanates from a sense of rejection.
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> * * * *
>
> These parents are often unable to separate their own retaliatory needs from the child's needs and rights to be with the other (target) parent. Avenging their anguish through punishment, they may attempt to exclude the target parent from the child's life.
>
> Blind to the child's need to ensure continuity and closeness with the other parent, they can only irritate, aggravate, and litigate, sometimes successfully incorporating the child into their world of hostility. Finally, the vengeful parent feels that he or she has assumed some power over the target parent.
>
> In this scheme of revenge, the ultimate power play is accomplished when the child has been inducted as a cohort against the other parent. Usually this is not an overnight process, but an insidious consummation of programming and brainwashing.
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> * * * *
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> **These children often start a process of faultfinding with the target parent.**
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> * * * *
>
> **When a parent behaves appropriately and as a good person in the child's life but is labeled "bad" by the child, the programmer has succeeded.**

STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 66-68[6] (emphasis added).

Vivian's hatred has a damaging impact upon Brooke and Rylee. "Creating distance is also a motivating factor in programming and brainwashing for those who are consumed with hatred and rage. As long as the emotions persist unresolved, the brainwashing parent will attempt to relegate the target parent to nonentity status. . . . Excluding the target parent is a personal coping mechanism that has damaging impact on children. This is understandable, but self-absorbed behavior." *Id.* at 80. Vivian wants Brooke and Rylee to treat Kirk as an outsider, who is not a member of the family; "Kirk," not "Dad."

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[6] The findings contained in Children Held Hostage (2nd Ed. 2013) are the result of a thirty-four year research study commissioned by the Family Law Section of the American Bar Association covering approximately 1,000 cases. *Id.* at 409. Children Held Hostage is considered the authoritative work on parental alienation.

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Vivian's hatred of Kirk and her desire to seek revenge against Kirk is evidenced by her continuing willful violations of this Court's orders. The parties agreed and this Court ordered that Vivian would provide, among other things, copies of all the videos she has of Brooke and Rylee. Kirk knows of the existence of the videos – he was present when most of the videos were taken. During negotiations between the parties and in correspondence from Vivian's counsel, the existence of the videos have been acknowledged. The correspondence between counsel specifically discussed the videos and how they would be duplicated. However, in an email on January 12, 2015, Vivian, through her counsel, inconceivably, took the position she does not have the videos. Despite this Court's explicit order that Vivian is to produce for copying "all of the videos of Brooke and Rylee, which are in Vivian's possession" Vivian does not want Kirk to have copies of the videos of Brooke and Rylee, and is willing to lie and knowingly violate this Court's order to prevent him from having them. *See* Exh. "1" attached hereto, p. 1-3; Decree of Divorce, filed 10.31.13, p. 26, l. 23-28; p. 27, l. 1-8.

Vivian's refusal to reimburse Kirk for the payment of her medical insurance and car insurance after the December 3, 2012 hearing is also revealing of Vivian's hatred of Kirk and willingness to lie to harm Kirk. During the December 3, 2012 hearing, Vivian's counsel specifically asked Kirk to keep Vivian's coverage on his group medical policy for as long as possible and Vivian would reimburse Kirk for the cost attributable to her, "we want that coverage to remain as long as possible so, to the extent that it is possible, Vivian will pay the cost of that policy, but it will last as long as it can." Hearing Transcript, 12.3.12, p. 38, l. 9-21. Vivian took over a year to get her own medical insurance and refuses to reimburse Kirk the $11,280.30 that he paid for her own medical coverage. *See* Exh. "3" to Motion, Kirk's email on 7.24.15 at 10:17 p.m. Vivian refuses to reimburse Kirk and now falsely claims that Kirk forgot to take Vivian off of his policy and that she had her own policy and used that policy. *See* Exh. "3" to Motion, Vivian's email on 7.24.15 at 7:08 p.m. Kirk did not forget and Kirk does not believe that Vivian obtained another policy. The same is true with respect to car insurance. Vivian took over a year to get her own car insurance, and refuses to pay Kirk the amount he paid to insure her until she got her own policy. Again, Kirk did not forget and Vivian did not have another auto insurance policy.

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**2. Vivian Believes She Is Entitled to the Sole Possession and Ownership of Brooke and Rylee**

Based upon statements Vivian has made to Kirk in the past, Kirk knows that Vivian strongly believes that as the mother, she is entitled to possession of Brooke and Rylee. Moreover, Brooke's statement soon after her fourteenth birthday that "girls are supposed to be with their mommies" is further confirmation of this entitled and misguided belief. *See also* Reply re Motion to Modify, filed 10.23.13, p. 24. Vivian's view of this entitlement was unaffected by her own horrendous misconduct concerning Brooke and Rylee, and Vivian was of the opinion that Kirk was lucky she was willing to allow him to share joint physical custody. Vivian's father abandoned her family when Vivian was only about four years old and made no effort to contact Vivian during her childhood. Custody Reply, filed 1.4.12, Exh. 9, p. 2. The following excerpt aptly describes the problem:

> Many mothers feel that they have a greater right to possession and ownership of children as a result of pregnancy and childbirth– "He's not getting her; I carried that child in my womb, and she's mine" will often be emphatically stated. Many women maintain proprietary views of their children and steadfastly believe that a special bond exists between mother and child through the process of conception and birth that fathers cannot share.
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> * * * *
>
> Women who adhere to this philosophy of motherhood do not believe that fathers, comparatively, are as capable of providing nurturing and care, attentiveness and understanding, love, time, communication, or emotional investment.
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> * * * *
>
> In many cases where this philosophy exists, we find that the mothers themselves were more likely to come from divorced or single-parent families in which they were predominantly raised by their mothers with little or no input from the father or other male figures. To these women, fathers are just not viewed as being significant and necessary to a child's healthy present and future development.
>
> It is most difficult to convince them otherwise; research to the contrary, discussions, counseling, mediation/conciliation, or even court orders may prove ineffective. However, because of ownership is their main operational concept, they may comply with some degree of sharing if their ownership is threatened.
>
> We have seen judges warn this type of parent of almost complete loss if they do not become more cooperative and terminate programming/brainwashing. Legal chastisement or contempt charges may have to be repeated following a hearing. It is not uncommon for these mothers to say that a judge has been bought off, is stupid, does not know the truth, is siding with the other parent, or make some other assertion that denies the legitimacy of the legal ruling and its insightful nature on behalf of the child.

CHILDREN HELD HOSTAGE, p. 74-75.

Alienating parents have a deficiency in their psychological makeup.

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> Today, most scholars believe that parental alienation is caused by some deficiency in the psychological makeup of the alienator parent. Some of these scholars believe that alienators are sociopaths, while others believe that they suffer from personality disorders, mental illness, or an inability to "individuate" herself from the child. Others think that alienator parents are just impulsive and deceitful people who lack feelings of empathy, sympathy, or guilt.

Sandi S. Varnado,[7] *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113 (2011) (citations omitted).

### 3. Vivian's Programming of Brooke to Alienate Brooke from Kirk is a Form of Child Cruelty and Abuse

Vivian's obvious efforts to damage Brooke's relationship with Kirk, including making false statements to Brooke about the cause of the divorce and Kirk's alleged refusal to pay Brooke's medical bills, is a form of emotional abuse. "*Experts regard the attempt to poison a child's relationship with a loved one as a form of emotional abuse. As with other forms of abuse, our first priority must be to protect children from further damage.*" RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 8. "We continue to find that this form of social-psychological child abuse is likely to be as damaging as physical abuse." CHILDREN HELD HOSTAGE at xxvii.

> Parental alienation is not only abusive, but cruel to the child:
>
> A parent who closes off the "avenues of love and support" available from the target is, therefore, being particularly cruel and selfish. But when parents "manipulate the[ir] children into erecting barriers themselves, when they enlist the[ir children] as agents in their own deprivation, they violate their children's trust in a most cruel manner. It is a form of kidnapping: [a] stealing [of their] soul[s]." Mental health professionals, and appropriately the courts too, have, therefore, recognized that parental alienation is a form of child cruelty and abuse.

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 10 (citations omitted).

Kirk has always been an attentive, caring and loving parent to Brooke. There is nothing in the relationship between Kirk and Brooke to justify Brooke's rejection of him. The following passage from "Divorce Poison" accurately describes what has occurred here:

> It would be only fair if a long history of a tender relationship with a loving, involved, understanding parent insulated your child from divorce poison. Unfortunately, it does not work this way. A child may be willing to denigrate the parent whose love is easily granted, in exchange for conditional acceptance from a parent who was previously

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[7] Professor Varnado is Assistant Professor of Law, Loyola University New Orleans College of Law.

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> uninvolved or harshly punitive and rejecting. . . . A child who felt neglected by a parent may welcome that parent's newfound interest and generosity rather than recognize or acknowledge that the parent is attempting to buy [her] child's allegiance through overindulgence. . . . If your spouse manipulates the children to blame you for the divorce . . . affection can dissolve overnight as their distress and hurt feelings are channeled into hatred.

DIVORCE POISON at 29-30.

When Vivian lost interest in Brooke and Rylee, Kirk left his practice so he could take care of Brooke and Rylee. Rylee had just turned 3 years old the week before and Brooke was only 6 years old. Kirk took them to and from school, all of their activities, made their meals, helped them with their homework, played games with them, took them to the movies, took them to buy their clothes, took them to Utah on the weekends, extended trips, etc. When Vivian closed the door to keep them out, Kirk was there for Brooke and Rylee. When Vivian left for extended periods of time again and again, Kirk was always there for Brooke and Rylee. The Court may recall that Vivian had no problem telling Brooke that Vivian was moving to Los Angeles to work on her Phd. at UCLA, and Brooke and Rylee were staying home with Kirk and they would probably spend time at the ranch. Motion for Custody, filed 9.14.11, Exh. "1," ¶66.

Vivian's efforts to alienate Kirk from Brooke and Rylee have been well documented and started soon after the filing of the Motion for Temporary Custody. The Court will recall that when Vivian struck Kirk in front of Rylee on October 14, 2011, she tried to convince Rylee that Kirk had struck her, just as she pricked her finger and rubbed blood on her face in her failed attempt to convince the police that Kirk had struck her. Plaintiff's Reply re Custody, filed 1.4.12, p. 32 & 34. On November 20, 2011, Vivian screamed again and again in front of Brooke and Rylee that Kirk is a liar and that neighbors had submitted affidavits that Kirk is a liar. During the afternoon of January 27, 2012, Kirk asked Rylee to sit with him on the couch and snuggle with him. Rylee responded, "I'm not supposed to snuggle you anymore dad." *See* Letter from Ed Kainen to Radford Smith (pages 2-4), dated February 3, 2012, which is attached as Exhibit 2 to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, filed 10.1.13. As noted in the moving papers, Vivian continued her programming of Brooke when Brooke turned 14 years old. More specifically, Vivian's numerous actions to alienate Kirk from Brooke are well chronicled in Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, filed 10.1.13. *See*

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*generally*, p. 5-8, 11-12. *See also* Reply re Motion to Modify, filed 10.23.13, p. 3, 6, 10, 11-19. Contrary to Vivian's false assertions, Vivian's continuing efforts to alienate Kirk from Brooke have been well documented. Tom Standish noted the programming during the October 30, 2013 hearing:

> And if we were to argue this right now, we would make a very strong case for the kind of unbelievable pressure that this lady [Vivian] puts on her children and the very fact that her 14-year-old would trump it out the day after her birthday that she wants to live with Mom is an indication what Mr. Kainen was just saying which is this lady is violating the local rule about talking to her children about this. She's constantly talking to them about it **and programming them**.

Hearing Transcript, 10.30.13, p. 35 (emphasis added).

While in Vivian's custody, Brooke and Rylee were in the Boulder City Christmas Parade in December of 2014. Kirk later found out about it when he saw their picture in the newspaper. During Kirk's holiday winter break time with Brooke and Rylee, Vivian arranged for her to take Brooke to DMV to take the examination to get her learner's permit. Kirk sent emails to Vivian complaining about Vivian making arrangements during his holiday time with Brooke and taking Brooke. A true and correct copy of these emails, dated December 25 & 26, 2014, are collectively attached hereto as Exhibit "2." In one of these emails, Kirk identified one of the primary issues now before the Court:

> Brooke, however, is being told that she is empowered to make all the decisions in her life at the present time and her parents do not have the right to make decisions they feel are in her best interest. Brooke presently believes she has the power to veto any family plans. This is flat out wrong. Responsible parenting does not mean empowering your children to make all decisions involving them and your family. I am very concerned about Brooke's future.
>
> Brooke's relationship with you and I is secondary to what is best for her. Brooke and Rylee both deserve a co-parenting environment that is best for them now and in the future. Responsible parenting includes making decisions affecting your children that are in their best interests, but not necessarily popular at the time.
>
> I ask you, implore you, and beg you to responsibly parent in the best interests of Brooke and Rylee. It is unquestionably in their best interests to be taught to be respectful and considerate of both their parents.

Kirk's pleas to Vivian, obviously, went unanswered.

**H. Absent a Strong Deterrent from the Court to Vivian, Rylee Will Be Next**

Kirk is very concerned about Rylee. Rylee is 12 years old. The Court may recall that when Whitney was about the same age, Vivian informed Kirk that Vivian wanted to send Whitney away to boarding school. When Kirk asked why, Vivian responded that she did not like the way Whitney looked

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at her. Motion for Custody, filed 9.14.11, Exh. 1, ¶26. Vivian had trained Tahnee that pleasing Vivian was paramount and Tahnee did everything she could to please Vivian. Whitney was unwilling to buy into that program and was well aware that she was not the preferred child with Vivian.

Vivian has now trained Brooke that pleasing Vivian is paramount. In addition, Vivian has convinced Brooke to align herself with Vivian against Kirk and to be responsible for Vivian's well being, even to the extreme of calling and working with the insurance company.[8] Because of her close relationship with Brooke, Rylee is not as independent as Whitney was at her age. However, Kirk believes that Rylee is also aware she is not the preferred child in her relationship with Vivian.

Kirk is concerned that Vivian will use Rylee's inferior status with Vivian to emotionally abuse Rylee in an effort to program Rylee:

> The use of the inferior status as an inculcation mechanism may be more subtle in domestic-relations situations. Making a child feel like a second-class citizen by giving her less attention than her sister who complies with the programme is one approach. Children are keenly aware of being less favored by a parent. This lowering of status within the family can be done by exclusion, rejection, or denial of affectionate contact; it is extremely painful to a child and, in and of itself, may be powerful enough to bring the child into compliance with the parental programme or belief system.

CHILDREN HELD HOSTAGE at 6.

## I. Vivian Must Immediately Stop Her Efforts to Alienate Kirk From Brooke and Rylee.

Parental alienation of a child from the other parent has been determined to be "an act inconsistent with the best interest of the child." In *Zeis v. Slater*, 870 N.Y.S.2d 387 (App. Div. 2008) the mother had been awarded sole physical custody. However, the mother interfered with the father's visitation rights and "denigrated the father in the child's presence." Finding "[t]his conduct is so inconsistent with the child's best interests that it per se raises a strong probability that the mother is unfit to act as a custodial parent," the appellate court affirmed the lower court's modification of custody, awarding the father sole physical custody. *Id.* at 388. Similarly, in *Lichtenfeld v. Lichtenfeld*, 838 N.Y.S.2d 660 (App. Div. 2007) the family court had granted the father's motion to modify custody and to award him sole physical

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[8] There is likely another reason Brooke is rejecting Kirk. "Pre-adolescent and adolescent children 8-15 years old can be easily alienated because "they can maintain a consistent stance of anger and are more likely to make rigid moral judgments of a parent." *Father? What Father – Two* at 9.

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and legal custody, with visitation to the mother. In affirming the award, the appellate court found, "Here, the mother deliberately interfered with the relationship between the children and the father, an act so inconsistent with the best interests of the children as to per se raise a strong probability that she is unfit to act as a custodial parent." *Id.* at 661.

In *Cloutier v. Lear*, 691 A.2d 660 (Me. 1997), the mother had been awarded primary custody. However, the father moved to modify custody and was awarded primary custody when it was shown the mother had denigrated the father to the children. In addition, a therapist had found that the oldest daughter had an adult-to-adult relationship with the mother, rather than that of parent-child – just as Brooke now has with Vivian – and as a consequence, found that the older daughter is at risk. The Maine Supreme Court affirmed the award of primary custody to the father. *Id.* at 662.

In *Grigsby v. Grigsby*, 39 So. 3d 453 (Fl App. 2010), the court awarded sole custody of the parties four minor children to the father and temporarily completely suspended the mother's time-sharing. The mother had engaged in a campaign to alienate the father from the children. The trial court specifically found that the mother had "actively interfered with the love and emotional ties that previously existed between the Father and the children." *Id.* at 456. The appellate court reversed on the very limited basis that the trial court needed to set forth the steps the mother must go through to regain time-sharing with the children and that it was inappropriate to empower the father to make the determination of when the mother's conduct was sufficient for her to re-establish contact with the children.

There is no question whatsoever at this point that Kirk is the parent "more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. NRS 125.480(4)( c ).

**J. Kirk, Naively, Assumed that By Simply Being the Best Parent He Can Be and By Not Denigrating Vivian In Any Way, Brooke Would Eventually Figure Out the Truth and Emotionally Come Back To Him.**

Kirk's response to Vivian's programming was naive. Kirk assumed that if he simply continued to be the best parent possible each and every day and said nothing negative about Vivian, then Brooke and Rylee would eventually figure out the truth and emotionally come back to him. He was wrong.

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Parents are often reluctant to tell their children the truth, even when it could prevent damage. Many parents believe that it is more detrimental "to do the same thing" (talk to the child about the other parent) as a programming parent does. Such target parents must come to understand that protecting one's image and self-respect is just that—protection; and it is important for a child to have the truth in order to overcome the programming or brainwashing. Believing that a child will eventually come to an independent conclusion about what really happened is analogous to believing that the tooth fairy leaves money under a pillow. It simply doesn't work that way. Just like the tooth that disappears, so may the parent-child relationship over time.

Parents who try zealously to protect their children from gaining any knowledge of litigation over custody, nonsupport, and other issues often discover that their self-control has backfired.

The programmer/brainwasher enjoys free rein in instituting propaganda as long as the target parent is either unaware or chooses to remain quiet. Ultimately, it is far better for children to understand different perspectives than to believe a self-serving image put forth by a programmer against a target parent. Such target parents should be encouraged to protect their relationship with the child rather than to adhere to the belief that the truth will triumph because children eventually see the truth. Frequently, the relationship under fire never re-equilibrates due to irreparable damage and deep-seated, distorted beliefs. Target parents should not remain quiet but must look at the results of nonintervention, thus dispelling the myths about the harmful effects of false protectiveness.

If a target parent comes to understand that programming or brainwashing is occurring, it is initially always in the child's best interest to hinder and impede the process. With no input from a target parent, the child cannot be successful in overcoming the pernicious power of a parent who is given free rein because the target parent mistakenly believes that he or she is protecting the child through silence.

CHILDREN HELD HOSTAGE at 60-61.

**K. Unless Steps are Taken, Brooke and Rylee Will Suffer Significant Damage**

The adverse impacts children suffer from parental alienation are significant.

- The powerful, often damaging impact on the relationship between the child and the target parent that results from the child being involved in the process.

* * * *

- The creation of overdependency in the child on the wishes, thoughts, desires, beliefs, values, and opinions of the programmer/brainwasher.
- Struggles the children went through to express their basic need to love, see, identify with, and know the target parent in the face of various degrees and types of programming-and-brainwashing.
- The degree to which children's physical and social-psychological health were adversely affected by programming-and-brainwashing.

* * * *

- The number of children (40 percent) who developed self-hatred and guilt because they were used as an ally in the war against the target parent.
- The number of children who were cut off from extended families of the target parent (50 percent completely . . .).

* * * *

- Children (30 percent) express fear that they would be further hurt by the programmer/brainwasher if it was observed that they spoke about it at all. . .
- By being used as allies in the parent combat, children are coerced into learning new forms of people control that they may then employ with other

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children and adults.

- By being used as agents by one parent against another parent, children develop damaged views of intimate relationships.
- Children involved in programming/brainwashing may become purveyors of the process when they have children. . .
- Children usually perceive the programmer/brainwasher as abusing parental power but may feel incapable of overtly reacting against the power.
- The damage caused by programming/brainwashing most often has gone undetected except for radical breaches in the relationship with one parent.

CHILDREN HELD HOSTAGE at 392-394.

**1. Though Not as Important as the Best Interests of the Children, the Consequences of Parental Alienation to the Targeted Parent are Devastating**

Professor Varnado describes the devastation to the targeted parent:

Parental alienation financially and emotionally plagues alienated parents, who often do not initially recognize the signs. One self-proclaimed victim reported that it was incomprehensible how he "went from Adored Dad to Despised Dad in the blink of an eye." Not surprisingly, every alienated parent participating in one study reported that he would never want to experience such a thing again.

Even when the alienator's parent's efforts do not ultimately destroy the relationship between the other parent and the child, alienating conduct still negatively affects that relationship. In such situations, the alienator parent's conduct results in a power shift from the other parent to the child. For example, when the alienator parent gives the child the power to determine whether , when, and under what circumstances to see the other parent, an alienated parent may hesitate to discipline the child, taking caution not to anger him. This fear of upsetting the fragile parent-child relationship leaves the alienated parent feeling powerless to freely and properly parent.

When an alienator parent's conduct leads a child to reject the other parent, the alienated parent's emotional response usually includes a "sense of powerlessness and frustration"; "stress, loss, grief, anger, and fear"; and feelings of pain, anxiety, deficiency, humiliation, and being unloved. As one self-proclaimed alienated parent noted, "To have that human connection [between oneself and one's child] taken away from you is probably one of the most difficult and painful things for any parent to deal with." . . .

> Ultimately, "[t]he [alienated] parent experiences the anguish of the loss of a child," which in turn causes that parent immense mental pain and suffering. This is similar to the loss of child to death, but in some ways, it can seem worse to the alienated parent because the alienated parent's feeling of loss is combined with her continuing concern for the child. Even though these alienated parents want to restore their relationship with their children and will "try anything to end the impasse," eventually some alienated parents give up on the parent-child relationship. Some have even attempted suicide.

Sandi S. Varnado,[9] *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113, 125 (2011) (citations omitted).

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[9] Professor Varnado is Assistant Professor of Law, Loyola University New Orleans College of Law.

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Many erroneously assume that the abused child will eventually come back to the alienated parent. Unfortunately, that is not the case:

> A child whose parent has been excluded from his life will not feel closer or yearn more strongly for him. Rather the child will forget about the parent or learn to disdain him. "Absence [in this situation] does not make the heart grow fonder; [rather] unfamiliarity breeds contempt."

*Father? What Father?* at 9 (Citations omitted).

### L. It is in Both Brooke's and Rylee's Best Interest for Joint Physical Custody to Continue

There is almost universal agreement that the best interests of the children are served by having significant contact with both parents. Sandi S. Varnado, *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113, 115 (2011). The greater amount of contact Brooke and Rylee have with Kirk the greater the likelihood that Brooke and Rylee can be protected from future programming.

Vivian, through Brooke, is trying to reduce Kirk's contact with Brooke. In contrast, Kirk is trying to maintain the legal status quo – he is not attempting to have Vivian's time with Brooke diminished in any way.[10] NRS 125.480(4)( c ). Kirk does, however, desperately want Vivian to stop emotionally abusing Brooke and Rylee and to stop alienating Kirk from Brooke and Rylee. Hopefully, if this Court, once again, makes it clear to Vivian that she agreed to joint physical custody and that custody is not going to be changed, Vivian will no longer have an incentive to continue to abuse Brooke and Rylee. Vivian needs to also get the clear message that if she continues in her efforts to alienate Kirk from Brooke and Rylee, then Kirk will be awarded primary custody as it will be in the best interests of the children to do so. "Unless effective deterrents to parental alienation are implemented, it is a fair prediction that the alienation will continue." Sandi S. Varnado, *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113, 126 (2011).

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[10] It must be noted however, that many states, "basically hold that parents who interfere with a parent-child relationship are less worthy of legal and physical custody." " CHILDREN HELD HOSTAGE, p. xxiv.

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**1. There is Reason for Hope.**

In addition, however, although it is important that the agreed to and Court ordered joint physical custody be maintained, steps must be taken so that Brooke and Rylee know they have permission to love and identify with Kirk.[11] CHILDREN HELD HOSTAGE, p. 389. The Court is respectfully requested to have a qualified specialist interview Brooke to determine the extent of the programming by Vivian.[12] The probability of success of such an effort is greater than might be thought. CHILDREN HELD HOSTAGE identifies several "detection factors" which are encouraging:

- The belief by therapists and legal personnel that programming/brainwashing is difficult to detect.
- The ease with which it can be detected when special interview/observational/research methods were employed
- The number of children (80 percent) who wanted the process detected and terminated.
- The number of children who will directly cooperate in the investigation, covertly and/or overtly (approximately 90 percent).

* * * *

- Children (70 percent) felt relief that the programming-and-brainwashing dilemma was discovered.

*Id.* at 390-391.

"Traditional or "regular" therapy, unfortunately, is generally ineffective to treat parental alienation." *Father? What Father? Two* at 10. Brooke's distorted perceptions must be identified and unraveled.

> Alienated children suffer from distorted perceptions and images of their targeted parent. These distortions cause them to feel hatred and animosity towards the target. Their hatred and animosity, though unfounded, are genuinely held. As a result, exploring their feelings will likely not dissipate the hatred and animosity and, more

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[11] A task force especially convened to study the problem of children who become alienated from one of their divorcing parents, recommended: "Alienated children need a *family-focused intervention* that includes all parties – the child, siblings, both the aligned and rejected parents, as well as other family members (e.g. stepparents, grandparents) determined to be contributing to the dynamics. The goal is to transform the child's distorted, rigidly held, polarized, and defensively split views of one parent as "all bad" and other to "all good" into more realistic and measured ones, rooted in the child's actual experience of both parents. In addition, the goal is to restore appropriate co-parental and parent-child roles within the family." Janet Johnston, *Rethinking Parental Alienation and Redesigning Parent-Child Access Services for Children Who Resist or Refuse Visitation* (2001), p. 7.

[12] Missouri Statutes 452.400 provides that when a parent interferes with the custody of the other parent, the violator may be ordered "to pay the cost of counseling to reestablish the parent-child relationship between the aggrieved party and the child."

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> likely, will only amplify and exacerbate them. It is only by identifying, unraveling and then finally challenging the distortions and beliefs that underlie their feelings, that the children can begin to open their hearts and minds to the possibility of a relationship with the target. Requiring them to spend large quantities of time with the parent then enables them to see him as the caring, loving parent he often is.

*Father? What Father? Two* at 10.

It is critically important that the evaluator be properly trained and meticulously follow Dr. Stanley S. Clawar's "14-step regimen that must be carefully followed in sequence for the treatment to be successful." *Father? What Father? Two* at 11. Dr. Clawar's 14-step regimen is set forth in detail in Chapter 6 (pages 203-237) of CHILDREN HELD HOSTAGE.

The extremeness of Brooke's position is cause for alarm:

> Mental health rofesionals agree that to prevent the alienation and its resulting injuries from becoming permanent, swift decisive action by the courts is necessary. If the alienation is permitted to continue, the "destructive dynamic" becomes "entrench[ed]" and the children's positions solidified. Appropriate contact between the target parent and the child must be reestablished quickly because delays only "consolidate and reward the child's phobic or recalcitrant stance." Unfortunately, all too often, courts are reluctant to take the required action until a child has deteriorated to a dangerous level.
>
> Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.

*Father? What Father? Part Two* at 11 (citations omitted).

**M. Brooke's Behavior is Inconsistent with Vivian's Assertions that She Has Not Disparaged Kirk to Brooke and that Brooke Wants To Live with Vivian Because Brooke is Mature, Intelligent, and the Current Mid-Week Custody Transfers Interfere with Her School and Dance**

The first and primary argument in Vivian's opposition is that ,"Vivian has not disparaged Kirk to Brooke. Opposition, filed 9.14.15, p. 3, l. 3 & 9. The second argument is that Brooke is 16, has a car, does well in school, and her decision to live with Vivian full time is because she is mature and intelligent and the custody transfers interfere with school. Opposition, filed 9.14.15, p. 4-5, 9. The truth is that Vivian has severely disparaged Kirk to Brooke since September of 2011. The truth is that

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Brooke's decision was based upon her strong felt false belief – as a result of Vivian's alienation – that Kirk is a "bad" person and Brooke now hates Kirk. The truth is that Brooke's perception of Kirk is highly distorted and her conduct is extremely disproportionate to Kirk's actual behavior and even any perceived, though erroneous, infractions. The truth is that Brooke's conduct is also highly disproportionate to Vivian's asserted reasons as to why Brooke wants to live with Vivian full time.

As noted previously, "When a parent behaves appropriately and as a good person in the child's life but is labeled "bad" by the child, the programmer has succeeded." CHILDREN HELD HOSTAGE at 68. Kirk has behaved appropriately and as a good person in Brooke's life, but is now being labeled as "bad" by Brooke. Vivian's efforts to alienate Kirk from Brooke are succeeding.

As the Court is aware, partially as a result of Vivian's emotional and physical absences, Brooke was extremely close to Kirk until after the filing of the Motion for Temporary Custody in September of 2011. For many years, with rare exception, the only time Brooke and Rylee were not with Kirk was when they were in school. Despite the extremely close caring and loving relationship between Kirk and Brooke for all those years, Vivian has been able to undermine and destroy that relationship almost to the point it never existed.

Despite his multiple requests, Kirk had not seen Brooke nor spoken to Brooke since the morning of July 17, 2015 or about two months. Brooke had not responded to any of Kirk's texts, including texts asking to see her, since her text to him that she is going to live with Vivian full time.

Brooke had an appointment with the orthodontist at 3:00 p.m. on September 16, 2015. Kirk was really looking forward to seeing her then. Vivian and Kirk were both at the orthodontist's office for an appointment with Rylee the day before, on September 15, 2015. A second appointment for Rylee was made at that time for the next day at 3:15 pm. Kirk was sure he would get to see Brooke, when he took Rylee for her appointment. However, at 9:17 a.m. on the morning of September 16, 2015, Kirk received a text from Vivian that "Brooke can't make appt at 3 today– on call for later spot if cancellation." The orthodontist appointments typically take one-half hour. While driving Rylee to her 3:15 appointment, Kirk received a text from Vivian insisting that Rylee's appointment was at 3:00 p.m. Though in error, this text evidences Vivian's belief that Rylee's appointment was at 3:00 p.m. If the appointment had been at 3:00 p.m., Kirk and Rylee would likely be gone by about 3:30 p.m. Kirk and Rylee arrived in

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time for Rylee's 3:15 appointment. When Rylee was finishing her appointment at about 3:45 p.m., Brooke arrived for her 3:50 p.m. appointment. Brooke walked in the room and acted as though Kirk, her father, who she had not seen or talked to in two months, was not even there. As Kirk and Rylee were leaving, Kirk approached Brooke and told her he loved her. Brooke merely said "ok," in a dismissive tone, and turned away.

Brooke treated her father this way after not seeing him for two months. Brooke's conduct is extremely disproportionate to Kirk's actual behavior and even any perceived, though erroneous, infractions. Brooke's conduct is also highly disproportionate to Vivian's asserted reasons as to why Brooke wants to live with Vivian full time. Vivian's efforts to alienate Kirk from Brooke have caused Brooke to have a highly distorted perception of Kirk where she believes Kirk to be "bad."

The reason Brooke made the decision to determine her own custody, despite recently acknowledging to Kirk that she did not have such power until she is 18 years old, is because Vivian has programmed her into falsely believing Kirk is "bad" ("Kirk just can't quite understand why he should have to pay any part of his daughters medical bills." "No calls on my behalf to repair credit") and Brooke now hates Kirk. There is no question that Vivian, as part of her embroilment of Brooke in the medical insurance issue, told Brooke the same thing she wrote in her emails to Becky Palmer and Kirk. This is just the latest in Vivian's continuing effort to alienate Kirk from Brooke, which Vivian has undertaken since September of 2011. However, it was inflammatory enough to be the tipping point.

As part of the effort to determine the level of programming by Vivian and to deprogramme Brooke, Kirk requests that Brooke stay exclusively with Kirk for the next 60 to 90 days. "As a general rule, we have found that change of the physical environment and increased social contact with a target parent are the major positive ways to deprogramme a child." CHILDREN HELD HOSTAGE, p. 229. Vivian's assertions that she does not control Brooke are false. If Vivian is told that Vivian must honor this Court's orders and there will be a severe consequence if she does not, Brooke will comply.

## IV. CONCLUSION

As the Court has previously noted, there is now a presumption that joint physical custody is in the best interests of Brooke and Rylee.

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Brooke's wishes, under NRS 125.480(4)(a) should be severely discounted as a consequence of Vivian's continuing and active interference in the relationship between Brooke and Kirk, and the distortions Vivian has created in Brooke's mind as a consequence.

Vivian is attempting to reduce Kirk's time with Brooke. Kirk is not attempting to reduce Vivian's time with Brooke. There is no question, under NRS 125.480(4)( c ) that Kirk is the parent which "is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent."

Under NRS 125.480(4)(d), Vivian is continuing the conflict with Kirk. Kirk has done nothing to continue this conflict and, as evidenced by Exh. 2, attached, has literally begged Vivian to stop what she is doing.

Under NRS 125.480(4)(e), except for Vivian's continuing manipulation of the children in her effort to alienate Kirk, the parties generally cooperate to meet the needs of the children.

Under NRS 125.480(4)(f), Vivian's own treating doctors diagnosed her with a "depressive disorder" and a "major depression disorder." Reply re Custody, filed 1.4.12, Exh. 25 & 26. Vivian's own medical records confirm she abused controlled substances for over seven years. Reply re Custody, filed 1.4.12, Exh. 11. Vivian's extremely delusional behavior (young actor is her "soul mate," love letter to other young man, oldest daughter will try to kill her in her sleep, etc.) was confirmed in the un-refuted affidavits of the parties' adult daughters. Motion for Custody, filed 9.14.11, Exh. 2 & 3.

Under NRS 125.480(4)(g), it is undisputed that the physical, developmental and emotional needs of children are best met by the children having significant contact with both parents – joint physical custody.

Under NRS 125.480(4)(h), Brooke has a closer relationship with Vivian than Kirk. However, Vivian's relationship is not based upon years of consistent love, care and attention, but overindulgence and rather cruel and abusive manipulation. On the other hand, Kirk's relationship with Brooke is based upon years of consistent love, care and attention. This relationship has been severely damaged by Vivian's alienating tactics over the course of several years.

Under NRS 125.480(4)(I), Kirk wants Brooke and Rylee to remain together. Vivian wants to separate them. Year in and year out, Kirk does everything he can to maximize the amount of time all

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five children spend together. For example, every year during the Nevada Day weekend, he takes all five children to Disneyland. When Brooke's summer school schedule during Kirk's vacation time with Brooke and Rylee prevented planned trips together, Kirk made arrangements for Rylee to go to Texas to spend time with Whitney and to California to spend time with Tahnee.

Under NRS 125.480(4)(j), Vivian, except for sleeping in the same bed with them when she was in town, lost interest in Brooke and Rylee from the fall of 2005 until mid-September of 2011. Vivian's long history of parental abuse and neglect of Brooke and Rylee has been extensively documented. Exhibits to Opposition to Motion for Attorney's Fees, filed 5.28.13, Exh. 5, ¶46. For example, despite bold warning labels not to, Vivian took controlled substances while nursing Rylee. Reply re Custody, filed 1.4.12, p. 13-16. The Court may recall instances where Kirk was gone during the day or over night and discovered upon his return that Vivian had not fed Brooke and Rylee. Motion for Custody, filed 9.14.11, Exh. 1, ¶88, ¶146 Vivian's alienation of Brooke from Kirk is cruel and abusive.

Under NRS 125.480(4)(k), Vivian has committed several acts of domestic violence against Brooke's and Rylee's older siblings, as well as Kirk. Vivian struck each of the older children in the head when they were each about 15 years old. Vivian struck Whitney "very hard in the side of her head" when Vivian was attacking Tahnee, and Whitney was trying to get Brooke and Rylee out of harm's way. *See* Motion for Custody, filed 9.14.11, p. 43-46. Vivian threw Tahnee to the ground and kicked Tahnee very hard in the abdomen over and over again. Vivian struck Kirk in the face, which was confirmed by the Boulder City Police Department, "wife hit male in the face." Reply re Custody, filed 1.4.12, p. 32-34 , Exh. 20

Under NRS 125.480(4)(l), Vivian abducted Brooke and Rylee for six weeks during the summer of 2005, with Kirk not knowing where they were or when they would return. *See* Motion for Custody, filed 9.14.11, p. 46, l. 9-25.

Going back to court is not something Kirk took lightly. Vivian will, undoubtedly, convince Brooke that all would be wonderful if Kirk would just let Brooke and Vivian do what they want to do. Kirk loves Brooke and Rylee too much to give up.

> The child frequently expresses anger toward the target parent for "giving up" in terms of gaining custody or just more time with him or her. As explained earlier, children believe that parents have a certain degree of omnipotence and power. Part of

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> this belief has to do with their need to feel protected by significant adults in their lives.
>
> When two parents who, in the child's mind, should be protectionist are at war, it becomes a source of consternation. Unsure of the adult response, many children never verbalize their true feelings or desires to either parent. But wars are won in the children's inner, secret world, and they hope fervently that the target parent will be strong, brave, and able to intuit their unspoken secret wishes.
>
> Their expectations are that the target will know how to rescue them from the programmer/brainwasher and not give up.

CHILDREN HELD HOSTAGE at 173.

Kirk respectfully urges the Court to send a resounding message to Vivian that the joint physical custody schedule to which she agreed and this Court ordered, which was previously enforced by this Court under strikingly similar circumstances, shall be enforced again by this Court, and that Vivian's severe disparagement of Kirk to Brooke will not be tolerated.

DATED this 18 day of September, 2015.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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# EXHIBIT “1”

KAINEN
LAW GROUP
A Professional Limited Liability Company

January 30, 2015

**Via Facsimile: (702) 990-6456**
Radford Smith, Esq.
Radford J. Smith, Chartered
64 North Pecos Road, Suite 700
Henderson, Nevada 89074

Re: **Kirk Harrison v. Vivian Harrison**

Dear Rad,

This letter is in response to your email to me on January 12, 2015.

Quitclaim Deeds

I have the Quitclaim Deed for 1514 Sunrise Circle, Boulder City, Nevada, signed by Kirk and duly notarized. A copy is attached so you can verify its accuracy and that it is in recordable form. When do you expect the corrected Quitclaim Deeds for the Utah properties to be completed? Kindly, email copies to me so that we can verify their accuracy and that they are in recordable form.

Photographs & Videos

In your January 12, 2015 email, you wrote, "I don't understand why this would hold up the process of getting the photos copied. Can you address this?" The position you took in a prior letter has held up "the process of getting the photos copied." More specifically, in your letter dated, April 17, 2014, you wrote:

> Vivian is not sure that Kirk will have all pictures scanned, and she is concerned that the careful order of those pictures placed in books will be lost by the process. She wants possession of all of the pictures he took so that she can have her own copies professionally scanned. She **does not want the scanning to occur** until there is a guarantee that the books remain in order after the scanning. She will ask the court

> to determine who keeps the originals of pictures. She **specifically requests** that **Kirk refrain from removing any pictures from the books for any purpose** until we can reach an agreement on this issue.

(Emphasis added).

In subsequent correspondence, we clearly indicated we had no problem using a third party service. However, we received no response from you and, thus, no agreement was reached, as previously demanded by you.

In summary, you sent a letter requesting that Kirk not copy the photos. Time goes by and then you send an email criticizing Kirk for not copying the photos.

In addition, however, there is a huge problem with Vivian now denying the existence of videos of Brooke and Rylee that Kirk absolutely knows that she has. Vivian took a lot of video of Brooke and Rylee, generally, prior to the Fall of 2005. In addition, Vivian has video taped every Christmas morning with all of the children, including Brooke and Rylee. Vivian has videotaped whatever birthday parties of Brooke and Rylee she has attended. Since September of 2011, Vivian has video taped the girls at softball games and basketball games. Vivian has video taped Brooke during an awards ceremony in junior high school. Vivian has video taped Brooke and Rylee during parent observation days of their dance classes. For Vivian to now deny the existence of all these videos is not well taken. This is especially true in light of Vivian's denial of the existence of the negatives of the family photographs, which were kept in drawers in the craft room of the marital residence.

Vivian's belated and new denial of the existence of these videos after all this time must have been a bit of a surprise to you as well, as this new position flies in the face of your prior letters that you copied to Vivian. For example, on April 17, 2014, you wrote, "**Vivian proposes** that **the parties** agree to [a] service to copy **movies**, and **that each party provide their entire inventory of movies** to that service for copying. Unlike the books, **there is no particular order to the movies** other than the particular reel." (Emphasis added). Under these circumstances, for Vivian to now take the position that she has no videos at this late date is bad faith.

Vivian has family photographs, all of the negatives of the family photographs, and all of the videos of Brooke and Rylee in her possession. It was not well taken when she started taking the position that she did not have the negatives. However, for Vivian to now to take the position she does not have any videos of Brooke and Rylee as well is so far from the truth to be patently absurd. The Decree of Divorce, filed October 31, 2013, provides in relevant part:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to the family photographs and videos of the older children when they were younger, which are in Kirk's possession, and **the family photographs, all of the negatives of the family photographs, and all of the videos of Brooke and Rylee, which are**

> **in Vivian's possession**, each party hereto shall pay one-half of the cost to transfer all of the photographs (utilizing the negative whenever it is in existence) and all videos containing one or more of the children to electronic storage and/or data base and to produce a total of seven copies of that entire data base so that each party hereto and each of the children have a copy. Each party shall fully cooperate with the other to facilitate the transfer and copying of all photographs (negatives whenever possible) and videos which are the subject of this Order.

(Emphasis added).

As I understand Vivian's position – at least as of January 12, 2015 – she now claims she has no family photographs, no negatives of the family photographs, and no videos of Brooke and Rylee. Such an untenable position is diametrically opposed to the Court's written Order and contrary to your letters.

Kirk only took the photograph albums and the videos of the older children. Numerous loose family photographs and the negatives of all the photographs were always kept in the drawers in the craft room. Vivian also had all of the videos of Brooke and Rylee.

Not coincidentally, the ever changing position that Vivian has taken in connection with the family photographs, negatives, and videos to deprive the children and Kirk of copies of these items is not unlike the position Vivian has taken with Tahnee and Whitney and their attempts to obtain their childhood memorabilia. Each of the girls has about four 12 gallon bins of childhood memorabilia. These bins were in the craft room of the marital residence. Kirk was in possession of the marital residence pursuant to an Order of the Court. However, Vivian, without Kirk's knowledge or permission, entered the marital residence and removed these bins from the marital residence. She is now refusing to give them to Tahnee and Whitney. Kirk suspects that Vivian removed the loose family photographs and the negatives from the craft room drawers at the same time she removed Tahnee's and Whitney's bins from the craft room.

As Vivian will receive a digital copy of everything that is copied, it is undeniable that Vivian's sole motivation is to deprive the children and their father of their childhood photographs and videos. Vivian has clearly rationalized that it is somehow acceptable or permissible for her to steal the childhood memorabilia of Tahnee and Whitney. Consistently, Vivian has rationalized it is somehow acceptable or permissible to unethically deny her possession of the loose family photographs, the negatives of all the photographs, and the videos of Brooke and Rylee.

Please, urge Vivian to do the right thing by her children and their father and what is mandated by the explicit terms of the Court's Order regarding all these items.

Appointment of Parenting Coordinator

The position we have set forth in prior letters has never changed. Kirk is willing to execute an agreement with Margaret Pickard that is "strictly in accordance with the Court's Order." That is the position set forth in my letter to you, dated March 25, 2014, and it has never changed. Consistently, as noted in my letter to you, dated October 27, 2014, "Our objection to Ms. Pickard's proposed agreement is that it went beyond the scope of Judge Duckworth's Order."

It should be noted that our position is totally consistent with the Findings and Orders Re: May 21, 2014 Hearing, filed September 29, 2014. That Order provides, "The authority of the Parenting Coordinator is defined in the Order Appointing Parenting Coordinator (Oct. 29, 2013), together with the limitations imposed therein. Neither party should be compelled to sign any agreements that exceed the Parenting Coordinator's authority as defined in the Order Appointing Parenting Coordinator. (Oct. 28, 2013)." The Court's statements during the hearing are also consistent with our position, "I would not expect any agreements to be signed that are – with the parenting coordinator that go beyond the function and role that I specifically identified in my order appointing parenting coordinator. Ms. Pickard's role and function must be narrowly limited to those issues. "

Communications by Vivian and Kirk with Dr. Ali

In connection with your concern about client communications with Dr. Ali, your specific question is, "advise me why he [Kirk] felt he was permitted to have a meeting with him atl [sic], much less without Ms. Harrison." The short answer to this question is that Kirk met with Dr. Ali **after** Vivian met with Dr. Ali.

On February 25, 2014, your client met with Dr. Ali for one hour, from 11:00 a.m. until 12 noon. My client then met with Dr. Ali for one hour from 12 noon until 1:00 p.m. the same day. Both of our clients met with Dr. Ali at his request.

Kirk advised me on February 24, 2014, that Vivian was meeting with Dr. Ali the next day and he was meeting with Dr. Ali after Vivian. You had no problem with Vivian meeting with Dr. Ali and I certainly had no objection to Kirk meeting with Dr. Ali. You memorialized your knowledge of the fact that both Vivian and Kirk had met with Dr. Ali in your letter, dated March 19, 2014 wherein you wrote, "It is my understanding that the parties have met with, and are proceeding with Dr. Ali."

Frankly, it does not make any sense to deny a therapist the ability to communicate with the parents of the 11 and 14 year old children he is charged with providing care. It is unrealistic to expect a therapist to be able to effectively assist children without the ability to communicate with their parents. I seriously question whether a truly conscientious qualified therapist would undertake such an engagement with this restriction. As a hypothetical illustration, assume a parent is concerned her child is suicidal. The child is meeting a therapist on a regular basis, but, for whatever

reason, does not share with the therapist she is having significant suicidal thoughts, which would not be that unusual. If the parent shares the concern with the therapist, the therapist is then aware of the problem and has a chance to save the child. If the parent is unable to communicate the concern with the therapist, then the child is at significant risk. This simply is not a tenable scenario for anyone.

During that initial meeting, Dr. Ali encouraged Kirk to tell him about any concerns he had for Brooke and Rylee. Dr. Ali also encouraged Kirk to share with him in the future any concerns he might later have as well. Dr. Ali, undoubtedly, had the same conversation with Vivian.

Subsequently, there came a point in time when Kirk had a concern for their children and telephoned Dr. Ali's office to relate the concern to Dr. Ali. When Dr. Ali did not return his call, he called again. Amanda, in Dr. Ali's office, recommended that Kirk send Dr. Ali an email setting forth his concern, advising Kirk that is what a number of the parents do when there is something they want Dr. Ali to know.

During Vivian's communications with Dr. Ali, including the initial hour long meeting, Vivian, without question, had a reasonable expectation that her communications with Dr. Ali concerning Brooke and Rylee were confidential. Dr. Ali, reasonably, also had the same expectation of confidentiality. During Kirk's communications with Dr. Ali, including the initial hour long meeting and the referenced email, Kirk, without question, had a reasonable expectation that his communications with Dr. Ali concerning Brooke and Rylee were confidential. Just as with Vivian's communications with Dr. Ali, Dr. Ali had a reasonable expectation of confidentiality in Kirk's communications with him. It would be wholly inappropriate for any of those confidential communications concerning Brooke and Rylee to be disclosed.

Additional Issues

QDRO

There remain several inaccuracies in the proposed Qualified Domestic Relations Order, which was circulated on January 12, 2015. Those inaccuracies and the necessary corrections are as follows:

| | |
|---|---|
| page 1, line 27: | delete "1514 Sunrise Circle" and replace with "1535 Sherri Lane" |
| page 2, line 1: | delete "1521" and replace with "1514" |
| page 3, line 4: | change "received" to "receive" |
| page 3, line 5: | delete "now" and replace with "not" |
| page 4, line 6: | delete "the spouse and soon will be" |

Reimbursement for Expenses

In your letter, dated March 19, 2014, you represented that, "We have provided Ms. Attanasio with the documents necessary for her analysis." In my letter, dated October 27, 2014, I noted my understanding that Melissa Attanasio and Cliff Beadle spoke quite some time ago and Cliff is awaiting a response from Melissa." Cliff Beadle is still waiting.

Utah Real Estate Broker

We provided you with the name of a proposed Utah real estate broker, Dell Killian, on April 8, 2014. I noted in my letter to you on October 27, 2014, "*You* have not responded to this proposal or proposed another realtor in Utah." We still have not heard anything in response. Is Mr. Killian acceptable?

Nevada Real Estate Broker

Since Vivian proposed Brent Runion of Desert Sun Realty, we assumed she would follow through with him to reach an agreement in accordance with the Decree of Divorce. If Vivian has not done so, Kirk would be happy to do so.

Holiday Weekends During Academic Year

Tom sent a letter to you, dated August 26, 2014, describing the problem and a proposed solution. We thought this would be addressed during the Supreme Court Settlement Conference on January 27, 2015, as you initially indicated. During the settlement conference, however, you refused to discuss it.

As noted in my letter, dated October 27, 2014, "The ultimate resolution of this issue will require a written modification to the Parenting Plan. Respectfully, I do not believe the Parenting Coordinator has the authority, in accordance with Judge Duckworth's order, to order a written modification to the Parenting Plan. This should not have been nor should it now be that big a deal."

In an effort to move this along, the following is our proposed written modification to the Parenting Plan:

Replacement of Paragraph 7.6 of Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. The Parties hereby agree to delete Paragraph 7.6 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, in its entirety and replace with the following:

> 7.6 *Other Nationally And State-Observed Holidays*: With respect to the following nationally observed holidays and holidays observed by the State of Nevada, to wit: 1) Martin Luther King Day; 2) Memorial Day; and 3) Labor Day, VIVIAN

shall have the children in her care that Monday holiday, the preceding weekend, and any Staff Development Days contiguous to any of those days. In the event that VIVIAN does not normally have the children the weekend before the Monday holiday, she shall take the weekend with the children, but grant the following two weekends to KIRK. With respect to the following nationally observed holiday and holiday observed by the State of Nevada, to wit: 1) President's Day, KIRK shall have the children in his care that Monday holiday, the preceding weekend, and any Staff Development Days contiguous to any of those days. In the event that KIRK does not normally have the children the weekend before the Monday holiday, he shall take the weekend with the children, but grant the following two weekends to VIVIAN. With respect to the following holiday observed by the State of Nevada, to wit: 1) Nevada Day, KIRK shall have the children in his care that Friday holiday, the following weekend, and any Staff Development Days contiguous to any of those days. In the event KIRK does not normally have the children the weekend following the Friday school holiday, he shall take the weekend with the children, but grant the following two weekends to VIVIAN. Any Staff Development Days not contiguous to the holiday weekends, as described, shall not create any exceptions to the normal visitation schedule.

Under this modification, Vivian will continue to have the girls three more days during the summer than Kirk and she will continue to have the preference she currently enjoys for Veteran's Day.

Waiting in the Car

As you are aware, there is a continuing problem on the day of the weekly exchange during the school year when Kirk obtains physical custody. Brooke and Rylee need to pick up their dance bags, a computer, and a make-up bag after school on the exchange day from the parent's home they are leaving. Vivian usually waits less than 2 minutes when the girls pick up their things from Kirk's house. However, when the girls pick up the identical items from Vivian's house, Kirk has been forced to wait in the car anywhere from 15 minutes to 40 minutes. There is no rational reason for this untenable situation to continue. It has become quite apparent that Vivian is not motivated to rectify the situation. Therefore, we propose what we believe to be a reasonable solution.

Addition of Paragraph 8.3 to the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. The Parties hereby agree to add the following Paragraph 8.3 to the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012:

8.3 The Parents agree that when school is in session, although the majority of the exchanges are effectuated by dropping off and picking up the children at school, the children need to obtain, shortly after school, their dance bags, a computer, and, perhaps, a make-up bag (collectively "Dance Bags") from the parent's residence

they are leaving. The parent to whom the physical custody of the children is being transferred shall, as soon as reasonably possible given the timing of piano lessons, voice lessons, etc., transport the children to the residence they are leaving for the purpose of picking up their Dance Bags. The children shall take no more than ten minutes to obtain their Dance Bags. If at any time the children take more than ten minutes to get their Dance Bags, then, at the election of the parent who was caused to wait more than 10 minutes, that parent shall no longer be required to transport the children to pick up their Dance Bags, and it shall thereafter be the responsibility of the parent, who was not caused to wait more than 10 minutes, to thereafter transport the Dance Bags to the residence of the parent, who was caused to wait more than 10 minutes, by placing the Dance Bags at the front door of said residence as soon as reasonably possible on the day of the exchange, but under no circumstances, more than one hour after the end of school on that day.

As noted in my prior letters, it is not my intention to file a motion to resolve these outstanding issues. Rather, it is my sincere hope that attorneys for both sides realize it is in both parties' best interests to resolve these matters amicably and expeditiously. Again, please, lets be reasonable and do what is in the best interests of both our clients and their children.

Very truly yours,

KAINEN LAW GROUP, PLLC

By:_____
EDWARD L. KAINEN, ESQ.

ELK/
cc: Kirk Harrison

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FAX COVER SHEET

**DATE:** 1/30/2015

**TO:** Radford Smith, Esq.

**FAX NUMBER:** 702-990-6456

**FROM:** Edward Kainen, Esq.

**RE:** Harrison v. Harrison

**NUMBER OF PAGES (Including Cover Sheet):** 9

**MESSAGE/COMMENTS:** Please see attached.

**CONFIDENTIALITY NOTICE:** The information contained in this Facsimile Message is privileged and Confidential. The contents of this Facsimile are intended ONLY for the use of the individual or entity named above, and others who have been specifically authorized to receive it. If you have received this communication in error, please notify us immediately by telephone. Any dissemination, distribution or copying of this communication is strictly prohibited.

**CIRCULAR 230 DISCLOSURE:** To ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are not required to advise you that, unless otherwise expressly indicated, any federal tax advise contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government.

TRANSMISSION VERIFICATION REPORT

TIME : 01/30/2015 13:03
NAME : KAINEN LAW GROUP
FAX : 8234488
TEL : 7028234900
SER.# : C1N995789

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| DATE,TIME | 01/30 13:00 |
| FAX NO./NAME | 17029906456 |
| DURATION | 00:03:07 |
| PAGE(S) | 09 |
| RESULT | OK |
| MODE | STANDARD ECM |

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**DATE:** 1/30/2015

**TO:** Radford Smith, Esq.

**FAX NUMBER:** 702-990-6456

**FROM:** Edward Kainen, Esq.

**RE:** Harrison v. Harrison

**NUMBER OF PAGES (Including Cover Sheet): 9**

**MESSAGE/COMMENTS:** Please see attached.

**Carol Navarro**

**From:** Kirk Harrison <kharrison@harrisonresolution.com>
**Sent:** Monday, September 14, 2015 11:40 PM
**To:** Carol Navarro
**Cc:** Ed Kainen
**Subject:** The following emails will be Exhibit "2" to the Reply

---

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
**Sent:** Friday, December 26, 2014 7:29 AM
**To:** 'Vivian Harrison'
**Subject:** RE: Violation of Parenting Agreement

This will confirm that you just showed up in front of my house to take Brooke during her holiday time with me. You did this after me notifying you earlier this morning via email that this was a violation of the custody agreement. When I approached your car and told you it was wrong and that Brooke was not to go with you, you said, "You already agreed to it." I agreed to it only on the condition that it was with the understanding this would not happen again. Your email to me that you believe the teenage discretion provision, as interpreted by your divorce attorneys, applied during holiday periods, in addition to during "their weekly schedule" was a clear rejection of the condition. Under these circumstances, you were wrong in telling Brooke to get into your car and driving away.

You need to stop trying to win a popularity contest and focus on being a responsible parent and what is best for our children. This type of behavior is clearly not in the best interests of our children.

---

**From:** Vivian Harrison [mailto:vivianlharrison@aol.com]
**Sent:** Friday, December 26, 2014 5:51 AM
**To:** Kirk Harrison
**Subject:** Re: Violation of Parenting Agreement

It is my understanding holiday and school breaks although alternate yearly are not exempt from Brooke's discretion and she is within her rights to use.

Sent from my iPhone

On Dec 25, 2014, at 10:17 PM, Kirk Harrison <kharrison@harrisonresolution.com> wrote:

Vivian,

As you are aware my Winter Break **holiday** began with Brooke and Rylee at noon today and continues until 7:00 p.m. on Sunday, January 4, 2015. This afternoon, Brooke **told** me that you are picking her up at 7:30 a.m. tomorrow morning to take her to get her learner's permit.

This is in blatant violation of our custody agreement. Even your divorce attorneys will agree that you and Brooke, you, or Brooke cannot unilaterally decide to take time this way during a **holiday**. Although I remain adamantly opposed to the notion that a child can unilaterally make any adjustments to the custody schedule at any time, even under your own attorneys' interpretation, infrequent minor adjustments can only be made during the "**weekly schedule**" set forth in Section 5 of the Stipulation and Order. Section 6.1 is expressly limited to "adjustments to their **weekly schedule**."



A.App. 1734

Brooke said that you have been helping her to study for the driver's examination and she would like you to take her. Although it will necessitate a change in our plans, I am agreeable to you taking her in the morning, provided you return her as soon as the examination is completed, and so long as it is with the understanding this will not happen again.

I do have a major problem with you planning activities with you and Brooke during her and Rylee's time with me. It is wrong, extremely inconsiderate, and is sending the wrong message to Brooke and Rylee.

Teenage discretion provisions are the creation of divorce attorneys who desire to continue conflict and uncertainty so they can continue to make money from the parties, in total disregard for what is in the best interests of the children and the family. There is a reason Judge Duckworth said he normally does order such provisions. It is incumbent upon you and I, as parents, to do what is best for our children. It should be our mutual goal to minimize conflict, minimize uncertainty, and encourage respect for both parents. This includes respecting the time Brooke and Rylee are with the other parent. Brooke and Rylee deserve no less.

Brooke, however, is being told that she is empowered to make all the decisions in her life at the present time and her parents do not have the right to make decisions they feel are in her best interest. Brooke presently believes she has the power to veto any family plans. This is flat out wrong. Responsible parenting does not mean empowering your children to make all decisions involving them and your family. I am very concerned about Brooke's future.

Brooke's relationship with you and I is secondary to what is best for her. Brooke and Rylee both deserve a co-parenting environment that is best for them now and in the future. Responsible parenting includes making decisions affecting your children that are in their best interests, but not necessarily popular at the time.

I ask you, implore you, and beg you to responsibly parent in the best interests of Brooke and Rylee. It is unquestionably in their best interests to be taught to be respectful and considerate of both their parents.

Respectfully,

Kirk

This email has been checked for viruses by Avast antivirus software.
www.avast.com

# EXHIBIT “2”

**From:** Kirk Harrison [mailto:kharrison@harrisonresolution.com]
**Sent:** Friday, December 26, 2014 7:29 AM
**To:** 'Vivian Harrison'
**Subject:** RE: Violation of Parenting Agreement

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You need to stop trying to win a popularity contest and focus on being a responsible parent and what is best for our children. This type of behavior is clearly not in the best interests of our children.

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This is in blatant violation of our custody agreement. Even your divorce attorneys will agree that you and Brooke, you, or Brooke cannot unilaterally decide to take time this way during a **holiday**. Although I remain adamantly opposed to the notion that a child can unilaterally make any adjustments to the custody schedule at any time, even under your own attorneys' interpretation, infrequent minor adjustments can only be made during the "**weekly schedule**" set forth in Section 5 of the Stipulation and Order. Section 6.1 is expressly limited to "adjustments to their **weekly schedule**."

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I do have a major problem with you planning activities with you and Brooke during her and Rylee's time with me. It is wrong, extremely inconsiderate, and is sending the wrong message to Brooke and Rylee.

Teenage discretion provisions are the creation of divorce attorneys who desire to continue conflict and uncertainty so they can continue to make money from the parties, in total disregard for what is in the best interests of the children and the family. There is a reason Judge Duckworth said he normally does order such provisions. It is incumbent upon you and I, as parents, to do what is best for our children. It should be our mutual goal to minimize conflict, minimize uncertainty, and encourage respect for both parents. This includes respecting the time Brooke and Rylee are with the other parent. Brooke and Rylee deserve no less.

Brooke, however, is being told that she is empowered to make all the decisions in her life at the present time and her parents do not have the right to make decisions they feel are in her best interest. Brooke presently believes she has the power to veto any family plans. This is flat out wrong. Responsible parenting does not mean empowering your children to make all decisions involving them and your family. I am very concerned about Brooke's future.

Brooke's relationship with you and I is secondary to what is best for her. Brooke and Rylee both deserve a co-parenting environment that is best for them now and in the future. Responsible parenting includes making decisions affecting your children that are in their best interests, but not necessarily popular at the time.

I ask you, implore you, and beg you to responsibly parent in the best interests of Brooke and Rylee. It is unquestionably in their best interests to be taught to be respectful and considerate of both their parents.

Respectfully,

Kirk

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**NOTICE OF ENTRY OF ORDER FROM HEARING**

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

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

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.

Radford Smith, Esq.

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

RYCE C. DUCKWORTH
DISTRICT JUDGE
AMILY DIVISION, DEPT. Q
AS VEGAS, NEVADA 89101

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

**ORDER FROM HEARING**

This matter came before the Court for a **Motion for Order to Show Cause, Opposition & Countermotion, and Order to Show Cause**, Plaintiff being present and represented by Edward Kainen, Esq., and Defendant being present and represented by Radford Smith, Esq. Good cause appearing therefor,

IT IS HEREBY ORDERED that the attached copy of the Minutes from the September 22, 2015 hearing is hereby incorporated herein and will become the Order of this case.

DATED this 1st day of October, 2015.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

D-11-443611-D

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

**Divorce - Complaint** **COURT MINUTES** September 22, 2015

D-11-443611-D Kirk Ross Harrison, Plaintiff
vs.
Vivian Marie Lee Harrison, Defendant.

**September 22, 2015** **10:00 AM** **All Pending Motions**

**HEARD BY:** Duckworth, Bryce C. **COURTROOM:** Courtroom 01

**COURT CLERK:** Michael A. Padilla

**PARTIES:**

| | |
|---|---|
| Emma Harrison, Subject Minor, not present | |
| Kirk Harrison, Plaintiff, Counter Defendant, present | Edward Kainen, Attorney, present |
| Lisa Linning, Other, not present | |
| Rylee Harrison, Subject Minor, not present | |
| Vivian Harrison, Defendant, Counter Claimant, present | Radford Smith, Attorney, present |

**JOURNAL ENTRIES**

- ORDER TO SHOW CAUSE ... PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 2.11 AND SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 30, 2013 ... DEFENDANT'S OPPOSITION AND COUNTERMOTION FOR MODIFICATION OF CUSTODY OF MINOR CHILD, EMMA BROOKE HARRISON "BROOKE"

April Graham, Court Clerk Trainee, present.

Court noted there are matters up on appeals; however, the issues raised in the papers, which the Court shall address, are ancillary to the appeals issues. Court informed counsel that it shall not get into the issue of teenage discretion, nor shall it address the parenting coordinator issue. Argument

D-11-443611-D

regarding Plaintiff's lack of contact with Brooke since July and what was the cause of Brooke not wanting to visit with Plaintiff. Court noted the parties agreed to joint legal and joint physical custody of the minor children, which creates a presumption that joint custody is in the minor children's best interest. Court informed counsel that the Court is not inclined to set further proceedings to modify custody at this time. Discussion regarding the contempt issue as it relates to Plaintiff's missed time, as the Court is not considering contempt regarding the allegation of Defendant disparaging Plaintiff to Brooke. Mr. Smith objected to Defendant being sworn today and if testimony is going to be taken, then he request the matter be set for an evidentiary hearing and it would be his intent to call Brooke as a witness. Mr. Kainen objected to involving Brooke and stated Plaintiff's desire is to fix the problem. Mr. Smith inquired as to what Defendant is supposed to do if Brooke refuses to go visit Plaintiff, and offered that Defendant could take away Brooke's ability to drive her car. Upon inquiry by the Court, Mr. Kainen stated Plaintiff has missed approximately 21 days. Discussion regarding an evaluation of Brooke. Following arguments, COURT ORDERED, as follows:

1. Each party shall have until 9/25/15 to submit up to three (3) names to serve as an outsourced evaluator of Brooke (Mr. Smith has already designated Mr. Paglini and Dr. Chambers). Counsel are to communicate to see if they can agree on an evaluator. The Court is looking for an individual who specializes in alienating behavior (not alienating syndrome), which may include a child interview. The Court shall make a designation by way of a Minute Order by next Wednesday. RETURN HEARING set for 12/14/15 at 9:00 AM.

2. Any documents filed with the court may be provided to the evaluator; however, any documents which have not been filed with the court must be provided to the other party.

3. Although the Court has made a Finding that contempt has been committed as it relates to Plaintiff's missed time, the contempt issues shall be DEFERRED to the next hearing.

4. The Court is not making any changes to the Orders and those are what they are. The Court expects Plaintiff to have his time and he may pick up the minor children from school. It is Defendant's responsibility to facilitate the VISITATION.

5. Plaintiff may go to counseling with Brooke, which is separate and apart from any current counseling. Counseling is for therapeutic purposes only.

6. There is to be no additional filings beyond this point as the Court does not need it.

Per STIPULATION, the minutes shall suffice as the Order from today's hearing; therefore, the Court shall issue an Order based on the minutes.

**INTERIM CONDITIONS:**

D-11-443611-D

**FUTURE HEARINGS:** December 14, 2015 9:00 AM Return Hearing
Duckworth, Bryce C.
Courtroom 01

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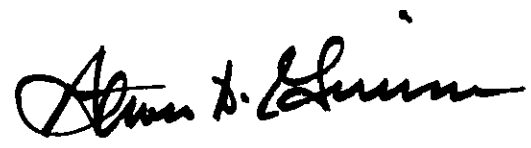

CLERK OF THE COURT

**MOT**
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-15-443611-D
DEPT NO. Q

Date of Hearing: 11/17/2015
Time of Heairng: 8:30 a.m.

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

**PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY VIOLATING SECTION 5 OF THE STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 1, 2015**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court, pursuant to NRS 22.010(3), for an Order to Show Cause why Defendant should not be held in contempt for knowingly and intentionally violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's order on October 1, 2015.

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

DATED this 12TH day of October, 2015.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

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

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 17th day of November, 2015, at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard.

DATED this 12TH day of October, 2015.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

The points and authorities filed, on August 21, 2015, in support of *Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's Order of October 30, 2013* and the points and authorities filed, on September 18, 2015, in support of *Plaintiff's Reply in support of Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012, and this Court's Order of October 30, 2013* and the points and authorities filed, on September 18, 2015, in support of *Plaintiff's Opposition to Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")* are hereby incorporated by this reference as though set forth in full herein.

## I. STATEMENT OF FACTS

### A. The Court's Orders and Expectations Were Made Very Clear To Vivian During the Hearing on September 22, 2015

Pursuant to the Court's Order, dated October 1, 2015, the Court held, *inter alia*, as follows: (1) Vivian is in contempt regarding Kirk's missed time; (2) the Court's Orders, including the Custody Order, remain the same and the Court is not making any changes; (3) Kirk is to have his time under the Custody Order – 50/50 joint physical custody, and; (4) Vivian has the responsibility to facilitate visitation.

Section 5 of the Stipulation and Custody Order of this Court, dated July 11, 2012, provides:

> 5. *Weekly Division of Time with Minor Child:* The parties shall share joint physical custody of the minor children. VIVIAN shall have the children in her care each Monday from after school, or Monday at 9:00 a.m. when the children are not in school (subject to the provisions of paragraph 7.6), until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. KIRK shall have the children in his care from Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school, until Friday after school, or Friday at 9:00 a.m. when the children are not in school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m.

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when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school.

Vivian was present during the hearing on September 22, 2015 when the Court rendered its decisions.

**B. Vivian Has Continued to Knowingly and Wilfully Violate This Court's Orders Beginning the Very Next Day After the Hearing on September 22, 2015.**

Despite these unequivocal orders, Vivian has continued to violate the Custody Order, including violating the Court's explicit orders on September 22, 2015, beginning the very next day after the hearing!

Kirk was to have custody of Brooke for two days, from after school on September 23, 2015 until after school on September 25, 2015. Kirk was lead to believe that Brooke normally arrived home around 4:30 p.m. from her classes on Wednesday. When Brooke still had not arrived by 7:00 p.m., Kirk sent a text to Vivian inquiring of Brooke's whereabouts. Vivian did not even respond. Kirk then sent another text to Vivian reminding her of the Court's orders just the day before and Vivian's obligation to facilitate the visitation. Again, ignoring even her basic obligation to cooperatively co-parent and communicate regarding their minor children, Vivian did not even respond. Kirk did not see Brooke anytime during his custodial period from after school on September 23, 2015, until after school on September 25, 2015.

Kirk was to have custody of Brooke for five days from after school on September 30, 2015 until after school on October 5, 2015. Brooke showed up at Kirk's house shortly after 9:00 p.m. the night of September 30, 2015 and went directly to her bedroom. Kirk made several attempts to talk with Brooke. Each attempt was rebuffed by Brooke with a curt "ok" and a request to leave Brooke's bedroom. Brooke only had school classes for two hours on October 1, 2015 from 10:00 a.m. until 12:00 noon and dance classes for two hours and 45 minutes from 3:45 p.m. until 6:30 p.m. However, other than coming home to change clothes for a few minutes shortly after 5:00 p.m., Brooke was gone from shortly after 9:00 a.m. until shortly after 10:00 p.m. The next morning, Brooke slept in and stayed in her bedroom. Shortly after 1:00 p.m. on Friday, October 2, 2015, Kirk heard the garage door open. Brooke was leaving

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with all of her bags. Kirk told her she needed to stay until Monday morning. She did not respond and drove off.

Kirk requested Vivian to provide him with Brooke's class schedule. Vivian's response was that he needed to get it from Brooke. Having no other choice, Kirk asked Brooke for her class schedule. Brooke said she would get it to him later. Kirk has never received it. Vivian again has failed in her obligation to share information and coparent.

During the brief time Brooke was with Kirk, she declined Kirk's offers to cook her meals and refused to eat any meals with Kirk and Rylee. When she came home after 10:00 p.m. the night of October 1, 2015, Brooke had "take out" food with her that she had purchased from a local restaurant.

As noted, Brooke was supposed to still be with Kirk through the weekend until after school on Monday, October 5, 2015. Despite the fact that Brooke had left at 1:00 p.m. the day before, on Saturday, October 3, 2015 (while Brooke was supposed to be still in Kirk's custody), at around 11:00 a.m., Rylee was heading out the door with Brooke's computer charging cord. Brooke was in her car in front of the house, and unbelievably, Vivian was in Brooke's car with her. In other words, during Kirk's custodial time, while Vivian continues to tell this Court that she has no control over Brooke's actions, she joins Brooke in interfering with Kirk's custodial time and also enlists Rylee in facilitating the same.

Next, Kirk was supposed to have custody of Brooke for two days from after school on October 7, 2015 until after school on October 9, 2015. However, again, Brooke did not come to Kirk's house at any time after school on October 7, 2015, and she did not appear at any time prior to after school on October 9, 2015.

### C. Vivian Has Prevented Kirk from Spending the Time with Brooke Mandated by Custody Order – Kirk Has Spent Less Than Seventeen Minutes with Brooke Between July 17, 2015 and October 12, 2015

In the three months since July 17, 2015, Vivian, by her direct actions and her inaction, for all practical purposes, has prevented Kirk from having any real time with Brooke. During this time period, the actual time Kirk has had with Brooke can best be measured in minutes, rather than hours or days: 9/16/15, orthodontist office, 1 minute; 9/30/15, home, less than 10

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minutes; 10/1/15, home, less than 5 minutes, and 10/2/15, home, less than 1 minute.

Waiting to bring this matter to the Court's attention at the Return Hearing on December 14, 2015, would not only greatly minimize the likelihood of being able to repair the damage actively being caused, as is more fully set forth below, but it would give the Court the inaccurate impression that this matter is unimportant to Kirk. Waiting another few months, is not a reasonable or viable option.

## II. ARGUMENT

### A. Vivian is Knowingly and Wilfully Continuing to Violate this Court's Orders

Vivian is continuing to actively interfere with Kirk's relationship with Brooke by enabling her to come and go as she pleases in the very car Vivian gave to her to do so. She has also given Brooke money so Brooke could buy meals at restaurants, rather than eat her meals with Kirk and Rylee. The fact that Vivian was actually in the car with Brooke on Saturday, October 3, 2015 – one of the days when Brooke was supposed to be in Kirk's custody – when they drove to Kirk's home and had Rylee bring Brooke's computer charger to the car, is especially telling of what is truly happening! Vivian's continued open defiance of this Court's Orders is sending a horrible message to not only Brooke, but 12 year old Rylee as well.

The Court may recall that Vivian's attorneys had Vivian take an MMPI, which was administered by Dr. Jill Margolis, who was chosen by Vivian and/or her counsel. Dr. Margolis noted that Vivian "reported some personality characteristics such as thrill seeking, impulsivity, **proneness to rule infractions**, and high-risk behavior, that may make her vulnerable to **clashes with authority** at times." *See* Exh. "M" to *Defendant's Reply to Plaintiff's Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support: and for Attorney's Fees*, filed January 27, 2012. (Emphasis added).[1] Vivian's conduct over the past several months are examples of those times.

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[1] A copy of Exh. "M" is attached hereto as Exh. "1" for the Court's convenience.

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The message Brooke should have received from Vivian is that Brooke is fortunate because, although her parents are divorced, she gets to spend a significant amount of time with both her mother and her father, both of whom love her very much. Instead, the overwhelming messaging Brooke receives from Vivian is that, "Girls are supposed to be with their mommies." This fact is especially important because when used in combination with Vivian's denigration of Kirk and alienation of Kirk from Brooke, it is the motivation for Brooke to be with Vivian "full time." In the past, Brooke has told Kirk that three of her girl friends only see their fathers every other weekend, and then, only if they want to see them. Brooke's paradigm, therefore, is the ideal is for her to spend "full time" with Vivian and anything less than that is less than ideal. It is not difficult to see how Brooke's belief in this "ideal" will adversely affect Brooke in her future relationships. Vivian would not have been able to instill this paradigm in Brooke without first alienating Kirk from Brooke so that Brooke would not have the emotional bond and love with Kirk that would inhibit a desire to be with Vivian full time.

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### B. It is Critical that Brooke Spend as Much Time as Possible with Kirk As Soon As Possible

All authorities agree that efforts to re-establish the relationship between Brooke and Kirk will be unsuccessful unless the child and the targeted parent spend a significant amount of time together. *See* STANLEY S. CLAWAR & BRYNNE V. RIVLIN, CHILDREN HELD HOSTAGE, 2nd Ed. (ABA 2013), p. 222; RICHARD A. WARSHAK, DIVORCE POISON, 2nd Ed., (Regan Books 2010), p. 273-275. "As a general rule, we have found that change of the physical environment and increased social contact with the target parent are the major positive ways to deprogramme a child. The more continuous and regular contact the child has with the programmer and brainwasher, the more likely the process is to continue and damage is to increase." CHILDREN HELD HOSTAGE, p. 229.

The longer Vivian has the opportunity to continue with her wilful non-compliance with the Custody Order and this Court's other orders, the more likely it is that future efforts to repair the damage will fail. The literature makes it clear that the longer we wait to significantly increase the contact, the more likely it is that any remedial effort will fail. Patience and delay

are not viable options if Brooke is to be saved from the permanent devastating effects of the alienation and the relationship between Brooke and Kirk is to be salvaged.

The extremeness of Brooke's behavior and attitude towards Kirk is cause for alarm:

> **Mental health professionals agree that to prevent the alienation and its resulting injuries from becoming permanent, swift decisive action by the courts is necessary.** If the alienation is permitted to continue, the "destructive dynamic" becomes "entrench[ed]" and the children's positions solidified. Appropriate contact between the target parent and the child must be reestablished **quickly** because delays only "consolidate and reward the child's phobic or recalcitrant stance." Unfortunately, all too often, courts are reluctant to take the required action until a child has deteriorated to a dangerous level.
>
> Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances **the only "treatment" that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent. In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did. The hundreds of children that were transferred and later interviewed expressed gratitude and relief that they were compelled to see and be with their parents and get to know them. When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.** ¶

Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added) (citations omitted).

Kirk is extremely concerned that Brooke may be reaching the "point of no return" as described in Children Held Hostage, p. 204, 219-223. The evidence shows Vivian has been denigrating Kirk to Brooke and Rylee for more than four years, and a record of the same has been made with the Court over that time period[2] It is alarming that Vivian has been utilizing so many of the programming techniques: "Long periods of programming and brainwashing" The record is replete with Vivian's programming and brainwashing for more than four years; The use of "multiple programming/brainwashing themes/techniques"; The "isolation of the

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[2] "[Vivian] will say anything in front of Brooke and Rylee without any thought as to the harm it is doing them, will manipulate Brooke and Rylee for her own selfish purposes (including saying negative false statements about their father). . ." Motion re Custody, filed 9.14.11, Exh. 2,Tahnee Harrison Aff., ¶39. "My Mother also told me, in front of Brooke and Rylee, "be sure and cut your Dad before he gets into the water, to make sure the sharks can do their job." Motion re Custody, filed 9.14.11, Exh.3, Whitney Harrison Aff., ¶8.

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child from the target parent" since July 17, 2015; Kirk's naive unwillingness to defend himself throughout this time, so as to not "put the child in the middle"; Being loyal to Kirk means being disloyal to Vivian. Brooke and Rylee are afraid to go to the movies with Kirk for fear Vivian will view it as being disloyal to her; Vivian messaging that she is "Mom" or "Mommy" and their father is now "Kirk"[3]; Mom, Brooke and Rylee are "family" and it does not include "Kirk"; Vivian has telephone calls with Brooke and Rylee "frequently during the time they are with the father" and insists they call her each night when they go to bed; "Creating conflict at the time of pickup" Vivian keeps Kirk waiting in the car for 20 to 40 minutes while she visits with Brooke and Rylee; "Mother surrounding herself with a support system to reinforce her programme" (it is Kirk's understanding that Heather Atkinson has also told Brooke that "girls are supposed to be with their mommies"); and, "Violating court orders." *See* CHILDREN HELD HOSTAGE, p. 219-223.

If we are to avoid going beyond the tipping point, it is very important that, at a minimum, Kirk have the custodial time he is supposed to have under the Custody Order, and that the same be enforced as soon as possible. Kirk genuinely believes that this situation has become more desperate as time has passed and that this is his last meaningful chance to save Brooke.

. . .

. . .

. . .

. . .

. . .

. . .

. . .

---

[3] The labeling of Kirk by Vivian to the children as "Kirk" rather than "Dad," minimizes his role in their relationship with him. *See* DIVORCE POISON, p. 149-151.

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Kirk respectfully urges the Court to send an unmistakable and resounding message to Vivian that Vivian's disparagement of Kirk to Brooke will not be tolerated, and that any interference with the custody schedule to which Vivian agreed, and which this Court ordered, shall not be tolerated, by once again issuing an order to appear and show cause why Vivian should not be held in contempt.

NRS 22.010(3) provides as follows:

> **Acts or omissions constituting contempt.** The following acts or omissions shall be deemed contempts:
>
> 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

DATED this 12th day of October, 2015.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK HARRISON**

STATE OF NEVADA )
: ss.
COUNTY OF CLARK )

KIRK HARRISON., being first duly sworn, deposes and states:

That I am the Plaintiff in the above-entitled action.

That the facts set forth in the foregoing Motion for an Order to Show Cause are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 8TH day of October, 2015.

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. May 17, 2016

NOTARY PUBLIC in and for said County and State

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**EXHIBIT “1”**

Report of Minnesota Multiphasic Personality Inventory2

Date 8-15-2011
Vivian L Harrison
DOB 08-16-1962

**Profile Validity**

This clinical profile has marginal validity because the client attempted to place herself in an overly positive light by minimizing faults and denying psychological problems. This defensive stance is characteristic of individuals who are trying to maintain the appearance of adequacy and self-control. This client tends to deny problems and is not very introspective or insightful about her own behavior.
The clinical profile may be an underestimate of the individual's psychological problems. The individual is likely to have little awareness of her difficulties. She is likely to be rigid and inflexible in her approach to problems and may not be open to psychological self-evaluation. She is likely to project an excessively positive self-image and be somewhat arrogant and intolerant of others' failings. She is unlikely to seek psychological treatment or to cooperate fully with treatment if it is implemented.
Individuals with this level of defensiveness, as reflected in her high K score, tend to admit few psychological problems. Thus, her content scale scores are likely to underrepresent her actual problems.
Her defensiveness on the MMPI-2 may be better understood by examining the S subscale elevations. She approached the test items with a view toward presenting herself as being very serene in her approach to life. Her high score on the Serenity subscale suggests that she would like to be viewed as having no problems or pressures. In addition, an assessment of her test defensiveness should consider the fact that she has a significant elevation on the Beliefs in Human Goodness subscale, indicating a naive response set claiming goodness in all people.

**Symptomatic Patterns**

Individuals with this MMPI-2 clinical profile are not admitting to many psychological symptoms or problems. The client's profile is within the normal range suggesting that she views her present adjustment as adequate. However, she reported some personality characteristics such as thrill seeking, impulsivity, proneness to rule infractions, and high-risk behavior, that may make her vulnerable to clashes with authority at times.

**Interpersonal Relations**

Quite outgoing and sociable, she has a strong need to be around others. She is gregarious and enjoys attention. Personality characteristics related to social introversion-extroversion tend to be stable over time. The client is typically outgoing, and her sociable behavior is not likely to change if she is retested at a later time.

**Diagnostic Considerations**

Her MMPI-s clinical profile is within normal limits. No diagnostic considerations are provided for individuals in this elevation range.

**Treatment Considerations**

Individuals with MMPI-s clinical profiles similar to this pattern are admitting few psychological problems compared with patients in mental health assessment settings. The client views her adjustment as adequate and probably does not feel the need for mental health treatment at this time. If she is being considered for treatment, perhaps at someone else's insistence, her relatively low level of psychological distress may need to be discussed with her before treatment can proceed effectively.

Jill Margolis, Ph.D.
Licensed Psychologist

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON
Plaintiff/Petitioner

v.

VIVIAN MARIE LEE HARRISON
Defendant/Respondent

Case No. D-15-443611-D

Dept. Q

**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) _____.

**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: KIRK HARRISON Date 10/12/15

Signature of Party or Preparer _____

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CLERK OF THE COURT

**OSC**
EDWARD KAINEN, ESQ.
Nevada Bar No. 5029
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Service@KainenLawGroup.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK HARRISON,

Plaintiff,

vs.

VIVIAN HARRISON,

Defendant.

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

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

**ORDER TO APPEAR AND SHOW CAUSE**

IT IS HEREBY ORDERED that said Defendant, VIVIAN HARRISON, shall appear on the 14th day of December, 2015, at the hour of 9:00 a.m., before the above-entitled Court, and show cause, if any she has, why she should not be held in contempt for: (1) convincing Brooke that she is empowered to determine her own custody and enraging Brooke to exercise that false power in violation of Section 5 of the Custody Order, filed July 11, 2012, and; (2) convincing Brooke, yet again, that she is empowered to determine her own custody and enraging Brooke to exercise that false power in violation of this Court's ruling and order during the hearing on October 1, 2015.

IT IS FURTHER ORDERED that Defendant may be served with this Order to Appear and Show Cause through her attorney of record.

. . .

. . .

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FAMILY COURT
DEPARTMENT Q

A.App. 1759

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

IT IS FURTHER ORDERED that Defendant must appear personally. Defendant also has the right to file affidavits on her behalf and may appear with an attorney, and has the right to present testimony on his behalf at the time of hearing.

IT IS FURTHER ORDERED that, if the Defendant fails to appear, he shall be deemed to have waived her right to the hearing and that in such case the Court may take such other and further action deemed necessary or appropriate.

DATED this 14th day of October, 2015.

DISTRICT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
EDWARD KAINEN, ESQ.
Nevada Bar No. 5029
ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorneys for Plaintiff

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CLERK OF THE COURT

0026
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RADFORD J. SMITH, CHARTERED
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Email: rsmith@radfordsmith.com
Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

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

**MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS; OPPOSITION TO EX PARTE MOTION FOR EXPEDITED HEARING**

DATE OF HEARING: November 24, 2015
TIME OF HEARING: 9:00 AM

COMES NOW, Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), through her attorneys, Radford J. Smith, Esq. and Garima Varshney, Esq., of Radford J. Smith, Chartered moves this court for its Order:

1. For an Order Clarifying the Order entered on October 1, 2015 regarding the Court's finding that Vivian is in contempt as it relates to Plaintiff, KIRK ROSS HARRISON's ("Kirk") missed time with Brooke, yet ordering that "contempt issues shall be deferred to the next hearing";

2. For an Order amending the Order entered on October 1, 2015 that finds Vivian in contempt without an Evidentiary Hearing on the issue of contempt;

3. For an Order denying Kirk's Ex Parte Motion for an Order Shortening Time filed on October 13, 2015 in its entirety; and,

4. For such other and further relief as to the Court may seem proper.

This motion is made and based upon the points and authorities and affidavits attached hereto, and upon all such argument as made by counsel at the time of the hearing.

Dated this 15th day of October, 2015.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant Vivian Harrison*

**NOTICE OF MOTION**

TO: KIRK HARRISON, Plaintiff;

TO: EDWARD L. KAINEN, ESQ., Attorney for Plaintiff; and

TO: THOMAS STANDISH, ESQ., Attorney for Plaintiff



A.App. 1762

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled Court on the 24th day of November, 2015 at the hour of 9:00 a.m or as soon thereafter as counsel may be heard.

Dated this 15th day of October, 2015.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant Vivian Harrison*

## I.

## INTRODUCTION

On September 22, 2015, the parties appeared before this Court on Kirk's Request for an Order to Show Cause why Vivian should not be held in Contempt. At that hearing, the Court set the matter for an outsourced evaluation with an individual who specializes in alienating behavior, which may include a child interview. By a subsequent Order, the Court appointed Dr. John Paglini to conduct the outsourced evaluation.[1] A return hearing from the outsourced evaluation/child interview is currently set for December 14.

On October 1, 2015, the Court entered a Notice of Entry of Minute Order from the September 22 hearing. The minute order states, "Although the Court has made a Finding that contempt has been committed as it relates to Plaintiff's missed time, the contempt issues shall be DEFERRED to the next hearing." [Emphasis in the original]. By this Motion, Vivian seeks a clarification of that order. Because

[1] *See* Notice of Entry of Order re: Expert Designation.

the Court cannot make a finding of contempt without an evidentiary hearing, Vivian seeks an order amending the October 1, 2015 order.

Finally, on or about October 13, 2015, Kirk has filed an ex parte request for an order shortening time on his Motion for an Order to Show Cause Why Defendant Should Not be held in Contempt, et al. While the Court moved the hearing on Kirk's motion to December 14, 2015, but it unclear whether the Court did that before or after addressing Kirk's request. Therefore, Vivian files an Opposition to Kirk's Ex Parte Request and responds that the Court has already addressed concerns presented in Kirk's motion by directing this case to an outsourced evaluation and child interview by Dr. Paglini, Vivian, through her counsel has contacted Dr. Paglini and provided him all the documents he needs to begin his evaluation[2] and therefore, there is no need under EDCR 2.26 for this matter to be heard on an expedited basis. Therefore, Kirk's' Ex Parte Request for an Order Shortening Time should be denied.

## II.

## STATEMENT OF FACTS

The facts underlying the present Motion and Opposition are set forth in Vivian's Sworn Declaration attached hereto, and exhibits attached thereto. The text of that Declaration is set forth here for the convenience of the Court:

I, VIVIAN HARRISON, being duly sworn, deposes and says as follows:

1. I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I am the Defendant in the case of *Harrison v. Harrison* case number D-11-443611-D, in the Eighth Judicial District Court, Clark County, Nevada. I submit this Declaration in Support of my Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing.

[2] *See* Letter to Dr. Paglini (without enclosures) dated October 12, 2015 attached hereto as Exhibit "C-1."

2. The Court has indicated in its order of October 1, 2015 that I was held in contempt at the hearing. At the hearing my counsel requested that Brooke Harrison be permitted to testify. I was also prepared to present witnesses that are aware of Brooke's statements about her custodial situation, and those witnesses can attest that Brooke's notions of what she wants to do regarding her custodial timeshare have nothing to do with my prompting her. It was my understanding from the hearing that the Court had agreed and granted my request that Brooke be interviewed by a qualified psychologist so as to understand her actions, and to allow the psychologist to address what is motivating her to not abide by the parenting plan.

3. I think because of the volume of the information that has been given to the Court in this case, it is easy to overlook the history. My lawyers and I carefully and meticulously set forth the history of Brooke's (and Rylee's) resistance to joint physical custody with Kirk in my Opposition and Countermotion filed October 17, 2013 to one of Kirk's three motions to eliminate the teenage discretion provision in our parenting plan filed July 8, 2013. A copy of that Opposition and Countermotion is attached hereto as Exhibit "A-1."

4. In that Opposition and Countermotion, I explained, with specific citations to the record of this case, that Brooke had always resisted equal time with Kirk due in part to Kirk's treatment of her, but for the most part to the close bond that I have with Brooke and Rylee. That bond has continued through today, although admittedly I see much less of Brooke due to her school and dance schedules. Further, in that Opposition I specifically addressed the system that was put in place to address Brooke's concerns and desires, and take some of the pressure off her so that she did not make the decision that she is making now. Kirk continues to challenge that system. After spending hundreds of thousands of dollars answering Kirk's continuous and repeated challenges to this Court's orders, his appeals of the agreements he made in the parenting plan, and now his actions to hold me in contempt without even allowing my

attorney to discuss a resolution with his, I have no interest in continued litigation. I have not encouraged (and in fact I have strongly discouraged) Brooke to not go to her father's house.

5. Even though the Court denied three separate Motions that Kirk filed to wipe out the teenage discretion provisions, and found that Brooke had properly exercised the communication, the motions, and the subsequent appeal of the provision, has worked. Brooke has not exercised teenage discretion even when she wanted to for fear that her Kirk would be angry, and continue to ridicule her about spending additional time with me. I cannot talk to her about these things, so I have done what is required under the parenting plan: I have taken her to see Dr. Jamal Ali. Brooke has indicated that she has repeatedly told Dr. Ali that she desires to spend more time in my home, but I tell her that I cannot talk to her about that. When she has told Kirk of her desire, he has told her that "someone" must be telling her to say these things (and thereby dismisses her statements). Does Kirk really believe that Brooke doesn't know he's referring to me? Kirk has undermined and challenged that process causing me to spend enormous amounts of fees, yet I'm in contempt for following it?

6. Kirk has filed an ex parte request for an expedited hearing, so I feel compelled to oppose that. I did see that the Court had moved the hearing on Kirk's motion to December 14, 2015, but I don't know if the Court did that before or after addressing the request by Kirk, so I am submitting the following in Opposition to that request.

7. Because I cannot talk to Brooke about Kirk or Court, I only get glimpses from statement that she will make in frustration about her father. I have shared those statements with the Court in the past, but it has not caused the Court to interview Brooke to get to the bottom of what is going on with her. Now we have that interview, and I would strongly request that the Court allow Dr. Paglini to find out what is going on and address it with the Court, Kirk and me. The Court should not take any action regarding the motions Kirk has filed until the completion of Dr. Paglini's report to the Court.

8. I have done everything I can think of other than kick Brooke out of my house to encourage her to go to her father's house. I have done the following if she does not visit her father:

A. Taken Brooke's car away from her except for her to travel to school and dance;

B. Not allowed her to have anyone else in her car;

C. Placed her on restriction;

D. Taken her cell phone away;

E. Restricted her from watching any television;

I have asked both the Court and Kirk (*see* email attached hereto as Exhibit "B-2") what I can do to comply with the Court's order. Kirk, to my knowledge, has not done any of these things. He has not advised me either directly or through counsel what he thinks I should do to get a child, who is 16 years old, to visit her father. I welcome the Court's further instruction as to steps I can take to cause Brooke's compliance.

9. Brooke went and stayed at Kirk's home during his time on Wednesday, September 30, and Thursday, October 1. She then showed up at my house on Friday, October 2. I advised her that she needed to return to Kirk's house; she refused. I cannot understand why if I'm being held in contempt for not controlling where Brooke goes, why Kirk is not held in contempt for his inability to keep her in his care during his visitation periods.

10. The Court asked my attorney at hearing what I would do if Brooke did not want to go to school. The first thing I would do would be to talk to her about why she did not want to go to school, and get her counseling if she did not want to talk about it with me. That is exactly what I wanted to do here, but Kirk filed a motion demanding that I be held in contempt.

11. The actions above have already started to take a toll on Brooke. I do not for a second think that what is going on is good for Brooke. She needs to have a voice in this process, and someone needs to listen to her and find out what's going on.

12. Kirk's allegation that I have denigrated him for four years to Brooke and Rylee is false. I have not. I would again ask that this Court also have Rylee interviewed about Kirk's statement.

*End of Declaration.*

## III.

## VIVIAN'S REQUEST TO AMNEDCLARIFY ORDER ENTERED ON OCTOBER 10, 2015

### 1. Vivian's Motion to Amend is Timely Filed

NRCP 59(e) provides, "A motion to alter or amend the judgment shall be filed no later than 10 days after the service of written notice of entry of the judgment."

EDCR Rule 8.06 states,

> (a) . . . notwithstanding any prior Order of this Court, whenever a party has the right or is required to do some act or file same within the prescribed response period after the service of a notice or other paper, other than process, and the notice or paper is electronically served upon the party, three (3) calendar days must be added to the prescribed period.

In the instant case, the Notice of Entry of the Minute Order was entered on October 1, 2015. Thus, Susie's motion to amend is timely filed.

### 2. Vivian's Request to Clarify and Amend Findings in the Order entered on October 1, 2015 should be granted

A court may issue an order holding a party in contempt for "disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3).

In order to hold Vivian in contempt, the court must permit Vivian to testify and show cause why she should not be held in contempt and allow her to cross examine any witnesses against her.

> [I]n a prosecution for contempt not committed in the presence of the court, due process requires that the person charged be advised of the nature of the action against him, have

> assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his behalf.

*Awad v. Wright,* 106 Nev. 407, 411, 794 P.2d 713, 716 (1990), quoting *Burgers v. Maiben*, 652 P.2d 1320, 1322 (Utah 1982).

In *Ex parte Hedden*, 29 Nev. 352, 90 P. 737, 1907 Nev. LEXIS 10 (Nev. 1907) the Court held that unless the contempt is committed in the immediate view and presence of the court, meaning the ocular view of the court, or where the court has direct knowledge of the contempt, the rights of every defendant should be protected. The charge should be made by affidavit and the contemner given the right to show cause why he should not be punished for contempt, and prove or disprove the charges against him before judgment be passed upon him; this right to defend one's self, ***either civilly or criminally***, in ***any*** action which may be instituted wherein his liberty or property is involved, is the sacred privilege of every citizen and is of such transcendent importance that it cannot be taken from him even by legislative enactment. [Emphasis added]. *Id.*

Both this Court and the United States Supreme Court have held that an individual's constitutional rights must be protected during a contempt of court action. Thus, in a prosecution for contempt, not committed in the presence of the court, due process requires that the person charged be advised of the nature of the action against him, have assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his behalf. *See, In re Oliver,* 333 U.S. 257, 92 L. Ed. 682, 68 S. Ct. 499 (1948); *Cooke v. United States,* 267 U.S. 517, 69 L. Ed. 767, 45 S. Ct. 390 (1925).

In the Order entered on October 1, 2015, the Court made a finding that Vivian is in contempt without holding an evidentiary hearing. Because that finding was made without an Evidentiary Hearing on the issue of contempt, Vivian seeks an order amending the Order entered on October 1, 2015.

. . .

. . .

## IV.

## CONCLUSION

Based on the foregoing, Vivian seeks the following relief –

1. For an Order Clarifying the Order entered on October 1, 2015 regarding the Court's finding that Vivian is in contempt as it relates to Plaintiff, KIRK ROSS HARRISON's ("Kirk") missed time with Brooke, yet ordering that "contempt issues shall be deferred to the next hearing";

2. For an Order amending the Order entered on October 1, 2015 that finds Vivian in contempt without an Evidentiary Hearing on the issue of contempt;

3. For an Order denying Kirk's Ex Parte Motion for an Order Shortening Time filed on October 13, 2015 in its entirety; and,

4. For such other and further relief as to the Court may seem proper.

Dated this 15th day of October, 2015.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
*Attorney for Defendant*

**DECLARATION OF VIVIAN HARRISON**

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

VIVIAN HARRISON, hereby declares as follows:

1. I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I am the Defendant in the case of *Harrison v. Harrison* case number D-11-443611-D, in the Eighth Judicial District Court, Clark County, Nevada. I submit this Declaration in Support of my Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing.

2. The Court has indicated in its order of October 1, 2015 that I was held in contempt at the hearing. At the hearing my counsel requested that Brooke Harrison be permitted to testify. I was also prepared to present witnesses that are aware of Brooke's statements about her custodial situation, and those witnesses can attest that Brooke's notions of what she wants to do regarding her custodial timeshare have nothing to do with my prompting her. It was my understanding from the hearing that the Court had agreed and granted my request that Brooke be interviewed by a qualified psychologist so as to understand her actions, and to allow the psychologist to address what is motivating her to not abide by the parenting plan.

3. I think because of the volume of the information that has been given to the Court in this case, it is easy to overlook the history. My lawyers and I carefully and meticulously set forth the history of Brooke's (and Rylee's) resistance to joint physical custody with Kirk in my Opposition and Countermotion filed October 17, 2013 to one of Kirk's three motions to eliminate the teenage discretion provision in our parenting plan filed July 8, 2013. A copy of that Opposition and Countermotion is attached hereto as Exhibit "A-1."

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for the most part to the close bond that I have with Brooke and Rylee. That bond has continued through today, although admittedly I see much less of Brooke due to her school and dance schedules. Further, in that Opposition I specifically addressed the system that was put in place to address Brooke's concerns and desires, and take some of the pressure off her so that she did not make the decision that she is making now. Kirk continues to challenge that system. After spending hundreds of thousands of dollars answering Kirk's continuous and repeated challenges to this Court's orders, his appeals of the agreements he made in the parenting plan, and now his actions to hold me in contempt without even allowing my attorney to discuss a resolution with his, I have no interest in continued litigation. I have not encouraged (and in fact I have strongly discouraged) Brooke to not go to her father's house.

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know if the Court did that before or after addressing the request by Kirk, so I am submitting the following in Opposition to that request.

7. Because I cannot talk to Brooke about Kirk or Court, I only get glimpses from statement that she will make in frustration about her father. I have shared those statements with the Court in the past, but it has not caused the Court to interview Brooke to get to the bottom of what is going on with her. Now we have that interview, and I would strongly request that the Court allow Dr. Paglini to find out what is going on and address it with the Court, Kirk and me. The Court should not take any action regarding the motions Kirk has filed until the completion of Dr. Paglini's report to the Court.

8. I have done everything I can think of other than kick Brooke out of my house to encourage her to go to her father's house. I have done the following if she does not visit her father:

A. Taken Brooke's car away from her except for her to travel to school and dance;

B. Not allowed her to have anyone else in her car;

C. Placed her on restriction;

D. Taken her cell phone away;

E. Restricted her from watching any television;

I have asked both the Court and Kirk (*see* email attached hereto as Exhibit "B-1") what I can do to comply with the Court's order. Kirk, to my knowledge, has not done any of these things. He has not advised me either directly or through counsel what he thinks I should do to get a child, who is 16 years old, to visit her father. I welcome the Court's further instruction as to steps I can take to cause Brooke's compliance.

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why if I'm being held in contempt for not controlling where Brooke goes, why Kirk is not held in contempt for his inability to keep her in his care during his visitation periods.

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12. Kirk's allegation that I have denigrated him for four years to Brooke and Rylee is false. I have not. I would again ask that this Court also have Rylee interviewed about Kirk's statement.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

VIVIAN HARRISON

DATED: 12-15-15



A.App. 1774

# EXHIBIT "A-1"

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CLERK OF THE COURT

**OPP**
RADFORD J. SMITH, ESQ.
RADFORD J. SMITH, CHARTERED
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**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

**FAMILY DIVISION**

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

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

DATE OF HEARING: October 30, 2013
TIME OF HEARING: ~~9:00 a.m.~~ 10:00 A.M.

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

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

## I.

## INTRODUCTION

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

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

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

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

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

Can Kirk believe his present motion has merit? He argues that a provision recognizing teenage discretion violates public policy even though Nevada law ***requires*** the court to weigh such discretion when determining the best interest of a child.[2] Kirk's refusal to name or approve a therapist or PC for 14 months, his attempt to reduce the power of the Parenting Coordinator to nothing[3], and his current meritless Motion are not good faith attempts to protect the children, but are instead designed to prevent the children from having any mechanism to express their continued desire to spend more time with Vivian. It is a fair inference Kirk believed that if he could torpedo the entire process, he could prevent the inevitable conversation between the children and therapist/Parenting Coordinator about custodial time. It is submitted Kirk entered the Parenting Plan in bad faith, and refused to name a therapist or Parenting Coordinator to block its effect and enforcement. Vivian must now come directly to the Court for relief.

[2] NRS 125.480(4)(a)

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

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

## II.

## STATEMENT OF FACTS

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

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

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

> What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care – we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.
>
> Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. The provision does not place the responsibility of choosing on Brooke, it simply gives each child discretion after 14 to spend more time with one parent or the other, a request that will likely be granted to them in any event by the Court. Again, the provision is designed to avoid litigation.

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

**1. <u>Brooke and Rylees's Longstanding Desire to Live Primarily with Vivian</u>**

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

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

> So that's one of the subfactors that I have to look at, looking at the physical, developmental, emotional needs of the children and the nature of their relationship with both parents. It may be some form of pre-focus assessment to the extent that I need the involvement of an evaluator—again, not for the purposes of a custody evaluation, that's ultimately my decision, but there may be some assistance in providing insight really as it relates to those three subfactors NRS 125. 480 and whether – and who provides that service.
>
> If it's someone on our provider list, I view it as something that expands more beyond just a simple FMC interview of Brooke, especially if [Rylee] is going to be involved – not necessarily for expressing a preference—but for purposes of evaluation her physical, developmental -- and that's been discussed throughout the papers and some of the conditions and treatment that she's going through, as well as the nature of her relationship with both parents.

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

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

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

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

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

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

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

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

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

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

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

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

- Declaration of Kellie Wendt: 2005-2012: Vivian attended games, dance recitals, rehearsals, and birthday parties, traveled to Disneyland, and took the girls Trick-or-Treating. Vivian is "present" and involved.

- Declaration of Melissa Mojica (gymnastics teacher), 2006-2008: Vivian brought Rylee to gymnastics and stayed to watch. Vivian was "involved and enthusiastic."

- Declaration of Brandi Carstensen (gymnastics teacher and fellow parent), 2006-2009: Vivian did majority of driving and waiting for holiday event across town; Vivian assisted and volunteered at school. "Deeply involved in [the children's] wants and was very attuned to their needs."

- Declaration of Noel Kanaley (Rylee's room parent) 2010-2011: Vivian was co-parent in Rylee's classroom. Vivian responded to every parent request, contributed to and participated in classroom parties and events. Vivian is "intimately knowledgeable about their activities, hopes and desires."

- Declaration of Lois Klouse (Brooke's 5th Grade teacher) 2008: Vivian alone was "concerned for their advancement in swimming, who initiated the call and then arranged for private swim lessons"; Vivian was "engaged and absorbed in the children. She knew their habits and needs and she knew how to deal with them in constructive ways. She was interested in them. She was genuinely interested in their activities."

- Declaration of Kelley Gray, (fellow parent): "Vivian was engaged and absorbed in Rylee's life"; Vivian participated in Rylee's activities.

- Declaration of Laurie Larson, (neighbor and friend)[4] "I emphatically state that I never understood I was signing a document which inferred I was 'in support of' primary custody and exclusive possession of their residence for Kirk Harrison . . . I do not claim that Vivian never drove the children to school or activities." Vivian is a "caring, involved and supportive mother."

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

- Declaration of Azure Fectau (Rylee's 3rd grade teacher) 2011-2012: Vivian has participated in a variety of school events and is "an interested, caring and energetic volunteer."

- Declaration of Gretchen Poindexter 2008: "Vivian was focused on Rylee and her swimming efforts" 2010 -2011 – "I recall seeing Vivian drop off and pick up from school from time to time[.] I have seen her assisting at the school. It appears to me that Vivian and Rylee have a very strong mother-daughter relationship."

- Declaration of Sue Broadbent 2008-2009: "I am certain I routinely saw Rylee and her mother and my grandchildren at soccer games in those years."

- Declaration of Tina Coleman 2007-2010: Vivian was actively involved in children's school.

- Declaration of Rosaleen Thomas 2010: "During her summer visit in Ireland . . . Vivian regularly spoke to the girls, and I said hello to them several times on Skype. She was very excited about their coming to Ireland; she was researching/planning what they were going to do when they came. One place in particular which was earmarked for a visit was the leprechaun museum in Dublin."

- Declaration of Lisa Morris, 2011-2012: "When Brooke Harrison was at King Elementary her mother Vivian helped with fund raising and other tasks in 2008 when she was a member of PAC. She was energetic, full of good ideas, always willing to donate her time and efforts. . . I have also witnessed Vivian attending the girls 2011 dance recitals and the 2012 parent observation dance classes in Boulder City, NV."

- Declaration of Sandy Wachtel, 2007-2011: "Since 2007, I have seen Mrs. Harrison at the dance studios, recitals, rehearsals and parent observation dates. I have seen her pick up and drop off, along with Mr. Harrison. I have seen mother and daughter Brooke interact there and at a few social events (including a birthday party this summer (2011)). It appears to me they have a solid, loving relationship; they like and love each other."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Although I believe you were totally wrong in what you did yesterday. I'm also willing to confess that I was wrong too. Can't we both just admit that we were wrong, or is it my fault as always? I know that you think that I disrespect you and don't appreciate what you do for me, but I think, deep down, you know that's not true. If you do believe it to be true, then I think you don't know me as well as you might have thought. Perhaps I just haven't gone about showing it as much as I should. You deserve better. I realize now your life must be awful. You go about your day taking care of all of your children as if it were your only responsibility. You never even think twice about doing something for yourself. Every waking hour is spent tending to our wants and needs. I know this, Mom.
>
> I'm aware of your sacrifices, and that's exactly why I used it against you. You hurt me where it hurts the most. My entire life I've been trying to live up to your expectations. I've always wanted to please you and make you proud of me. I honestly held your opinion in the *highest* regard. In the past few months, however, I felt our approval of me dwindling away. I failed you and myself. I can't stress enough how much my last semester of high school became an absolute embarrassment for me.

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

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

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

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

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

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

[5] This is not different from when Tahnee did not want him to attend the swimsuit portion of her beauty pageants. He did not, to Vivian's knowledge, blame Vivian for that.

practice for the entire time Brooke and Rylee have been in dance. Brooke told Vivian that she wanted Vivian to take her shopping. This did not come as a surprise; Vivian cannot remember a single instance where Kirk bought dance clothes or shoes for the children while Vivian and Kirk were together.

Kirk admits that he argued with the girls when they told him that they could not remember him buying dance shoes or clothes for them in the past. Motion, page 7.[6] Because Kirk's involvement in dance has been limited to driving the children, he does not understand that the children do not equate the purchasing of leotards at Target with the purchase of dance clothes and shoes, which they purchase from a specialty store. Kirk has attempted to create a new reality whereby he was involved in the purchase of dance clothes for the children – he was not, and he was not justified in chiding Brooke for spending time shopping with Vivian.

Further, Kirk presents Brooke's desire to be at Vivian's home to dress and do make-up with her friends for their first Homecoming Dance as an act of alienation by Vivian. It is telling that Kirk does not understand Brooke's desire to be with someone who is skilled and experienced in applying make-up, and who taught *her* how to apply make-up. Also, Kirk leaves out important facts. Brooke and her friends planned to go from one mother's home to another when preparing for the dance. Brooke and one of the friend's mother's told Vivian about the plan. The plan involved the girls traveling to three different homes for different events (hair and make-up at Vivian's home, other events at two other homes).

Moreover, Brooke is a very feminine girl who has discussed her interest in being a make-up artist. Kirk's response to her is that she is too intelligent to be a make-up artist, and should consider law or medicine. While a 14 year old may change her idea about a career many times, dismissing her stated

[6] In his emails attached to his Motion as Exhibit "1," he states (in an email to Vivian dated August 24, 2013 at 5:00 p.m.) that he had purchased a pair of ballet shoes for Brooke "at the store in Boulder City before they closed" (he could not identify the name of the store or when it closed). The store to which he referred is Danceworks, that closed in ***2007***. Vivian has no recollection of Kirk ever purchasing any shoes at that store. In comparison, Vivian regularly purchased dance supplies and clothing there from the time the parties' adult daughters Tahnee and Whitney were involved in dance, to the time of its closure.

desire as frivolous puts an end to communication. Vivian has not done this, and will love and support Brooke if she eventually chooses to be a make-up artist, surgeon, or a circus clown. Vivian understands that Brooke is now in a different developmental stage in her life, and criticism and behavioral demands must give way to patience and encouragement. Kirk does not share that view.

In August, 2013, Vivian travelled with the children first to a Disney Cruise, then to Disneyworld, and then to Huntsville, Alabama to their annual trip to sewing camp. Kirk planned to travel with the children upon their return to an amusement park near Salt Lake City, Utah, for eight days. Brooke (who was then experiencing cramps) was tired, and wanted to rest at the hotel the first day of the trip. Brooke's statement of Kirk's actions was set forth in an email that Brooke sent from her iPad to Vivian on that date:

> Dad took my phone away and he is being so mean to me. There is no other way to contact you except email. I'm sorry Rylee is next to me in one bed watching her iPad and dad comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to stay in the hotel room because apparently we're staying here for another 8 days. He rips my phone out of my hands takes off the charger and headphones and he asks me why i'm listening to people who are telling me that he is a bad person (he is referring to you) I tell him there isn't and he says its not good to lie. Then he states that I am lying about being hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts going on about he raised me since I was 7 and how he took me to school. Then he asked why I don't love him and I said he doesnt respect privacy, he barges in, doesn't support me in anything I do, Then he asks what he doesn't support me in, and I say dance and he says he drives me to and from and he pays tuition. Then, I say that he doesn't support me in Makeup Artistry and then he says that he's bought me makeup and that what else can he do to support me. And then I say that he always says he'd rather me be a lawyer or a doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show is done and she closes her iPad because dad stated earlier that she MUST stop after that episode. So she turns it off and dad not respecting Rylee starts saying how if he died today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate him. Then he starts calling me selfish and how I don't want to do anything with the family and I say we aren't a family. Then I start to ignore him while he starts blaming everything on "the person that is telling me all about the bad stuff isn't doing the right thing and how its affecting our relationship. He walks back to his bed and says that he is sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm around her and turns away from me. Then I ask dad for my phone because I want to talk to you and he says no and then I say he is not letting me talk to you. Thats all that happened. I miss you mommy. I want to come home and be with you and Rylee without her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

**Exhibit "F"** attached. Brooke's email outlines several of Kirk's behaviors that are part of a larger pattern that has damaged his relationship with Brooke.

1) *Kirk's Disparagement of Vivian:* Nothing is more divisive to children than one parent speaking poorly about the other parent whom they love. Brooke describes Kirk's thinly veiled assertion that Vivian is telling her that Kirk "is a bad person" and asks why she is "listening" to Vivian. When she denies that Vivian has said that (Vivian has not disparaged Kirk to the children), Kirk suggests that she is lying.[7]

Vivian is particularly concerned about this issue. Before and during this case, Kirk stated to others, including the parties' adult children and Vivian's real estate lawyer (Mr. Woodbury), that Vivian was both a drug addict and suffered from mental illness. In an act of enormous insensitivity, he solicited the adult daughters to provide affidavits in his efforts to limit Vivian to supervised visitation. As evidenced by his recent filings, he continues to assert that Vivian suffers from mental disorder. In his present motion, he again asserts DSM-IV findings without an expert report or opinion. Kirk will never fairly present Vivian to Brooke or Rylee, or refrain from directly, or indirectly suggesting that she suffers from some disorder. It is difficult to imagine that if Kirk believes Vivian is mentally ill, he does not say so around the house. We already see this in his thinly veiled reference to her as someone who has led the girls astray, and who they should not trust.

Moreover, Kirk's filings in this case, including his present motion, evidence his repeated efforts to both directly and indirectly convince the children, both adult and minor, that Vivian does not care about them, and that she is "crazy." Kirk continues to try to plant seeds with the younger children to lose confidence in Vivian, and to think poorly of her. He disguises his statements as being "supportive" and

[7] Kirk's assertion that the children are lying adds them to a long list of anyone who has taken a position contrary to Kirk's. Littered throughout Kirk's filings are claims that Vivian, her friends, neighbors, coaches, counselors, experts, and attorneys are "perjurers", "liars" and "co-conspirators." He specifically told Brooke that she was lying when she explained to Kirk that (contrary to his repeated assertion in this case), Vivian was not in the children's bed when Rylee fell out of bed and hurt herself. *See,* Affdavit of Vivian, filed October 27, 2013, page 77, paragraph 209.

either does not see it, or does not think anyone else will see it, as harmful or abusive. There are numerous examples of this in Kirk's filings, including the present motion. The following are just a few examples from Kirk's initial affidavit filed in this case (attached to his September 14, 2011 Motion).

> ¶68 "I told Brooke Mom is going through a rough time right now."
>
> ¶97 Conversation with Brooke reminding her of all the times Vivian was going to be gone, discussing his "concerns" with what Vivian has done in the past.
>
> ¶116 "Brooke told me tonight that Vivian talked to her about she and Rylee going to Ireland this summer. . . I told Brooke that she could go for a week or two if I went as well."
>
> ¶151 "Later when I was consoling her I asked Brooke how she thought Rylee was dealing with all of this…"
>
> ¶156 "I believe Brooke knows that until very recently I would have quickly dismissed anything at all said that negatively reflected on Vivian. At some point, it is more important that your children have an environment where they feel comfortable speaking openly about things that bother them, than to continue to wrongly protect the image of someone that continues to do harm to your children."
>
> ¶166 "I told Brooke that just like she, Rylee and I had done all year, that we would do the laundry tomorrow."

It appears he planted these same seeds with the older children that he is now using to influence them.

> ¶28 "I would talk to each of the children separately in an effort to solve the then pending problem."
>
> ¶41 "I told Tahnee how bizarre it is for a mother to say such things to and about her own children, let alone even think such things. Tahnee and I both agreed how this highlights just how incredibly insecure Vivian has become and that Vivian feels she is in competition with her own children and feel threatened by them."
>
> ¶50 "I told [Tahnee] that in her mother's condition, if we got a divorce and Vivian had partial custody, I would be fearful for Brooke and Rylee."
>
> ¶53 "I told Tahnee that I had done all I could concerning Vivian, and all I could do was be the best father I could and that all of us needed to do our best in looking out for one another."

> ¶56 "I told Tahnee that Vivian does not really think Chloe is a better dancer than her. Vivian is simply incredibly insecure and needs to tell others that they are not so hot. I told Tahnee about when Vivian last year told me that nobody wants to be with me."
>
> ¶69 "I telephoned Whitney and expressed concern about this to Whitney saying you are going to be on national television with someone who is not dealing with a full deck right now and it could prove very embarrassing."
>
> ¶75 "I told Tahnee that Vivian's need for attention is frightening."
>
> ¶106 "That night Tahnee, Joseph, and I talked about some of the issues with Vivian, including the incident at Brooke's ball game with Bill B. and her meeting a man on the airplane, giving him a ride to his hotel and having drinks with him in a bar, then discovering he was Cam W.'s boss. We also talked about her lack of attention to Brooke and Rylee."

In her affidavit filed with her initial motion, Vivian addressed Kirk's history of alienation of the children. *See* Affidavit of Vivian Harrison, attached to Opposition filed October 27, 2013, paragraphs 78 through 90. (That excerpt is attached hereto as **Exhibit "G"** hereto). In sum, Kirk undermined Vivian's authority, did not support her in disputes with the children, perpetuated falsehoods to them, and openly disparaged her to the children. His actions toward the adult children are now repeated with Brooke and Rylee.

Kirk's behaviors designed to disparage Vivian in the eyes of the children (including the adult children) have taken many forms. Kirk's repeated claim that Vivian "poisoned" Rylee has been a central theme throughout his case. Even after Dr. Dewan indicated that he was more concerned with Rylee's weight as a factor in her early onset of puberty than he was with any alleged exposure to testosterone cream, Kirk continued to raise alarms with Rylee and all the other children (and anyone who would hear his complaint) that because of Vivian her growth would be stunted, she would suffer ill effects of an implant, etc. In her Opposition to Kirk's Motion, Vivian provided sound medical data that evidenced in recent years more children were entering early pubescent development, and that the trigger was identified as everything from excess weight, to the use of anti-bacterial soaps. Nevertheless, Kirk rode his



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bandwagon that Vivian "poisoned" Rylee to the point that Dr. Dewan wrote a letter stating that he did not make any finding that Rylee's puberty was caused by exposure to testosterone. *See* Letter of Dr. Dewan dated July 6, 2013, attached hereto as **Exhibit "H"**. In his most recent statement, dated October 14, 2013, and attached hereto as **Exhibit "I,"** Dr. Dewan confirms that he projects that Rylee will reach her normal height of approximately five-foot ten.

Even the way Kirk reacted to this news was manipulative. The alternative that Dr. Dewan proposed was that Rylee would be from 5'4" to 5'7", normal heights by any standard. When Dr. Dewan advised the parties of his findings regarding Rylee's height, Kirk acted as if he had just won the lottery. Rylee barely reacted, other than a puzzled look on her face. Kirk seems unable to comprehend that the message he was giving to a young girl who is naturally concerned with other's perception of her body is that she is okay when she is 5'10", but less than okay if she is shorter. This is particularly important in light of the height of her adult sisters (5'11" and 5'8).

2) *Kirk's Constant Assertion that Children are Lying*: No person – coach, teacher, friend's parent – who knows the girls will suggest they are dishonest sneaks or manipulators as Kirk suggests in his motion. The evidence will show they are honest, intelligent and forthright girls. But, Kirk suggests Brooke is lying about things he states Vivian said about him, claims that Brooke is lying about her cramps, advises both Brooke and Rylee that they are lying when they do not agree that he has purchased dance clothing and shoes for them, and with his proposition that he raised them "since [Brooke] was 7." Kirk's assertion that the children are lying places significant unnecessary pressure on them, and appears to the children as disapproval and a lack of caring. The emotional conflict caused by Kirk demanding that they re-write their history together is debilitating. It is this kind of behavior by Kirk that Vivian sought to address through a therapist and PC, but Kirk has undermined that process. Brooke is now suffering under Kirk's constant barrage of criticism and disapproval.

3) *Kirk's Use of Guilt to Manipulate the Children*: Brooke states that in her email that Kirk, after he suggested she was lying, turned to Rylee and stated, "if he died today [Brooke] wouldn't shed a tear and how [Brooke doesn't] want to be with him anymore and why [Brooke hates] him." Any experience as a parent or sibling permits us to understand how incredibly manipulative and damaging this type of statement is to a child, and to that child's relationship with her sibling. Rylee reacted in a way that can be expected; she turned away from Brooke when Brooke tried to hug her. Kirk manipulated Rylee into believing that Brooke was uncaring, and insensitive.

Indeed, one of the core forms of manipulation that Kirk has used to discourage Brooke from spending time with Vivian, or living with Vivian as she desires, is that she would be "abandoning" her sister. Kirk repeatedly tells her, and has solicited the parties' adult daughters to advise her, that she is being selfish and uncaring toward her sister by wanting to engage in activities away from her. The irony in this is that because Brooke and Rylee attend different schools (Brooke is in high school, Rylee in elementary school), are in different dance programs, and engage in different activities, they spend little time together under the current schedule. This is not unusual – siblings of different ages, particularly when the older sibling becomes a teenager, have different interests. In approximately a year Brooke will be driving. She will soon be dating, and have more interest in her peers than her parents or siblings. Again, this is part of the natural developmental stage that Brooke is in. Kirk's insistence that she must feel guilty about seeking her own independence is damaging to her.

Kirk also outlines in his motion how he uses name-calling to prevent Brooke from spending time with Vivian. Kirk states that Brooke takes too much time to retrieve items left at Vivian's home. Kirk then greets Brooke on her return to the car with allegations that she is rude, inconsiderate and selfish. (Motion, page 8). When she reasonably suggests that he leave her there (the parties' homes are minutes apart) and return, or have Vivian drive her back, he refuses. This situation is caused by the constant back

and forth from the parties' homes caused by the current schedule, but more important, Kirk should not be attempting to manipulate Brooke in this manner.

The above are only samples of various events, words and actions that has led to Brooke's now adamant desire to live with Vivian. Kirk is responsible for the breakdown in his relationship with Brooke, not Vivian. When negotiating the parenting plan, Brooke insisted that did not want to live with Vivian. Vivian could have sought primary custody, but believed that resolution, therapy and a Parenting Coordinator was the best way to allow Kirk to address his problems through the process, and was in the best interest of the children. Remarkably, Kirk has tactically undermined that process, and now seeks to destroy it.

## III.

## THE COURT SHOULD DENY KIRK'S MOTION TO MODIFY, AND CONFIRM THE PARTIES' TEENAGE DISCRETION PROVISION TO BE CONSISTENT WITH NEVADA LAW

A district court retains jurisdiction throughout a child's minority "[a]t any time to modify or vacate its order" pertaining to custody. NRS 125.510(1). Either party, or the Court, may seek to modify or terminate joint custody of a child if it is shown the modification is in the best interest of the minor child. NRS 125.510(2).

The standards for a change of custody apply to a request to modify visitation. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996)("A court decision regarding visitation is a custody determination.") *See also, Rennels v. Rennels,* 127 Nev. Adv.Op. 49, 257 P.3d 396 (2011)(once initial visitation order entered, standard for parent to modify grandmother's visitation is the *Ellis*[8] standard).

A district court must give deference to the agreements entered by the parties when presented a motion to modify custody. In *Rivero v. Rivero,* 125 Nev. 410, 216 P.3d 213 (2009), the Court said:

[8] *Ellis v. Carucci,* 123 Nev. 145, 161 P.3d 239 (2007)

> We conclude that the terms of the parties' custody agreement will control except when the parties move the court to modify the custody arrangement. In custody modification cases, the court must use the terms and definitions provided under Nevada law.
>
> Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy. Therefore, parties are free to agree to child custody arrangements and those agreements are enforceable if they are not unconscionable, illegal, or in violation of public policy. However, when modifying child custody, the district courts must apply Nevada child custody law, including Therefore, once parties move the court to modify an existing child custody agreement, the court must use the terms and definitions provided under Nevada law, and the parties' definitions no longer control. In this case, Ms. Rivero moved the district court to modify the decree. Therefore, the district court properly disregarded the parties' definition of joint physical custody.

Kirk seems to argue that the Court should consider terms of the parties' agreement when a party seeks to enforce it, but that the Court may modify the agreement freely provided such modification meets the statutory or case law standards for modification. (Motion, page 13, lines 19-28). This ignores the plain language of the *Rivero* decision. Under *Rivero,* a district should give *deference* to a parenting agreement *except* where the parties have used "terms and definitions" that are contrary to Nevada law. In *Rivero,* 125 Nev. 410, 2 the court ignored the definition of physical custody in the parties agreement because it was contrary to the law's new definition in the *Rivero* case.

Here the parties have not placed any new terms or definitions into their agreement. Instead, their experienced counsel negotiated, and the parties agreed upon, a provision designed to meet the needs of the children. The Court should give deference to that agreement.

The deference to parents' custody agreements arises from the fundamental notion parents act in the best interests of their children. *Troxel v. Granville,* 530 U.S. 57, 68, 120 S.Ct. 2054 (2009) . Nevada law adopts this notion in NRS 125.490 by its presumption, affecting the burden of proof, "that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody[.]"

Kirk suggests even if the deference to parents' custody agreements outlined in *Rivero* applies here, the "teenage discretion" provision in the parties' agreement violates public policy. He cites NRS 125.460:

> The legislature declares that it is the policy of this state:
>
> 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and,
>
> 2. To encourage such parents to share the rights and responsibilities of child rearing.

Kirk argues that giving a child discretion undermines the policy of "frequent associations and a continuing relationship" for that child--a denigration of the statute (NRS 125.480) that a mature child's opinion *must* be heard. Where the parties have joint physical custody, the district Court ***must*** render findings under the factors in NRS 125.480 when modifying a custody order. As referenced above, those factors include "the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody" and the "physical, developmental and emotional needs of the child." The analysis of those issues cannot be accomplished unless the Court recognizes the age of a child, and the effect of a child's desire to spend more time with one parent on the child's emotional well being. The Legislature commands the spontaneous choices of an intelligent child must be given weight, and the scale on which that weight is measured is her emotional and developmental well-being.

The recognition of the importance of giving teenage children a voice in their custody is universal. Virtually every state's law recognizes a teenager's discretion as a factor in custody matters.[9]

Granting a voice to teenagers in the desires of a teenage child has strong support in studies and guides addressing the custody of teenage children. In 2008, the American Bar Association published the

[9] Attached is an analysis of factors under each states law published in the *Family Law Quarterly*, Volume 46, Number 4, Winter 2013, pages 525-527. The analysis demonstrates that every state except Massachusetts recognize the "child's wishes" as a factor in determining custody.

second edition of, "A Judge's Guide: Making Child-Centered Decisions in Custody Cases."[10] That guideline constitutes a comprehensive overview of literature underlying issues surrounding the judicial administration and review of child custody cases. The guide is structured by separate analyses of the developmental ages of children. One of the developmental periods in the guide is adolescents between the ages of 14 and 18. That section addresses the importance of permitting the adolescent to be part of the process of determining custody.

The parties' teenage discretion provision is a model for provisions of its kind. It permits the child certain discretion that promotes a healthy sense of independence without modifying custody, protects the child by providing a third party that can assess whether the child is exercising that discretion for good reason, and provides an alternative dispute mechanism, through discussion of a PC, for the child. The provision is not unconstitutional, is consistent with Nevada law and nearly all other states, and promotes, not undermines, each parent's frequent associations with children.

## IV.

## THE COURT SHOULD DIRECT AN INTERVIEW OF THE MINOR CHILDREN, AND RESERVE A DATE FOR EVIDENTIARY HEARING ON THE ISSUE OF CUSTODY

As the basis of his motion, Kirk has quoted the children without corroboration, and has suggested that the children should have no voice in their custodial care. Kirk has described and admitted the breakdown in his relationship with Brooke. Brooke has repeatedly stated her preference to live with Vivian, and her disputes with her father are degenerating and escalating. Kirk has undermined the process defined by the parties to shore up his relationship.

The children are of sufficient age and maturity to form and intelligent preference as to their custody. They are model children. They receive exceptionally good grades in school, and no coach,

[10] The guideline is a joint project of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law. Relevant excerpts from the guide are attached hereto as Exhibit "J". The Guide is found at http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf and is 299 pages.

teacher, counselor, instructor, minister or other person who comes in contact with the girls would state they are other than "good kids and model citizens." Both children are engaged in dance, and Rylee is involved in sports.

The children have an extremely strong bond with Vivian – *in part* due to gender, and in part from her history of being the one parent who, throughout all their lives, gave them the type of care they wanted. Now, the activities they want to share with or in which they want to be overseen-by Vivian are the essence of their developmental stages of puberty and adolescence: A doctor's appointment addressing first period, the hip-hop dance demonstration, the purchase of dance clothing, advanced dance classes, the preparation (make up) for first Homecoming dance. Time with Vivian avoids placing the children in a position where they are pressured, and feel guilty or embarrassed.

Sadly, Kirk now undermines Vivian's general role as a parent, and her special role as the female parent, at this time of the girls' lives:

A. He purposely uses guilt as a method of punishing Brooke's need for an independent choice;

B. He solicited phone calls from adult children to Brooke to guilt her into staying in Kirk's care, and embarrassed her in front of the adult children;

C. He refuses to allow, or undermines, additional contact or time with Vivian.

D. He suggests to Rylee her sister is abandoning her, a false claim the serves no purpose but to cause anguish in Brooke and Rylee;

E. He interferes with the children's contact with Vivian; and,

F. He suggested repeatedly to Brooke that Vivian is doing something wrong.

The parties' parenting agreement provides the children an independent third party to discuss their thoughts, emotions and desires regarding any change, and to deal with the behavior of both parents in this

high-conflict divorce. But, Kirk tactically undermined that goal when he repeatedly refused to allow the children to be interviewed, avoided the publication of the results of that interview, and failed for fourteen months to name a therapist.

Kirk knows the children will tell the therapist they want to live with their mother because that is where they feel they will be most comfortable and happy. As in any totalitarian regime, a third party to whom the truth can be told is a threat--no free press is allowed. If there is a neutral third party to whom the children can speak, then Kirk's behavior will be addressed and his control eroded. And, as in such regimes, the creation of an external threat is necessary to justify strict controls. In this case the false external threat Kirk created is, sadly, the girl's mother.

Is the fact the girls want to spend more time with Vivian coincidence or conspiracy? Are there facts, e.g., age, gender, history of care and demeanor, which *in themselves* reasonably make the girls want to spent time with one parent more than the other, or is there a scheme by Vivian to alienate the girls from Kirk due to her perception of parenting as "competition" as Kirk contends? Vivian asks the Court FMC determine if the girls' wishes are genuine or artificial, spontaneous or coached, and start them on the road to peace in their family.

Vivian moves first for an interview of Brooke and Rylee to ferret out Kirk's factual assertions underlying his motion. Brooke has continuously and adamantly stated she wants to reside primarily with Vivian, and Kirk has defeated his own goals because he failed to give the therapist/coordinator system to which he agreed any chance for dialogue, counseling and compromise with his daughters. Vivian asserts that the facts set forth herein constitute adequate cause for hearing on the custody of the children.[11] Vivian requests that the Court find adequate cause for hearing, and review the status or necessity of an

[11] In *Rooney v. Rooney*, 109 Nev. 540; 853 P.2d 123 (1993) the court held that a district court may deny a motion to modify custody where the moving party failed to show "adequate cause." Adequate cause exists where the facts alleged in the affidavits are relevant to the grounds for modification, and the evidence is not merely cumulative or impeaching.

evidentiary hearing on custody after the return of the children's interviews through the Family Mediation Center.

V.

**KIRK HAS AGAIN UNNECESSARILY MULTIPLIED THE PROCEEDINGS IN THIS CASE**

Though styled as a motion to modify the "teenage discretion" provision only, Kirk raised issues and sought relief that have nothing to do with the underlying motion. That has been his consistent behavior throughout this litigation.

At page 14 of his Motiom, Kirk lists alleged wrongs committed by Vivian that he claims are violations of Court orders or failure to "do the right thing by her own children." He does not appear to be seeking any specific relief, but appears to address these issues as part of his contention that Vivian has no regard for the rights or needs of the children. Vivian responds, in brief:

a. Kirk's contention that Vivian "took" days from him is false. Vivian's calendaring of dates was consistent with the Stipulated Parenting Plan;

b. Whitney owes money to Vivian for credit card use, not the alternative;

c. Vivian does not have Tahnee or Whitney's original birth certificates, and those certificates can be easily procured from the Dept. of Health and Human Services.

d. Vivian has not wrongfully withheld memorabilia owned by Tahnee or Whitney, and this allegation has nothing to do with the present motion;

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

e. The exchange of information from school would fall under the joint legal custody provisions, and arguably Kirk would be entitled to a copy of the GATE Book. Vivian has not withheld any copy Kirk ordered. She is attempting to find out what happened to the books Kirk indicates he ordered;

f. There is no violation of any Court order associated with any litigation in which Vivian is involved. Whatever litigation Vivian has initiated through separate, experienced and respected counsel cannot reasonably be seen to effect the children. This is yet another example of Kirk using irrelevant claims to disparage Vivian.

g. If the old Stairmaster was Kirk's by oral agreement at a hearing, he entitled to it. Vivian hopes to exchange that property with the mass of items he wrongfully removed from the home at the time he vacated. Again, this has nothing to do with the present motion.

What is relevant to the present motion is that Kirk continues to attempt to alienate the adult daughters by promoting this fantasy that Vivian has committed some wrong against them. Kirk's willingness to engage in this type of behavior bodes poorly for his divisive actions affecting the relationship of Brooke and Rylee.

## VI.

## CONCLUSION

Kirk's Motion is how he must now manage conflict in his home--he thwarted the therapist and PC. He takes no responsibility for the conflict; he blames Vivian. No law and a few tortured facts, *if any*, support Kirk's Motion. After the way that he conducted himself in this action, his claim that Vivian sees this case as a "competition," is his sad testimony he cannot see the effect his own behavior, and an admission he may lack any reasonable sum of self-awareness. He, not Vivian, leveled vile personal claims against the other parent, repeated the claims to the adult children, and then recruited them in a war

againsnt their mother. He, not Vivian, sought supervised visitation. He-attacked every individual who had the felt need and decency to support Vivian and the children in defense of his all-out assault.

What was Vivian's course? During a year of litigation she steadily and consistently sought the same negotiated resolution: joint physical custody. She put her concerns regarding Kirk aside, and developed a system of "teenage discretion" that would allow him an opportunity to work with the girls. She gave him access to the girls, a therapist, and a PC for a year before Brooke turned 14, hoping to avoid conflict and permit the girls and their dad to mend and improve their relationship.

Kirk's response? Tactics, manipulation, litigation, rancor and bitterness.

Vivian now must request the *Court* address Kirk's poor relationship with Brooke, and the damage he causes when he demeans and manipulates Brooke and Rylee to eliminate Brooke's voice for the increased independence she must have as part of her natural development.

Kirk turned his back on peace in the family; instead, he fomented conflict. Now, to resolve the conflict Vivian must request the Court:

1. Deny Kirk's motion in its entirety;
2. Direct an interview of the children through the Family Mediation Center;
3. Find adequate cause for hearing on the issue of custody;
4. Award attorney's fees to Vivian under EDCR 7.60, and the factors set forth in *Brunzell*.

Dated this 17 day of October, 2013

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
*Attorney for Defendant*

## CERTIFICATE OF MAILING

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

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

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

on this 17 day of October, 2013, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

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

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# EXHIBIT "A"

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February 4, 2012

**VIA FACSIMILE**
Edward Kainen, Esq.

*Re: Harrison v. Harrison*

Dear Ed:

I find it remarkable that you have time to write a long, detailed letter, but you cannot provide responses to basic discovery that you promised me weeks ago. You have not offered any explanation as to why you have not responded to the discovery. I can only assume that you do not want to provide the information because it could be damaging to your client's position.

Further, I requested in my letter of February 2 that you provide me a copy of the phone records your client received yesterday. Those records were requested as part of our discovery. Please let me know whether your client is willing to provide those records.

Moreover, you have not responded to my letter of January 27 seeking your explanation regarding your intent to reveal Vivian's confidential medical records to lay witnesses, including Ms. Roberts. If I do not hear from you, I will be forced to seek a protective order. I cannot understand why you refuse to address this matter. Your only explanation to me at this point is that the use of the records is some sort of "set up." That does not provide adequate explanation for revealing confidential information.

In addition, I have not received a copy of the records from Marvyn Gawryn that you received on the date of his scheduled deposition. Since I do not have the records, it is difficult for me to comment on your claims, other than I think your theory that Gawryn coached her regarding tests is nonesense. It seems to me that the person in the best position to address your allegations would be Mr. Gawryn, so I do not understand why you cancelled his deposition. Before you make allegations about his interactions with Vivian, you should give him the opportunity to address those allegations.

I wanted to confirm that your deposition of Dr. Margolis is a COR deposition. I presume that you do not intend to have her appear for the deposition. I note that the deposition is set at a time that I could not be present, but again I am assuming that your notice is intended to seek records, not take the deposition of Dr. Margolis. I trust you will contact my office first before setting depositions that I have to attend, and I will give you the same courtesy.

In regard to the allegations contained in the letter, I note again that Vivian made special efforts to preserve your client's phone number, which, of course, is contrary to your client's contention that she intended to cancel his number. Please explain to me why she would go to the trouble of contacting me to write a letter to you telling you how your client could preserve his number if she intended to cancel it.

In regard to your allegations regarding the production of billing statements, at the mediation with Mr. Jimmerson both Gary and I provided Jim with redacted billing statements and it is our understanding that those were provided to you. In any event, I am willing to exchange redacted statements with you if you are willing to provide all of Kirk's redacted statements.

I disagree with your statement that the Court did not expect you to provide billings, and in any event you already agreed to provide them to me by January 23 (approximately two weeks after they were due under the document requests served on your office). In our case, I believe the Court indicated that I could provide the information this week, but that he wanted the brief filed by close of business on Friday. Again, if you would like to exchange those documents, let me know.

In regard to Kirk's allegations regarding Vivian's behavior, your recitation of allegations in the letter, with the corresponding threat to show the letter to the judge, suggests to me that you have prepared the letter for that purpose - to show it to the judge. Such a submission would be a violation of our rules. It appears that Kirk is simply looking for a way to get more allegations before the Court. Vivian does not agree with your client's recitation of the events, and indicates to me that he has mistated the facts. In any event, we can all agree that either party showing disrespect to the other in front of any of the children, either your or old, is damaging to this family. I wholeheartedly disagree with your assessment of Kirk's statements and actions outlined on pages 45 through 47 of Vivian's Opposition and Countermotion. I do not believe the quotes were taken out of context, and I believe they demonstrated Kirk's willingness to belittle and marginalize Vivian to the children.

Vivian indicates that both Kirk and Vivian were present when the current video system was involved, and that she has done nothing with the equipment since it was installed. She was not in charge of the system, and she hoped and believed that the system had caught the events of October 14 on video.

In regard to your request that we now have a fifth psychologist or psychiatrist get involved in this matter, it is absolutely unnecessary and will not resolve anything. We have tried in good faith to demonstrate to your client that Vivian is not suffering from any psychological disorder, and some of the best minds in the world have agreed. We have hired what we believe are the finest experts in the this area to address Kirk's claim, and we gave them all of Kirk's allegations so that he could understand that they were considering his positions. So you are clear, I am sending under separate cover the letters verifying that all of the pleadings and all of Vivian's medical records were provided to Dr. Applebaum and Dr. Ronningstam. The doctors reviewed the pleadings and the records and found that Vivian had no personality disorder of any kind. Let me suggest to you the obvious - the reason they did not find one is because none exists.

I am at a loss to understand why you do not proceed with an analysis by Dr. Roitman. I am curious whether you have provided him the pleadings that have been filed in this case, or the medical records, and I have no idea why you have not had Dr. Roitman interview Vivian.

The argument challenging our experts reports appears to be based upon your claim that the information provided to them by Vivian was inaccurate. I would be in a better position to know

how to respond to your requests if you would provide me an outline of that information contained in their reports that Kirk believes is false or incorrect.

In regard to your claim that Vivian has taken the children to the Atkinson's home for some nefarious reason, please allow for the possibility that the children simply want to spend time with her, and that your client has made it increasingly uncomfortable for her to be in the home. He has locked doors, gotten into her email, kept a running diary

Kirk's allegations all speak to the care of Brooke and Rylee, and address facts that the girls themselves can clear up. I suggest we have them interviewed immediately by Dr. Paglini so the results of that interview are available for the Court on the 10th. This might be the best way to resolve some of the outstanding issues.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc. Vivian Harrison (via email)
Mary Anne Decaria, Esq.
Thomas Standish, Esq.

# Send Result Report

MFP

TASKalfa 500ci

Firmware Version 2H7_2F00.012.012 2011.07.14

06/01/2012 15:47
[2H7_1000.023.001] [2H7_1100.002.003] [2H7_7000.012.012]

Job No.: 030960 Total Time: 0°00'52" Page: 003

# Complete

Document: doc20120601154639

RADFORD J. SMITH, CHARTERED

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| Jolley, Urga, Wirth, Woodbury & | JUNE 1, 2012 |

| No. | Date and Time | Destination | Times | Type | Result | Resolution/ECM |
|---|---|---|---|---|---|---|
| 001 | 06/01/12 15:47 | 6997555 | 0°00'52" | FAX | OK | 200x100 Normal/On |

# EXHIBIT "B"

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| Thomas Standish, Esq. | Jolene<br>For Radford J. Smith, Esq. |
| COMPANY: | DATE: |
| Jolley, Urga, Wirth, Woodbury & Standish | JUNE 1, 2012 |
| PHONE NUMBER: | FAX NUMBER: |
| 699-7500 | 699-7555 |
| RE: | CASE NUMBER: |
| *Harrison v. Harrison* | D-11-443611-D |
| | TOTAL NO. OF PAGES INCLUDING COVER: |
| | 3 |

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

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

64 NORTH PECOS ROAD-SUITE 700 • HENDERSON, NEVADA 89074
(702) 990-6448 • FAX (702) 990-6456

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

SMITH & TAYLOR
*Attorneys at Law*
64 NORTH PECOS ROAD, SUITE 700
HENDERSON, NEVADA 89074

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

June 1, 2012

**VIA FACSIMILE**
Thomas Standish, Esq.

*Re: Harrison v. Harrison*

Dear Tom:

Thank you for your letter of May 31, 2012. I have had an opportunity to review the letter with Vivian. As I understand Kirk's position, he is requesting three modifications to the proposed MSA I forwarded to you on Friday, May 25, 2012:

1) He seeks to eliminate the "teenage discretion" language set forth in paragraph 6 of the draft parenting plan;

2) He seeks an additional 10 day period of care during the summer vacation months; and,

3) He seeks to change his time to have the girls in his care from Monday and Tuesday to Wednesday and Thursday of each week.

Let me address each of those requests individually:

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

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

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

2) *Summer vacation:* The girls have attended sewing camp with Vivian in the past. Brooke has gone to the camp for four years since she was eight years old, and Rylee attended last year at eight years old. It is an activity both girls enjoy, and sewing is considered a life skill. In order for the children to go to this camp, Vivian must accompany them, and she must enroll in the program. The camp is filled with days of instruction and sewing. Kirk is welcome to attend the camp. If the children do not want to attend the camp in the future, this issue is moot. Vivian does not feel it is in the best interest of the children at this time to expand the summer visitation periods, particularly in light of Brooke's current difficulty in her relationship with Kirk.

3) *Days of the Week:* Vivian too desires to have the children on Wednesday and Thursday of each week. She permitted Kirk to choose between an alternating week schedule and a five/two - two/five schedule, and she feels she should be able to choose which weekdays she has the children. Moreover, it is not our experience that mediations occur more often on Monday and Tuesday, and because there are so few there does not appear to be a substantial need to change the proposed plan. Vivian would be willing to work with Kirk to arrange exchanges in those instances that Kirk has a mediation that is going to last into the evening after the children are out of school.

Please call with questions.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc: Gary Silverman, Esq.
Vivian Harrison

# EXHIBIT "C"

VIVIAN'S ACTIVITIES WITH THE CHILDREN SINCE THE ENTRY OF THE PARENTING PLAN

Activities – (signed up scheduled & purchased equipment & provided necessary supplies)

Rylee and Brooke:

- Intensive Dance classes (ballet, Pointe, jazz, Character, Tap, Lyrical, Irish, Hip Hop, Musical theatre, Choreography) – private lessons as needed
- Piano Lessons – Rylee (scheduled during Vivian's visitation days)
- Voice Lessons – Rylee (scheduled during Vivian's visitation days)

Rylee only:

- Activity Days LDS Church (weekly) – Mondays (for Rylee's age group)
- Gymnastics – Rylee (scheduled during Vivian's visitation days)
- Sports
    - Basketball
    - Softball

MEDICAL

Make all Doctor appointments and try to schedule during Vivian's days

- Dr. Dewan Pediatric endocrinologist – every 3 months (5 since January)
- Dr. Malliner optometrist – every year (Brooke contracts)
- Lab draws – Rylee every 6 months
- Dr. Noorda orthodontist – 5 appointments since February
- Dr. Bybee dentist – every 6 months (3 since January)
- Dr. Gaal – Ortolarnyngology – Brooke – 1 apt
- Dr. McKnight – (7 appointments since November 2012 allergist)
- Dr. Smith GP – as needed[1]
- Dr. Jonathan Camp (2 apts – pediatric orthopedic surgeon)
- Dr. Rosemary Hyun (Pediatrician – 1 apt)
- Dr. Handler (dermatologist) – Rylee
- Dr. Christine Covetti (dermatologist) – Brooke
- Yearly flu shots
- Brooke-Contact lenses

SCHOOL

- Brooke signed up for Summer BYU Health Class for High School Credit
- Rylee- Nevada Citizenship – 3 countries, diagrams and projects

[1] Kirk's first appointment with Dr. Smith was a few days prior to filing the current Opposition and Countermotion.

- Great American Recital – Vivian and Rylee practiced daily for 2 months during summer (the Great American Recital includes – Reciting from memory, Gettysburg Address, Star Spangled Banner, List of Presidents first and Last names in order, US States & Capitals in alphabetical order, Preamble of the US Constitution, write pledge of allegiance.)
    - Because Vivian and Rylee practiced the above throughout the summer, Rylee was able to recite from memory all of the above in the 1st day of the school.
- Monthly book reports and 4 projects associated with that report (teacher ask Rylee if she could use hers as sample)
- Brooke –assisted in at least 6 different school projects last school year – provided Math Tutor (the projects included writing essays, preparing reports, etc.)
- Attended ALL Open Houses alone (girls were not in attendance with their Dad) and Parent teacher Conferences
- Bought backpacks & majority of back to school supplies

MISC

- Homecoming dress & shoes
- 8th Grade Graduation Dress & Shoes
- All hair appointments
- Nail appointments (holiday & special events – at least 7 times per year)
- Help Brooke & Rylee with hair and make-up ALL dance recitals, music & voice recitals, homecoming, graduation, etc.
- Set up Photography Session for head shots for Dance Resume and provided props (6 hour shoot at residence)
- Helped girls complete mandatory dance resume for Dance School
- Broadway Season Ticket Holders – Smith Center
- Family Disney Cruise & Disney World Vacation
- Beach Spring Brea
- Ski Trip planned Winter Break
- Week sewing Camp
- Taught Brooke to ride a bike
- Surfing

VOLUNTEER

- Rylee Classroom Parent – every other week
- Volunteer at School every week
- Parent Advisory Committee
- Field Trip Chaperone
- Dance Recital & Meeting
- Assisted at softball practice when needed

# EXHIBIT "D"

## LIST OF THINGS VIVIAN HELPED THE CHILDREN WITH

- She taught all of the children to read, and she has read extensively with and to all of the children. All of the children have reading awards for number of pages or minutes read during a specific school year. Before the children could read independently, Vivian read all of those pages with the children;

- The children have received mountains of awards based on academics. She was the parent who helped the children with the vast bulk of their homework, but she certainly agrees the children worked very hard at their schoolwork. Kirk may not understand, however, that children do not always run naturally toward schoolwork after school, and there were many times where Vivian had to push all five children to study and complete their assignments and projects;

- Vivian supplemented the children's education by tutoring them during the summers utilizing the Abeka program;

- All of the children have taken swimming lessons. Some started with the "Mommy and Me" program at six months old, but all of them took Red Cross swimming lessons or private swim lessons. (Vivian's mother did not know how to swim, and Vivian was afraid of the children drowning);

- All five children have played soccer, and Vivian coached Joseph's soccer team;

- All five children have played on softball/baseball teams;

- The four oldest children have all played organized basketball;

- The older three children were "every sport, every season" (golf, basketball, volleyball, swim, baseball / softball), and all of them lettered in sports in high school;

- All the children have taken dance lessons (Joseph was the first boy in his dance school);

- Vivian sat through almost all of the full practices of all of the children. Even when they were in high school, Vivian sat through many of the practices, sometimes as the only parent in the stands (with Brooke in a baby seat);

- The older children were in karate when they were five, and Tahnee and Whitney achieved their junior black belts. Vivian believes that Joseph may have also, or was very close to it;

- All five children have taken piano lessons, while Brooke and Rylee have also taken violin, guitar and drums;

- The older children have received art instruction through the Parks and Recreation Department;

- Vivian took the children on many vacations to Disneyland alone (at least once per year and sometimes twice). Kirk and Vivian once took a vacation without the children to Paris, but Vivian asked Kirk if they could come back early because she couldn't stand to be away from the children and was worried about them. That is the only time she can ever recall being away from the older girls or Joseph during their childhood;

- Joseph played baseball for approximately six years when he was younger.

- All the children have taken golf lessons, and Joseph is pursuing a career in professional golf.

- All the children have been good students. Some have had different struggles and different strengths. Tahnee and Whitney are graduates of the prestigious and difficult International Baccalaureate program at Green Valley High School. Joseph struggled a little, but he was an excellent math student and an incredible golfer. Brooke and Rylee are both excellent students.

- There were days that Vivian was in the car driving the children to places 5 or 6 hours. The parties used to joke that Brooke grew up in a car seat.

- Tahnee and Whitney were both in the Miss Teen Nevada pageant and others. Tahnee was Miss Teen Nevada.

*See* Vivian's Opposition to Kirk's Motion for Joint Legal and Primary Physical Custody, et al. filed on October 27, 2011, pages 22-24

# EXHIBIT "E"

| Paragraph Number | Tahnee's Affidavit |
|---|---|
| 1 | Daughter of Kirk and Vivian |
| 2 | Affidavit is based upon my personal knowledge |
| | Graduated from college end of fall 2008, lived at home since January 2011. Prior to that lived at home each summer, |
| 3 | Thanksgiving, Christmas and Spring Break |
| 4 | Summer of 2005, Vivian took Brooke and Rylee somewhere for several weeks |
| 5 | After Summer of 2005 Vivian started to act differently |
| 6 | 2006, Kirk retires, Vivian started to withdraw |
| 7 | June 2008 - car ride - Vivian started belitting Whitney's intelligence and criticizing her weight |
| | January 30, 2009 - Vivian wanted to invite some other girl for a dinner with Harrisons and another family. Kirk said it won't |
| 8 | be appropriate, Vivian said she was leaving him |
| 9 | February 27, 2009 - Vivian threw coffee mug at Kirk |
| 10 | March 12, 2009 - Vivian said Kirk did not cook enough. Tahnee says that's not true |
| 11 | March 16, 2009 - Joseph's birthday party |
| 12 | When Kindles first came out, Vivian got one and became more isolated |
| 13 | August 29, 2009 - Tahnee saw Brooke on internet at an Ashley Tisdale fan chat room |
| 14 | September 2009 - Vivian told Tahnee she wanted to spend three to four months in Europe |
| 15 | September 12, 2009 - Vivian invited five or six 16 year old girls over to watch a movie in the home theater |
| 16 | Vivian's fixation with the show "Tudors" (around October 7, 2009) |
| 17 | october 12, 2009 - Jonathon Rhys-Meyers |
| 18 | October 13, 2009 - Justin Timberlake |
| | October 16, 2009 - about how Vivian talks in front of Brooke and Rylee about divorcing Kirk, Tahnee mentions how she |
| 19 | believes Vivian has deterioated in the past one year due to her Phentermine use, |
| 20 | October 20, 2009 - Kirk is trying to build an apartment at the ranch for Brooke and Rylee |
| 21 | November 13, 2009 - Vivian googled Jonathan Rhys-Meyers and expressed displeasure regarding his girlfriend |
| 22 | In New York - Whitney's fiancee's mother stayed in the same hotel room |
| 23 | December 4, 2009 - psychic |
| 24 | December 13, 2009 - Vivian got a procedure done on her face |
| | December 13, 2009 - during dinner with Kirk, Tahnee mentions that Jonathan Rhys-Meyers is involved in organization in |
| 25 | Ireland and the organization does philanthropic work in India |


A.App. 1823

December 23, 2009 - Vivian spent $875 on jacket and $500 each on two pairs of jeans
December 25, 2009 - Vivian bought a pair of books for $800
December 31, 2009 - Vivian got upset because Kirk took brooke and Rylee to see the movie "Avatar"
February 3, 2010 - Vivian buys Christian Louboutin shoes and a dress $1,395
Vivian goes to a basketball game in high heals and a leather coat
March 1, 2010 - Vivian talked about having fat injected into her butt, Tahnee talks about reading books regarding narcissistic
mothers
March 8, 2009 - Vivian started sleeping with Brooke and Rylee again
April 5, 2010 - Salt Lake City, Utah to attend a Muse concert
April 16, 2010 - Driving home from Salt Lake, stopped at Mexican restaurant, Vivian gets upset with Witney
August 25, 2010 - While Kirk is recovering from a bicycle accident, Vivian was on phone with the psychic and could not take
Brooke to her orthodontist appointment, later she was busy on facebook
October 3, 2010 - Vivian's relationship status on facebook is "single"
March 19, 2011 - Vivian removed Tahnee from her facebook
Tahnee says Vivian is self-absorbed, has uncontrolled fits of rage, etc.
Tahnee says that Kirk takes good care of Brooke and Rylee on a daily basis
Kirk should have primary custody


A.App. 1824

| Paragraph Number | Whitney's Affidavit |
|---|---|
| 1 | Daughter of Kirk and Vivian |
| 2 | Affidavit is based upon my personal knowledge |
| 3 | Graduated from college in spring 2009, lived at home after graduation until September 2010, spent summer during the college at hoem and come home for Thanksgiving and Christmas |
| 4 | 2005 - Vivian abruptly took Brooke and Rylee somewhere for several weeks |
| 5 | during this time, Vivian started acting differently |
| 6 | After Kirk retired in 2006, Vivian started withdrawing from other members |
| 7 | June 2008 - Car incident - belitting Whitney's intelligence, attacked Tahnee |
| 8 | Summer and Fall of 2008 - in Australia, Kirk's roommate and Kirk came down. When Whitney called Vivian, she said Kirk did not tell her "where the money is" and "to make sure the sharks can do their job" |
| 9 | July 31, 2009 - Drove Kirk's car to St. George to see a play - Vivian read Kindle |
| 10 | Middle of September 2009 - Vivian read all the time |
| 11 | October 2009 - Kirk spent 4 days at Ranch, Brooke and Rylee did not eat dinner until 10:00 p.m. |
| 12 | October 16, 2009 Tahnee and Whitney's discussion with Kirk re: Vivian talking about divorcing him, her adversarial behavior etc. |
| 13 | Summer of 2009 - Vivian said she's going to Europe |
| 14 | Summer of 2009 - Vivian's facination with Jonathan Rhys-Myers |
| 15 | November 2009 - Whitney's fiancee comes for Thanksgiving Dinner |
| 16 | October/November 2009 - Vivian starts having numerous treatments on her face, and started spending more and more time in her office reading |
| 17 | December 13, 2010 - Dinner with Kirk and Tahnee - Vivian wants to go to India because of Jonathan Rhys Meyers |
| 18 | Vivian sleeps with Brooke and Rylee |
| 19 | December 2009 - Vivian buys a pair of books $800 |
| 20 | January6, 2010 - Kirk said Vivian wanted Whitney to change her wedding date due to Vivian's elective plastic surgery |
| 21 | January 24, 2010 - Rylee's 7th Birthday - Vivian did not help in preparing for the party |
| 22 | Vivian went to California to have plastic surgery |
| 23 | April 5, 2010 - Salt lake City, Utah Muse concert |
| 24 | April 2009 -Vivian told Whitney that she is going to divorce Kirk |
| 25 | March 2011 - Vivian said Whitney has gained weight |
| 26 | Vivian most of her time in home office with door closed |
| 27 | Kirk should be granted total custody |


A.App. 1825

# EXHIBIT "F"

Sent from my iPhone

Begin forwarded message:

**From:** emmabharrison@aol.com
**Date:** August 5, 2013, 2:08:53 PM PDT
**To:** vivianlharrison@aol.com
**Subject: Dad**

Dear mom,

Dad took my phone away and he is being so mean to me. There is no other way to contact you except email. I'm sorry Rylee is next to me in one bed watching her iPad and dad comes over sits at my feet and asks "Why don't I want to do anything?" I said I want to stay in the hotel room because apparently we're staying here for another 8 days. He rips my phone out of my hands takes off the charger and headphones and he asks me why i'm listening to people who are telling me that he is a bad person (he is referring to you) I tell him there isn't and he says its not good to lie. Then he states that I am lying about being hurt and having cramps and that I am being spoiled and mean and selfish. Then he starts going on about he raised me since I was 7 and how he took me to school. Then he asked why I don't love him and I said he doesnt respect privacy, he barges in, doesn't support me in anything I do, Then he asks what he doesn't support me in, and I say dance and he says he drives me to and from and he pays tuition. Then, I say that he doesn't support me in Makeup Artistry and then he says that he's bought me makeup and that what else can he do to support me. And then I say that he always says he'd rather me be a lawyer or a doctor and then he says i'm too smart to become a makeup artist etc. Then Rylee's show is done and she closes her iPad because dad stated earlier that she MUST stop after that episode. So she turns it off and dad not respecting Rylee starts saying how if he died today I wouldn't shed a tear and how I don't want to be with him anymore and why I hate him. Then he starts calling me selfish and how I don't want to do anything with the family and I say we aren't a family. Then I start to ignore him while he starts blaming everything on "the person that is telling me all about the bad stuff isn't doing the right thing and how its affecting our relationship. He walks back to his bed and says that he is sorry to Rylee and not saying how he is sorry. Then I turn over to rylee and wrap my arm around her and turns away from me. Then I ask dad for my phone because I want to talk to you and he says no and then I say he is not letting me talk to you. Thats all that happened. I miss you mommy. I want to come home and be with you and Rylee without her thinking I'm a horrible person. I hate Utah and I hate dad. I love you.

Love,

Brookie

# EXHIBIT "G"

**Harrison v. Harrison**

**Excerpt from the Affidavit of Vivian Harrison, Filed October 27, 2011**

78. Kirk claims that I have taken credit for the accomplishments of the children. Frankly, is absurd and ridiculous. I'm not sure from his explanation how he thinks that I took such credit. I certainly never said, "I earned that trophy", or "I'm Miss Teen Nevada", or "I hit that home run," "I won that State Championship," or "That Jr. Black Belt is mine", or "I took that math exam," etc. Did I see to it that they were signed up, had the proper equipment, and went to practice on a consistent basis? Yes, but their achievements are their own. I have been proud of my children's accomplishments like all parents, and if Kirk and others have heard me speak about my children's accomplishments, it's because in that area there is a lot I can talk about.

79. There have been times when I have discussed my role in the children's accomplishments with them. Our daughter Tahnee has a temper, and when angry can make very hurtful comments. For example, she has said, "I'm smarter than you," "have more talent than you", "am more athletic than you", "I went to a better college than you," "I'm going to be more successful than you," "You do nothing, you don't even work", "Its dad's money", etc. (all themes that I believe have been kept alive by Kirk since they are mentioned throughout his motion). I had conversations with Tahnee when she was in high school, after she said something along the lines of the foregoing quotes, reiterating the fact to Tahnee that she was able to achieve so much was because I supported her efforts. Tahnee would then allege I was trying to take credit. The problem wasn't that I wanted to take credit, the problem was that Tahnee was of the belief that she did not need to show any gratitude, and even worse, she could taunt me by telling me that I had no role in her achievements. Do I think she was grateful? Yes, I do. Do I

think she said things in the heat of arguments that suggested she wasn't grateful? Yes, I do. Rather than assuring her that I played any role in her success, it is clear (indeed, he even admits it) that Kirk instead fostered the notion, and continues to foster the notion, that I only did anything for Tahnee (or any of the other children for that matter) because I wanted to take credit for it.

80. One of the consistent problems in our marriage has been Kirk's lack of respect for me when dealing with the children. There are numerous times in his affidavits that he demonstrates this. When I would attempt to discipline the children by loss of privileges, he often undermined it. Kirk has on many occasions referred to me as a "freeloader" and he told me in front of the children "you don't work." He has even convinced the older children that I don't deserve "his money," a theme the two oldest girls have seemed to latched onto based upon their continual reference to things I buy (of course neither of them has ever suggested to me that I've spent too much on them). So the Court can see that Kirk's suggestion that I only buy things for myself is plain wrong, I have attached as Exhibit A-3 a list of purchases I have made on behalf of the children in the period from 2005 to 2011.

81. There are other themes besides the "your freeloading mother is spending too much of my money" and "she has stolen credit for all your achievements" mantra that he has used to try to alienate the children. Kirk's most recent invention is that I have favored Tahnee while growing up. I have never "favored" any child and I love them all immeasurably. Each child had his or her own individual needs and talents and interests, which I did my best to address. Whitney spent more time with her friends, because Whitney's personality is very gregarious and social. She loves to be around people; she is very social and has lots of friends. Tahnee's personality is quite different. She is much more introverted and enjoys spending time

alone. Tahnee loves to stay at home and read, draw and work on the computer. Being around people is exhausting for Tahnee and she has described herself as having social anxiety. I supported Whitney's decision to participate in extra-curricular activities and attend the LDS church. I supported all of the children in everything they did. Sibling rivalry and relationships are always complicated, and I did my best to help all of them.

82. Kirk makes much of the notion that Whitney, at age 13, expressed that she wanted to live with friends (she never actually did live with anyone else). Whitney had good friends who were LDS, and she wanted to go to church regularly. She looked at LDS families and compared them to Kirk and me, and she thought we fell short of her ideal. Again, she was 13 years old. Whitney remained in our home, and was very involved in church activities, student body office, and other leadership positions at school. Rather than allowing this to just die, Kirk brings this issue up over and over again. At no time do I recall every expressing to Whitney that she should move out of our house.

83. Kirk's repetition of problems that occurred while the children were in high school is on full display in his motion. He repeats again the incident where I smacked Tahnee and told her to get out of the house. Kirk, of course, has selectively used or distorted facts. First, he claims Tahnee was sixteen. In reality she was almost 18, and in her senior year of high school After arguing for a significant period in which Tahnee continued to belittle my parenting of our younger children, she punctuated her argument with a "F__k you," and I smacked her mouth. I am not proud of that fact, but it was a single incident. Contrary to Kirk's contention, that is the only time I ever recall smacking Tahnee in the mouth. I fully understand teenagers need to become independent and thus separate themselves from their parents. I also understand that this struggle for independence may lead to disagreements. I do not believe, however, that a

teenager's desire to gain independence grants them license to be rude, defiant and ignore their responsibilities

84. Both Kirk and Tahnee have failed to tell the whole story underlying that incident, and by doing so, have misrepresented it. Tahnee and I began having difficulties when she started high school. Our family was forced out of our Boulder City home because of a lawsuit Kirk was in with our neighbor, and we were renting a home in Green Valley. Tahnee and Whitney transferred to Green Valley High School and were accepted into the International Baccalaureate Program. Both girls made the golf team and Whitney also made the basketball team and served as an officer in the student government. During Tahnee's junior year she inexplicably appeared to be shutting down and exhibiting signs of depression. She became more isolated, quit her dance and piano classes, refused to practice golf, study for her prepatory ACT Kaplan practice exams and received multiple failing notices. *See* Exhibit A-4, attached hereto. She had also began to talk back and became openly defiant in front of Brooke who then was only three years old. I took Tahnee to Sue Beglinger, a family counselor, and then to a psychiatrist, Dr. Elizabeth Tully to prescribe medication. I was seriously concerned about Tahnee's failing notices, and I wanted to help her overcome her problem. Kirk's only input to this process was to criticize me for trying to "control" Tahnee. I was extremely thankful when the psychiatrist provided a medical note that allowed Tahnee additional time to turn in all late assignments, and Tahnee was eventually able to pull up her grades. Nevertheless, this was a very stressful time for the family.

85. We finally moved into a new home in Boulder City, and our fifth child Rylee was born in January 2003. My conflicts with Tahnee became more frequent and started to escalate. I asked Kirk to assist me in parenting the older children for months, but Kirk replied that I had "messed up the kids", and now I wanted him to "fix it." Instead of Kirk becoming supportive, he

began to undermine my authority by belittling me openly in front of the children. He started saying things like, "You know how your Mom is" and, "just walk away and wait until I get home." After a while, whenever I asked Tahnee to do anything she did not want to do she said, "No, I'll talk to Dad."

86. The day that I asked her to leave, we had been arguing for hours. When I went into a different room with the little girls, then three and a baby, she would follow and say more. The conversation became heated. I was tired, and I was angry that she continued to come after me even with the little girls there. I said things that I shouldn't have – the worst of which was mentioning the problems she had undergone earlier that school year. I know that hurt Tahnee, and she felt like I was abandoning her by telling her to leave. I simply wanted to stop the arguments, and I did not truly think she would be gone for any length of time. It was wrong, and I regret it, but what truly made it an incident that continues to be brought up over and over again is the way Kirk reacted.

87. Tahnee did leave the house that day, but I knew where she would go, her friend Heather's house. Tahnee had a place to go and was not in any danger or living on the street. I was hoping for two things, 1) Kirk would realize the severity of the situation and step up and help parent; and, 2) Tahnee would realize how good she had it and make a commitment to change and participate with her family in a positive nature. Instead, Kirk retrieved Tahnee from Heather's (exactly where I suspected she would go) and brought her home. In front of the children he said "this house belongs to the children" and that it was going to "always be their home no matter what they say or do." In other words, the children need not show me any respect, were free to do whatever they wanted or did not want to do at the home, and there was not going to be any consequence. Kirk expresses his view in his motion that the children's only

"fault" was to want some independence from me, or to dare to question a decision I made concerning them.

88. I note that in his motion he presents his theme that I could not accept the independence of the children in a way that makes no sense. Strangely, while saying on the one hand that I was too involved in the older children's lives (and thus could not accept their independence), he also states that after giving birth to Rylee and having a toddler, Brooke, I became more focused on the two youngest children, while I became less tolerant of the oldest three children's attempts to be more independent. (Kirk's aff. p. 7) That statement is contradictory and illogical. It stands to reason that if I was more focused on the younger children that I would be less focused on the older three and any of their attempts to be more independent would be aided by my focus on the younger children.

89. Kirk, however, was wrong about what was going on. The person that best expressed what happened that day was Tahnee. In a letter that she wrote, she outlined how she felt about the incident. A true and correct copy of that letter is attached hereto as Exhibit A-5. For me, the incident is over, and I love Tahnee and always will. She should, and I believe does, know that I will be there for her whenever she needs me for as long as I live.

90. While Kirk is quick to blame me for every ill that has ever occurred in our family, he fails to mention any of his own confrontations with Whitney and Tahnee. When they were defiant with him the story had a different ending. He chased Tahnee down the street yelling. My recollection is that he couldn't catch her and came back empty handed, and it was a while later when Tahnee mustered enough courage to come home. He also chased Whitney with a hairbrush in our home and caught her upstairs and spanked her with the brush in hand. He also chased Tahnee while playing golf at the golf course and she fell down in a hazard and cut her leg. He

grabbed her and brought her back to the golf cart. All of these instances occurred during the same timeframe, and during all the above instances Kirk used profanity. Kirk did these things only on a few occasions when the girls were defiant with him, and they stopped being defiant. With me, however, that never happened. I couldn't threaten them with physical punishment. Tahnee is six feet tall and Whitney is five foot eight and they both are junior black belts. The girls were bigger, stronger, and faster than me. At five foot three and often with a toddler and infant in my arms, I posed no real threat to them. With Kirks constant undermining and non-supportive nature, I could not discipline them in anyway.

# EXHIBIT "H"

6 July 2013

To Whom It May Concern:

I am writing this letter in regards to Rylee Harrison. She was first seen by us in April 2011 after mother had become suspicious that the testosterone medication that she had been prescribed by her physician might be causing changes in her daughter. She had been applying the cream in the areas recommended by the FDA and the drug manufacturer. She sought out medical opinion, and it was suspected that the medication that she was using might have been giving some secondary transference to her child and causing changes in her body. At the time of the prescription, there was no warning to the consumer or physician that such a transference of testosterone cream to fomites and then other household members could occur. Now such a black box warning does exist, but in 2011 it did not.

Upon learning that the cream may be the cause for her daughters development of pubic hair, she stopped the cream and switched to injections. This is safe, and would allow continued co-bedding with the children in a safe manner.

It was discussed that the testosterone exposure may of advanced her bone age, and when she went into puberty, we may consider a surgical implant of Supprelin to suppress puberty and maximize her height. The need for the implant is totally voluntary, and in no way is required for her to have a healthy life. The implant secretes a hormone that her body normally would make, and in itself has no side effects that could harm her.

Estimation of height is exactly that. An estimate. The closer you get to the final adult height, which typically is at age 14-15 in a female, the more accurate the estimation.. Estimations done at age 2 are not very accurate, and there are general formulas and ways to estimate final adult height, but many factors in the course of ones life can come into play and alter this- things such as subclinical ovarian cysts that advance bone age. Our estimation, based upon the fathers height and the mothers height that the midparental height , or genetic expectation was to be 68 inches in height. This differs from the pediatricians estimation of 6 feet tall, but is considered to be more accurate. We felt that Rylee was on track to having a final adult height of 64 inches. This was based upon an advanced bone age that she had done. This is still with 2 standard deviations from the midparental height, and still is

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considered to be within the normal range for her genetic potential, just on the lower end of of it. Many children can have advanced bone age without exposure to testosterone. Ovarian cysts can advance it, obesity can advance it, and there are factors that we don't understand. To say that Rylee's predicted height and advanced bone age is solely secondary to the testosterone exposure would be wrong. It did contribute, there is no doubt, but to be solely responsible we cannot say.

Rylee's mother has been to every single appointment. She has called into the office, followed up on lab results, xray results, and has always asked very appropriate and intelligent questions. She has never missed an appointment, missed a lab draw, and has researched on her own to educate herself on options that she may have. Upon learning that the cream could be harming the family, she immediately stopped, and switched to a non contaminating formulation.

I am of the opinion that Rylee's mother has shown nothing but genuine interest in Rylee's health as any mother would. She appears to be the main caregiver and liason for her health.

As Rylees stature is going right now, she is in the lower range of normal for her genetic potential. Use of the implant is a consideration, but not an absolute, and may even possibly not be needed. Depends how things play out. Her weight can contribute to advanced bone age, and it is not uncommon for preadolescent females to have ovarian cysts that wax and wane and effect the bone age. To say that the testosterone cream and exposure are solely responsible would be very wrong. Mother became suspicious and initiated the workups that led to the diagnosis. She was vigilant, and correct in her suspicions. We feel the mother has been very involved in Rylees health beyond the testosterone, and only has Rylees best intentions at heart.

Respectfully,

Ashcesh Dewan, MD
Endocrinology

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# EXHIBIT "I"

The Pediatric Endocrine & Diabetes Specialists

14 October 2013

DECLARATION EXECUTED IN THE STATE OF NEVADA (NRS 53.045)

1. My name is Dr. Asheesh Dewan.

2. I am an adult.

3. I make this declaration of my personal knowledge unless stated otherwise.

4. I am a physician licensed in the State of Nevada. I specialize in pediatric endocrinology. Rylee Harrison has been my patient since April 2011, when her parents brought her to me for possible precocious puberty.

5. Since that time I have seen Rylee on regularly scheduled appointments. Most recently, I examined her on October 7, 2013, after she had drawn blood samples and a bone age x-ray to determine her growth pattern.

6. I reviewed the results of her tests with her parents during that appointment. At that time I informed them of my conclusions:

A. Rylee, who will be age 11 in January has entered puberty which is normal for her age. Rylee is currently 63.22" inches tall. Rylee's bone age x-ray matches her current chronological age of 11 and displays bone age and growth patterns which are normal for her age and genetic potential. The Mid parental height growth potential is estimated at 68 inches given her parents adult height. Rylee does not not have advanced bone age and no medical intervention of any kind is warranted.

B. Given her current height and bone age Rylee is estimated to be at the high end of her genetic potential with an predicted adult height of around 5'10" tall.

C. In my opinion, she is healthy and doing well, she does not need further blood draws or tests.

D. I would like to examine her again in six months, only to monitor her weight.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date 14-October 2013, in Las Vegas

Asheesh Dewan, MD
Endocrinology

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# EXHIBIT "J"

**Chart 2:** *Custody Criteria**

| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Alabama**<br>ALA. CODE § 30-3-131<br>ALA. CODE § 30-3-152 | X | X[1] | X | X[2] | X | X | |
| **Alaska**<br>ALASKA STAT. § 25.20.060<br>ALASKA STAT. § 25.24.150 | X | X | X | | X | X | X |
| **Arizona**<br>ARIZ. REV. STAT. § 25-321<br>ARIZ. REV. STAT. § 25-403 | X | X | X | X | X | X | X |
| **Arkansas**<br>ARK. CODE ANN. § 9-13-101 | | X | X | | | X | X |
| **California**<br>CAL. FAM. CODE § 3010<br>CAL. FAM. CODE § 3011<br>CAL. FAM. CODE § 3020<br>CAL. FAM. CODE § 3027<br>CAL. FAM. CODE § 3027.5<br>CAL. FAM. CODE § 3028<br>CAL. FAM. CODE § 3030.5<br>CAL. FAM. CODE § 3031<br>CAL. FAM. CODE § 3040<br>CAL. FAM. CODE § 3041<br>CAL. FAM. CODE § 3041.5<br>CAL. FAM. CODE § 3042<br>CAL. FAM. CODE § 3044<br>CAL. FAM. CODE § 3046<br>CAL. FAM. CODE § 3047<br>CAL. FAM. CODE § 3048<br>CAL. FAM. CODE § 3064<br>CAL. FAM. CODE § 3080<br>CAL. FAM. CODE § 3081<br>CAL. FAM. CODE § 3085<br>CAL. FAM. CODE § 3120<br>CAL. FAM. CODE § 3150<br>CAL. FAM. CODE § 6323 | X | X | X | X[2] | X | X | X |
| **Colorado**<br>COLO. REV. STAT. § 14-10-124 | X | X | X[3] | | X | X | X |
| **Connecticut**<br>CONN. GEN. STAT. § 46B-54<br>CONN. GEN. STAT. § 46B-56 | X | X | X | X[2] | X | X | X |
| **Delaware**<br>DEL. CODE ANN. TIT. 13 § 721<br>DEL. CODE ANN. TIT. 13 § 722 | X | X | X | | X | X | X |
| **District of Columbia**<br>D.C. CODE § 16-914 | X | X | X | | X | X | X |
| **Florida**<br>FLA. STAT. § 61.13<br>FLA. STAT. § 61.401 | X | X | X | X[4] | X | X | X |
| **Georgia**<br>GA. CODE ANN. § 19-9-3 | X | X | X | | | X | X |
| **Hawaii**<br>HAW. REV. STAT. § 571-46 | X | X | X | | | X | X |
| **Idaho**<br>IDAHO CODE ANN. § 32-704<br>IDAHO CODE ANN. § 32-717<br>IDAHO CODE ANN. § 32-717B | X | X | X | X | | X | X |
| **Illinois**<br>750 ILL. COMP. STAT. 5/601<br>750 ILL. COMP. STAT. 5/602<br>750 ILL. COMP. STAT. 5/602.1 | X | X | X | | X | X | X |



| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Indiana**<br>IND. CODE § 31-17-2-8<br>IND. CODE § 31-17-2-15<br>IND. CODE § 31-17-6-1 | X | X | X | | | X | X |
| **Iowa**<br>IOWA CODE § 598.12<br>IOWA CODE § 598.41 | X | X | X | | X | X | X |
| **Kansas**<br>KAN. STAT. ANN. § 23-2219<br>KAN. STAT. ANN. § 23-3203<br>KAN. STAT. ANN. § 23-3206 | X | X | X | | X | X | X |
| **Kentucky**<br>KY. REV. STAT. ANN. § 403.270 | X | X | X | | | X | |
| **Louisiana**<br>LA. CIV. CODE ANN. ART. 131<br>LA. CIV. CODE ANN. ART. 132<br>LA. CIV. CODE ANN. ART. 134<br>LA. REV. STAT. ANN. 9:345<br>LA. REV. STAT. ANN. 9:364 | X | X | X | X | | X | X |
| **Maine**<br>ME. REV. STAT. TIT. 19-A § 1507<br>ME. REV. STAT. TIT. 19-A § 1653 | X | X | X[3] | | X | X | X |
| **Maryland**<br>MD. CODE ANN. FAM. LAW § 9-101.1<br>MD. CODE ANN. FAM. LAW § 1-202<br>MD. CODE ANN. FAM. LAW § 5-203 | | X[6] | X | | | X | X |
| **Massachusetts**<br>MASS. GEN. LAWS CH. 208 § 28<br>MASS. GEN. LAWS CH. 208 § 31<br>MASS. GEN. LAWS CH. 208 § 31A<br>MASS. GEN. LAWS CH. 209C § 10<br>MASS. GEN. LAWS CH. 215 § 56A | | | X | | | X | X |
| **Michigan**<br>MICH. COMP. LAWS § 722.23<br>MICH. COMP. LAWS § 722.24<br>MICH. COMP. LAWS § 722.26A | X | X | X | | X | X | X |
| **Minnesota**<br>MINN. STAT. § 518.17<br>MINN. STAT. § 518.165 | X | X | X | X[2] | X | X | X |
| **Mississippi**<br>MISS. CODE ANN. § 93-5-23<br>MISS. CODE ANN. § 93-5-24 | | X[7] | X | X[2] | | X | X |
| **Missouri**<br>MO. REV. STAT. § 452.375<br>MO. REV. STAT. § 452.385<br>MO. REV. STAT. § 452.410<br>MO. REV. STAT. § 452.423 | X | X | X[8] | | X | X | X |
| **Montana**[9]<br>MONT. CODE ANN. § 40-4-205<br>MONT. CODE ANN. § 40-4-212 | X | X | X | | | X | X |

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Chart 2: *Custody Criteria* (continued)*

| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Nebraska**<br>NEB. REV. STAT. § 42-358<br>NEB. REV. STAT. § 42-364<br>NEB. REV. STAT. § 43-2923 | X | X | X | | | X | X |
| **Nevada**<br>NEV. REV. STAT. § 125.480 | X | X[9.5] | X | X | X | X | |
| **New Hampshire**<br>N.H. REV. STAT. ANN. § 461-A:6 | X[3] | X | X | | X | X | X |
| **New Jersey**<br>N.J. STAT. ANN. § 9:2-4 | X | X | X | | X | X | X |
| **New Mexico**<br>N.M. STAT. ANN. § 40-4-8<br>N.M. STAT. ANN. § 40-4-9<br>N.M. STAT. ANN. § 40-4-9.1 | X | X | X | X | X | X | X |
| **New York**<br>N.Y. DOM. REL. LAW § 240 | | X[10] | | | | X | X |
| **North Carolina**<br>N.C. GEN. STAT. § 50-13.1<br>N.C. GEN. STAT. § 50-13.2 | | X[11] | X | | | X | |
| **North Dakota**<br>N.D. CENT. CODE § 14-09-06.2<br>N.D. CENT. CODE § 14-09-06.4 | X | X | X | | X | X | X |
| **Ohio**<br>OHIO REV. CODE ANN. § 3109.04 | X[3] | X | X[12] | | X | X | X |
| **Oklahoma**<br>OKLA. STAT. TIT. 43 § 109<br>OKLA. STAT. TIT. 43 § 112 | | X | X[12] | | X | X | X |
| **Oregon**<br>OR. REV. STAT. § 107.137 | X | X[13] | X[14] | | X | X | |
| **Pennsylvania**<br>23 PA. CONS. STAT. ANN. § 5328<br>23 PA. CONS. STAT. ANN. § 5334 | X | X | X | | X | X | X |
| **Rhode Island**<br>R.I. GEN. LAWS § 15-5-16<br>R.I. GEN. LAWS § 15-5-16.2 | | X[15] | X | | X[15] | X | X |
| **South Carolina**<br>S.C. CODE ANN. § 63-3-530<br>S.C. CODE ANN. § 63-3-810<br>S.C. CODE ANN. § 63-15-30<br>S.C. CODE ANN. § 63-15-40 | | X | X | | | X | X |
| **South Dakota**<br>S.D. CODIFIED LAWS § 25-4-45 | | X[16] | X | | | X | X |
| **Tennessee**<br>TENN. CODE ANN. § 36-4-132<br>TENN. CODE ANN. § 36-6-101<br>TENN. CODE ANN. § 36-6-106 | X | X | X | X[12] | X | X | X |
| **Texas**<br>TEX. FAM. CODE ANN. § 107.002<br>TEX. FAM. CODE ANN. § 153 | | X[18] | X[19] | X | | X | X |
| **Utah**<br>UTAH CODE ANN. § 30-3-10<br>UTAH CODE ANN. § 30-3-10.02<br>UTAH CODE ANN. § 30-3-10.10<br>UTAH CODE ANN. § 30-3-11.2 | X | X | X | | X | X | X |



| STATE | Statutory Factors** | Child's Wishes | Joint Custody Authorized | Presumption in Favor of Joint Custody | Cooperative Parent | Domestic Violence*** | Attorney or GAL**** |
|---|---|---|---|---|---|---|---|
| **Vermont**<br>VT. STAT. ANN. TIT. 15 § 594; 665; 665A | X | X[20] | X | | X | X | X |
| **Virginia**<br>VA. CODE ANN. § 20-124.2; 20-124.3 | X | X | X | | X | X | X[21] |
| **Washington**<br>WASH. REV. CODE § 26.09.013<br>WASH. REV. CODE § 26.09.187<br>WASH. REV. CODE § 26.09.220 | X | X | X | | X | X | X |
| **West Virginia**<br>W. VA. CODE § 48-6-206<br>W. VA. CODE § 48-9-209<br>W. VA. CODE § 48-9-302 | X | X | X | | X | X | X |
| **Wisconsin**<br>WIS. STAT. § 767.41<br>WIS. STAT. § 767.407 | X | X | X | X | X | X | X |
| **Wyoming**<br>WYO. STAT. ANN. § 20-2-201 | X | X[22] | X | | X | X | |

* The chart looks at child custody determinations during a divorce or separation. The statutes cited do not necessarily affect child custody decisions in other situations.

** Although there is a statutory list of factors, the court may in its discretion consider other factors under the particular circumstances of the case.

*** The jurisdiction has enacted a statute permitting the consideration of domestic violence in conjunction with child custody. The statutes vary from making domestic violence a factor in custody determinations, to imposing presumptions against custody in batterers or imposing special procedural considerations in cases involving domestic violence.

**** This column indicates whether a state has statutory authority for appointment of a guardian *ad litem* or attorney for a child specifically in child custody cases.

1. By case law. *See, e.g.*, Naudit v. Haddock, 882 So. 2d 364 (Ala. Civ. App. 2003).
2. There is a presumption that joint custody is in the best interest of the child if both parents request joint custody.
3. Does not use the term "child custody," but instead uses the terminology, such as "parental responsibilities and rights," "legal custodian," or other similar terminology.
4. Fla. Stat. § 61.13(2)(c)(2)—"The court shall order the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child."
5. Domestic violence is not addressed in the statute but has been considered by courts as a factor in case law.
6. By case law. *See, e.g.*, Hild v. Hild, 157 A.2d 442 (Md. 1960); Wagner v. Wagner, 674 A.2d 1 (Md. Ct. Spec. App. 1996); Montgomery Cnty. Dep't of Soc. Services v. Sanders, 381 A.2d 1154 (Md. Ct. Spec. App. 1977).
7. Factors considered in custody decisions are listed in case law. *See* Albright v. Albright, 437 So. 2d 1003, 1005 (Miss. 1983).
8. Public policy encourages participation of both parents in decisions and statute directs that "the court shall determine the custody arrangement which will best assure both parents participate in such decisions . . . so long as it is in the best interests of the child." This statute, however, does not create a presumption in favor of joint custody. *In re* Marriage of Kroeger-Eberhart v. Eberhart, 254 S.W.3d 38, 2007 Mo. App. LEXIS 1661 (Mo. Ct. App. 2007).
9. In Montana, the words "custody," "joint," "primary parent," or "visitation" are not used when referring to child custody. Parents are considered to have identical rights as to the child, but their parenting times may differ.
9.5. Nevada will consider a child's wishes, among other factors, if the child is of sufficient age and capacity to form an intelligent preference as to custody.
10. By case law. *See* Gant v. Higgins, 203 A.D.2d 23 (N.Y. App. Div. 1994).
11. By case law. *See, e.g.*, Harris v. Harris, 115 N.C. 587 (1894); Brooks v. Brooks, 184 S.E.2d 417 (N.C. Ct. App. 1971).
12. Uses the term "shared parenting."
13. By case law. *See In re* Marriage of Tuttle, 660 P.2d 196 (Or. Ct. App. 1983).
14. The court may only order joint custody if both agree to joint custody. The court may not order joint custody over the objection of either parent.
15. By case law. *See, e.g.*, Africano v. Castelli, 837 A.2d 721 (R.I. 2003); Pettinato v. Pettinato, 582 A.2d 909 (R.I. 1990).
16. *See* Price v. Price, 611N.W.2d 425 (S.D. 2000).
17. It is presumed that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or agree to joint custody in open court.
18. By case law. *See* Vazquez v. Vazquez, 292 S.W.3d 80 (Tex. App. 2007).
19. Texas uses the language "sole or joint managing conservator" rather than "sole or joint custody."
20. By case law. The court is not required or forbidden to consider the preference of the child. *See* Cameron v. Cameron, 398 A.2d 294 (Vt. 1979).
21. Discussed further in Verrocchio v. Verrocchio, 429 S.E.2d 482 (Va. Ct. App. 1993).
22. By case law. *See* JRS v. GMS, 90 P.3d 718 (Wyo. 2004).

A.App. 1843
A.App. 1843

0001

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

DEFENDANT'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT CHILD ISSUES [TO DELETE "TEENAGE DISCRETION" PROVISION] AND OTHER EQUITABLE RELIEF;
DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND ATTORNEY'S FEES AND SANCTIONS

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

*NOTICE:*

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 17nd day of October, 2013

Joiene Hoeft
Printed Name of Preparer

Signature of Preparer

# EXHIBIT "B-1"

**From:** Vivian Harrison <vivianlharrison@aol.com>
**Date:** October 15, 2015 at 11:16:07 AM PDT
**To:** Kirk Harrison <kharrison@harrisonresolution.com>
**Subject: Transfer**

Kirk,

When I came home last night, sometime after 9, I went to Brooke's room. I asked her why she didn't go to your house and asked her if she had spoken to you. I told her to communicate with you and that she had to go to your house. She said she wasn't feeling well. I know she has been sick for a few days and has sit out of dance for at least two days. She said she texted you and that she was going to your house this weekend and Whitney was coming to visit. I encouraged her to spend time with Whitney. I then told her she needed to go to your house tonight and she said this weekend. I took her phone from her. She was angry and said taking her phone again was ridiculous and she was tired of it.
Since court I have done the following punishments;
-Taken car, except to & from school & classes
-not allowed to drive friends in car
-on restriction
-taken cell phone
-no tv
There is nothing else I can think of to do. This has made my home contentious and Brooke is becoming increasingly distant from me. Something that has not happened in the past. Your negative relationship with her is effecting my relationship in a negative way. Any suggestions?

You had in the past not been able to make 10,11& 12 yr old Rylee go to dance, shopping etc yet I'm suppose to make a 16 yr old do what she reuses to do? When she was in your care why didn't you make her stay? What measurements have you taken? How are you rectifying the situation instead of filing court documents?
Again , Your expectation is I'm suppose to make her leave, why didn't you prevent her from leaving?

Vivian

# EXHIBIT "C-1"

RADFORD J. SMITH, CHARTERED
*A Professional Corporation*
2470 ST. ROSE PARKWAY, SUITE 206
HENDERSON, NEVADA 89074
TELEPHONE: (702) 990-6448
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RSMITH@RADFORDSMITH.COM

RADFORD J. SMITH, ESQ.
GARIMA VARSHNEY, ESQ.
MATTHEW FEELEY, ESQ.
JOLENE HOEFT, PARALEGAL
KENNETH SMITH, PARALEGAL

October 12, 2015

**HAND DELIVERED**
John Paglini, Psy.D.
9163 W. Flamingo Road, Suite 120
Las Vegas, Nevada 89147

*Re: Kirk Harrison v. Vivian Harrison*
*Case No. D-11-443611-D*

Dear Dr. Paglini:

As you may recall, Gary Silverman and our firm represent Vivian Harrison ("Vivian") in the above case; Tom Standish and Ed Kainen represent Kirk Harrison ("Kirk"). By an Order entered on October 6, 2015, the Court has directed you to act as the psychologist performing evaluative services towards parties' minor child, Emma Brooke Harrison ("Brooke"), born June 26, 1999 (age 16 years). I am enclosing the Notice of Entry of that Order herein.

Also enclosed herewith is a CD-Rom disk containing all of the pleadings and orders in this case since the parties' Stipulation and Order Resolving Parent/Child Issues was entered. Enclosed herewith please find the following pleadings and orders -

1. Notice of Entry of Order re: Expert Designation filed October 6, 2015;
    a. Notice of Entry of Order from Hearing (incorporating Minutes)
    b. Plaintiff's Motion for an Order to Show Cause why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 filed on August 21, 2015;
    c. Defendant's Opposition to Plaintiff's Motion for Order to Show Cause et al. and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") filed September 14, 2015;
    d. Plaintiff's Reply in Support of Motion for Order to Show Cause et al and Opposition to Defendant's Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke");
    e. Affidavit of Kirk Harrison (in Support of Reply) filed September 18, 2015;

2. Notice of Entry of Order for 5-21-13 Hearing, filed on September 29 2014;
3. Order from 12-18-13 Hearing, filed on June 13 2014;
4. Plaintiff's Reply in Support of Motion to Modify Order Resolving Parent/Child Issue, Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions, submitted on May 14, 2014;

5. Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issue, filed May 9 2014;

6. Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, filed April 21 2014;

7. Notice of Entry of Order (12-18-13 Hearing) submitted December19, 2013;

8. Plaintiff's Reply in support of Motion for Judicial Determination of Teenage Discretion Provision/ Opposition to Countermotion for Attorney's Fees, filed on December 13, 2013;

9. Defendant's Opposition to Motion for Judicial Determination of Teenage Discretion Countermotion for Attorney's Fees, filed on December 6, 2013;

10. Plaintiff's Motion Judicial Determination of Teenage Discretion Provision, filed on November 18, 2013;

11. Supplemental Declaration in Support of Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, to Delete "Teenage Discretion Provision".../ Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issue, for an Interview of the Minor Children..., filed on October 29, 2013;
12. Notice of Entry for Appointment of Parenting Coordinator, filed on October 29, 2013;

13. Plaintiff's Reply to Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issue, for an Interview...,filed on October 28, 2013;

14. Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues...Plaintiff's Opposition to Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issue, for an Interview of the Minor Children..., submitted on October 23, 2013;

15. Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, to Delete "Teenage Discretion Provision"... Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issue, for an Interview of the Minor Children, filed on October 17, 2013;

16. Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, filed October 1, 2013;

17. Notice of Entry of Orders Incident to the Stipulation and Order Resolving Parent/Child Issues and the December 3, 2013 Hearing, filed on September 19, 2013;

18. Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist ..., filed September 9 2013;

19. Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist ..., filed on July 19 2013;

20. Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for Minor Children as Required by the Court Ordered Parenting Plan, filed May 10 2013; and,

21. Notice of Entry of Stipulation Order Resolving Parent/Child Issues, submitted July 11 2012.

Pursuant to the Order, please contact Ms. Vivian Harrison ((702) 275-0000) to set up the child's interview. A Return Hearing from the child interview is scheduled for December 14, 2015 at 9:00 a.m. We would therefore request that your report be provided to both sides and the Court prior to that time. Finally, each party must disclose to the other party any information provided to you that is not a part of the record to ensure utmost transparency in this process.

Please contact me if there is any additional information or documents you would like. I appreciate your attention to this matter.

Sincerely,

RADFORD J. SMITH, CHARTERED

Garima Varshney

Garima Varshney, Esq.

Enclosures
cc. without enclosures
Vivian Harrison
Gary Silverman, Esq.
Edward Kainen, Esq.
Thomas Standish, Esq.

0001

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition : ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

MOTION FOR CLARIFICATION; MOTION TO AMEND FINDINGS; OPPOSITION TO EX PARTE MOTION FOR EXPEDITED HEARING

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

***NOTICE:***

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 15 day o October, 2015

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer



A.App. 1851

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

KIRK ROSS HARRISON, NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

_____/

# CHILD CUSTODY FAST TRACK STATEMENT

# APPENDIX – VOLUME 7


ROBERT L. EISENBERG
Nevada Bar No. 0950
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
775-786-6868
rle@lge.net

KIRK R. HARRISON
Nevada Bar No. 0861
1535 Sherri Lane
Boulder City, Nevada 89005
702-271-6000
kharrison@harrisonresolution.com

*ATTORNEYS FOR APPELLANT*


Docket 72880 Document 2017-36597

## CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX


| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 1. | Complaint for Divorce | 03/18/11 | 1 | 1-7 |
| 2. | Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence | 09/14/11 | 1<br>2 | 8-220<br>221-361 |
| 3. | Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees | 10/31/11 | 2<br>3 | 362-418<br>419-652 |
| 4. | Answer to Complaint for Divorce and Counterclaim for Divorce | 11/22/11 | 3 | 653-659 |
| 5. | Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees | 01/04/12 | 4<br>5 | 660-907<br>908-929 |
| 6. | Court Minutes [All Pending Motions] | 02/24/12 | 5 | 930-933 |
| 7. | Stipulation and Order Resolving Parent/Child Issues | 07/11/12 | 5 | 934-950 |
| 8. | Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees | 05/10/13 | 5 | 951-984 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 9. | Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 985-994 |
| 10. | Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 995-1009 |
| 11. | Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees | 07/19/13 | 5 | 1010-1044 |
| 12. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees | 09/09/13 | 5 | 1045-1053 |
| 13. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to | 09/11/13 | 5 | 1054-1059 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief | | | |
| 14. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 10/01/13 | 5 | 1060-1080 |
| 15. | Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/17/13 | 5 | 1081-1149 |
| 16. | Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief | 10/21/13 | 6 | 1150-1171 |
| 17. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/23/13 | 6 | 1172-1223 |
| 18. | Order for Appointment of Parenting Coordinator | 10/29/13 | 6 | 1224-1232 |
| 19. | Notice of Entry of Decree of Divorce | 10/31/13 | 6 | 1233-1264 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 20. | Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits) | 11/14/13 | 6 | 1265-1281 |
| 21. | Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision | 11/18/13 | 6 | 1282-1316 |
| 22. | Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees | 12/06/13 | 6 | 1317-1339 |
| 23. | Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees | 12/13/13 | 6 | 1340-1354 |
| 24. | Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions] | 12/17/13 | 6 | 1355-1356 |
| 25. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 04/21/14 | 6<br>7 | 1357-1388<br>1389-1431 |
| 26. | Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions | 05/09/14 | 7 | 1432-1458 |
| 27. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions | 05/14/14 | 7 | 1459-1472 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| 28. | Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions | 05/20/14 | 7 | 1473-1518 |
| 29. | Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/13/14 | 7 | 1519-1524 |
| 30. | Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/16/14 | 7 | 1525-1532 |
| 31. | Notice of Appeal | 07/17/14 | 7 | 1533-1593 |
| 32. | Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1594-1601 |
| 33. | Notice of Entry of Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1602-1611 |
| 34. | Amended or Supplemental Notice of Appeal | 10/16/14 | 7 | 1612-1622 |
| 35. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 | 08/21/15 | 8 | 1623-1673 |
| 36. | Order to Appear and Show Cause | 09/01/15 | 8 | 1674-1675 |
| 37. | Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor | 09/14/15 | 8 | 1676-1692 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Child, Emma Brooke Harrison ("Brooke") | | | |
| 38. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") | 09/18/15 | 8 | 1693-1738 |
| 39. | Notice of Entry of Order from Hearing | 10/01/15 | 8 | 1739-1743 |
| 40. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 10/12/15 | 8 | 1744-1758 |
| 41. | Order to Appear and Show Cause | 10/14/15 | 8 | 1759-1760 |
| 42. | Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing | 10/15/15 | 8 | 1761-1851 |
| 43. | Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing | 11/02/15 | 9 | 1852-1879 |
| 44. | Dr. Paglini Letter to Court | 11/23/15 | 9 | 1880-1881 |
| 45. | Notice of Entry of Order from Domestic Court Minutes | 12/02/15 | 9 | 1882-1886 |
| 46. | Supplement to Plaintiff's Motion for an Order to Show Cause Why | 12/10/15 | 9 | 1887-1903 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | | | |
| 47. | Reply to Opposition to Motion for Clarification; Motion to Amend Findings | 12/10/15 | 9 | 1904-1920 |
| 48. | Court Minutes [All Pending Motions] | 12/14/15 | 9 | 1921-1922 |
| 49. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 12/16/15 | 9 | 1923-1942 |
| 50. | Notice of Entry of Order from Domestic Court Minutes | 12/17/15 | 9 | 1943-1947 |
| 51. | Court Minutes [All Pending Motions] | 01/26/16 | 9 | 1948-1949 |
| 52. | Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing | 05/25/16 | 9 | 1950-1958 |
| 53. | Letter from John Paglini, Psy.D. to Court | 05/31/16 | 9 | 1959-1961 |
| 54. | Notice of Entry of Order re John Paglini, Psy.D. Letter | 06/21/16 | 9 | 1962-1963 |
| 55. | Notice of Appeal | 06/27/16 | 9 | 1964-1975 |
| 56. | Plaintiff's Motion for Reunification Therapy for Minor Children and Father | 07/26/16 | 9 | 1976-2076 |
| 57. | Notice of Entry of Order re: August 24, 2016 Hearing | 08/19/16 | 9 | 2077-2079 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 58. | Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order | 08/30/16 | 9 | 2080-2095 |
| 59. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 08/30/16 | 10 | 2096-2196 |
| 60. | Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order | 09/23/16 | 10 | 2197-2206 |
| 61. | Plaintiff's Motion for an Order to Nullify and Void Expert Report | 09/28/16 | 10 | 2207-2292 |
| 62. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 09/30/16 | 10 | 2293-2316 |
| 63. | Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for | 09/30/16 | 10 | 2317-2321 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13 | | | |
| 64. | Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report | 10/18/16 | 10 | 2322-2337 |
| 65. | Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016 | 10/19/16 | 11 | 2338-2358 |
| 66. | Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report | 11/02/16 | 11 | 2359-2381 |
| 67. | Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit | 11/04/16 | 11 | 2382-2423 |
| 68. | Court Minutes [All Pending Motions] | 11/07/16 | 11 | 2424-2426 |
| 69. | Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 12/29/16 | 11 | 2427-2440 |
| 70. | Plaintiff's Pre-Trial Memorandum | 01/17/17 | 11 | 2441-2457 |
| 71. | Prehearing Memorandum | 01/17/17 | 11 | 2458-2477 |
| 72. | Court Minutes [Evidentiary Hearing] | 01/18/17 | 11 | 2478-2479 |


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| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 73. | Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 01/31/17 | 11 | 2480-2489 |
| 74. | Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2490-2507 |
| 75. | Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2508-2512 |
| 76. | Court Minutes [All Pending Motions] | 02/01/17 | 11 | 2513-2514 |
| 77. | Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 02/13/17 | 11 | 2515-2537 |
| 78. | Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 02/13/17 | 11 | 2538-2556 |
| 79. | Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 02/15/17 | 11 | 2557-2563 |
| 80. | Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions | 02/17/17 | 12 | 2564-2595 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 81. | Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 03/06/17 | 12 | 2596-2602 |
| 82. | Defendant's Opposition to Motion to Strike; Countermotion for Sanctions | 03/13/17 | 12 | 2603-2608 |
| 83. | Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/15/17 | 12 | 2609-2617 |
| 84. | Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/16/17 | 12 | 2618-2627 |
| 85. | Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017 | 03/28/17 | 12 | 2628-2634 |
| 86. | Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017 | 04/10/17 | 12 | 2635-2638 |
| 87. | Notice of Appeal | 04/14/17 | 12 | 2639-2649 |
| **TRANSCRIPTS** | | | | |
| 88. | Transcript re: All Pending Motions | 10/30/13 | 12 | 2650-2688 |
| 89. | Transcript re: All Pending Motions | 05/21/14 | 12 | 2689-2744 |
| 90. | Transcript re: All Pending Motions | 09/22/15 | 13 | 2745-2823 |
| 91. | Transcript re: All Pending Motions | 12/14/15 | 13 | 2824-2886 |
| 92. | Transcript re: All Pending Motions | 01/26/16 | 13 | 2887-2928 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 93. | Transcript re: All Pending Motions | 11/07/16 | 14 | 2929-3040 |
| 94. | Transcript re: Evidentiary Hearing - Vol.1 | 01/18/17 | 14 | 3041-3152 |
| 95. | Transcript re: Evidentiary Hearing - Vol. 2 | 01/18/17 | 14<br>15 | 3153-3178<br>3179-3315 |
| | Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [*Confidential*] SEALED | | 15 | 3316-3375 |
| | Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016 | | 15 | 3376-3377 |
| | Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016 | | 15 | 3378-3380 |
| | Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016 | | 15 | 3381-3384 |
| | Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [*Confidential*] SEALED | | 15 | 3385-3387 |
| | Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016 | | 15 | 3388-3389 |
| | Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015 | | 15 | 3390-3392 |
| | Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule | | 15 | 3393-3394 |
| | Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016 | | 15 | 3395-3416 |
| | Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016 | | 15 | 3417-3426 |
| 96. | Transcript re: All Pending Motions | 02/01/17 | 16 | 3427-3640 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
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| **ADDITIONAL DOCUMENTS[1]** | | | | |
| 97. | Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 | 07/24/17 | 16 | 3641-3647 |
| 98. | Plaintiff's Supplemental Filing | 08/24/17 | 16 | 3648-3666 |
| 99. | Supplemental Notice of Appeal | 08/24/17 | 17 | 3667-3676 |
| 100. | Notice of Entry of Order re: Expert Designation | 10/06/15 | 17 | 3677-3682 |
| 101. | Notice of Entry of Order re: Pending Motions | 01/04/17 | 17 | 3683-3693 |


[1]These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

# EXHIBIT 3

BOARD CERTIFIED SPECIALIST IN
*CHILD AND ADOLESCENT
*ADULT PSYCHIATRY
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January 14, 2014

Kirk Ross Harrison v. Vivian Marie Lee Harrison
CASE NO.: D-I 1-443611-D

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

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

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

Documents reviewed

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

2. Defendant's Opposition to Plaintiff's Motion To Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions To Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's fees and Sanctions (filed 10.16.13)

3. Plaintiffs Reply in Support of Plaintiffs Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Plaintiffs Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions (filed 10.23.13)

4. Plaintiffs (sic) [DEFENDANT'S] Reply to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions (filed 10.28.13)

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

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

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

3. Plaintiffs Reply in Support of Plaintiff s Motion for a Judicial Determination of the Teenage Discretion Provision and Plaintiffs Opposition to Defendant's Countermotion for Attorney's Fees (filed 12.13.13)
4.

Discussion

The issue of parity and quality of parenting

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

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

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

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

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

Court responsibility to foster cooperative parental relationships despite adversarial pressures

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

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

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

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

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

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

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

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

The issue of teenagers' custody preference

Cost versus benefit to open this matter in the first place

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

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

The domain of the court versus parental traditions and culture

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

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

Changing developmental needs

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

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

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

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

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

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

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

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

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

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

Adversarial positioning is not the best interests of children

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

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

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

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

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

Unintended consequences of court authorization of teenage discretion

Arbitrary powers

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

Interferes with self discipline and frustration tolerance

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

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

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

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

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

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

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

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

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

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

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

Choosing parental messages

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

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

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

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

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

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

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

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

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

Long term psychological impacts on teenagers manifesting when they become adults

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

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

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

Interference with preparation for the future

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

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

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

Principles of adjustment and interference of court interventions after divorce

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

# EXHIBIT 4

**ORDR**
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

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

**ORDER FOR APPOINTMENT OF PARENTING COORDINATOR**

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

. . .

. . .

. . .

**1.0 AUTHORITY OF PARENTING COORDINATOR**

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

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

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

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

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

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

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



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

(b) holiday sharing;

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

(d) communication between the parents;

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

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

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

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

(i) child's travel and passport issues;

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

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

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

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

**2.0 <u>PROCEDURES AND RELATED REQUIREMENTS</u>**

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

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

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

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

**3.0. NO PARENTING COORDINATOR CONFLICTS**

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

**4.0 SCHEDULING:**

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

**5.0 EMERGENCY COMMUNICATION WITH THE COURT:**

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

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

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

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

**6.0 PARENTING COORDINATOR FEES/EXPENSE SHARING**

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

**7.0 APPOINTMENT**

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

Name: _____

Street Address: _____

City: _____ _____ State: _____ Zip: _____

Telephone #: _____ _____ Fax # _____

E-mail: _____ _____

**8.0 TERMS OF APPOINTMENT**

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

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

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

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

Dated this _____ day of _____, 2013.

_____
DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

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

Approved as to form and content:

RADFORD J. SMITH, CHARTERED

By: _____
RADFORD J. SMITH, ESQ.
Nevada Bar No. 2791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

# EXHIBIT 5

**Kirk Harrison**

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

Kirk and Vivian,

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

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

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

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

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

Regards,

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

MARGARET PICKARD PLLC

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

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

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

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# MARGARET PICKARD | PLLC

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**Mediation – Parenting Coordination**
*NevodaMediator@gmail.com*


## *An Overview of Parenting Coordination*

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

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

READ CAREFULLY PRIOR TO THE INITAL CONSULTATION

***Parenting Coordination Goals***

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

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

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

***Parenting Coordinator Recommendations***

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

***Co-Parenting Tips***

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

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



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

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

***Filing Motions with the Court***

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

***Confidentiality***

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

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

*Acknowledged this _____ day of February, 2014.*

Mother's Signature

Father's Signature

Mother's Printed Name

Father's Printed Name

Attachments: *Parenting Coordination Agreement*
*Parenting Coordination Intake Forms*

# MARGARET PICKARD | PLLC

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**Mediation – Parenting Coordination**
*NevadaMediator@gmail.com*


## *Agreement for Parent Coordination Services*

Margaret E. Pickard, Esq.

1. ***Appointment***:

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



A.App. 1419

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

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

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

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

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

_____ _____
Vivian Harrison's Signature Date

_____
Vivian Harrison's Name (Printed)

_____ _____
Kirk Harrison's Signature Date

_____
Kirk Harrison's Name (Printed)

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

# MARGARET PICKARD | PLLC

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

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

**Mediation – Parenting Coordination**
*NevadaMediator@gmail.com*


## PARTY INFORMATION SHEET – Parent Coordinating

**YOUR INFORMATION:**

Name: _____

Address: _____ City: _____

State: _____ Zip Code: _____

Phone Numbers: Home: _____ Work: _____

Email: _____

Cellular: _____ Facsimile: _____

Date of Birth:_____

Issue you need to discuss today:

_____

_____

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

_____

How did you hear about this office?

_____

**Co-Parent:**

Name: _____

Address: _____ City: _____

State: _____ Zip Code:_____

Phone: Home: _____ Work: _____

Email: _____

Date of Birth:_____



A.App. 1421

**CHILDREN OF YOURS WITH THE ADVERSE PARTY:**

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

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

_____

Physical Custody Arrangement: Joint _____ Mother _____ Father _____

Visitation Arrangement:

_____

_____

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

_____

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

_____

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

_____

_____

**MEDICAL INSURANCE/PROVIDERS**

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

Mother _____Father _____Both _____

Are there any unreimbursed medical expenses? Yes _____No _____

If yes state amount $_____

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

**OTHER CHILDREN OF YOURS OR OF THE ADVERSE PARTY:**

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

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

If so, please state: _____

_____

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

_____ _____

Party Date



A.App. 1423

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

# Credit Card Charge Authorization Form

## CARD HOLDER INFORMATION

Name on Card: _____

Credit Card No.: _____

Expiration Date: _____

Security Code: _____

Billing Address: _____

_____

Amount: _____

Type of Card: _____

Telephone: _____

Email Address: _____

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

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

_____

*Signature of Credit Card Signatory and Authorized*

_____ _____

Printed Name Date

MARGARET PICKARD | PLLC

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

# AUTHORIZATION
## *FOR THE INTERVIEWING OF MINOR CHILDREN*

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

CHILD'S NAME: _____

CHILD'S DOB: _____

INTERVIEW DATE/TIME: _____

CHILD'S NAME: _____

CHILD'S DOB: _____

INTERVIEW DATE/TIME: _____

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

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

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

**Agreed and Accepted:**

***Father:*** _____

**Signature:** _____ **Date:** _____

Address, City State and Zip Code: _____

***Mother:*** _____

**Signature:** _____ **Date:** _____

Address, City State and Zip Code: _____

**RELEASE OF INFORMATION**

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

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

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

*Father:* _____

Signature: _____ Date: _____

Street Address: _____

City, State, Zip Code: _____

*Mother:* _____

Signature: _____ Date: _____

Street Address: _____

City, State, Zip Code: _____

**MARGARET PICKARD** | PLLC

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

## AUTHORIZATION FOR THE RELEASE OF PROTECTED HEALTH INFORMATION

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

PROVIDER: _____

PATIENT NAME/DOB: _____

PATIENT NAME/DOB: _____

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

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

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

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

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

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

**Agreed and Accepted:**

***Father***: _____

**Signature:** _____ **Date:** _____

Address, City State and Zip Code: _____

***Mother***: _____

**Signature:** _____ **Date:** _____

Address, City State and Zip Code: _____

# EXHIBIT 6

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2012

PHILADELPHIA, TUESDAY, MAY 7, 2013

An ALM Publication

# Concern Over Judicial Authority Drove Parent Coordinator Elimination

**BY BEN PRESENT**

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

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

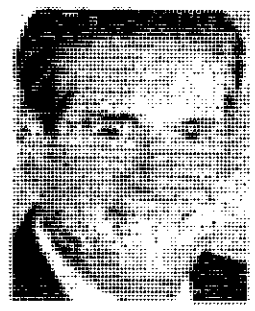
In other words, it seemed that while most attorneys had seen parenting coordinators work in many cases (though some had seen it go terribly), all recognized that the Supreme Court was trying to be cognizant of instances where courts are abdicating their authority to nonjudicial entities and, in turn,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

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

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

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

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



**David L. Ladov**

the high court's sentiment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Legal Intelligencer

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

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

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

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

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

## 'BALLS AND STRIKES'

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

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

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

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

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

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

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

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

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

## PSYCHOLOGISTS' INVOLVEMENT

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

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

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

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

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

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

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

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

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

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

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

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

Moving forward, Hoffman said his first order of business approaching the rule change's effective date is to notify his clients of the change.

Hoffman said he would be informing his clients who have parent coordinators that dispute resolution is going to have to go through court.

In wealthier counties such as Montgomery, Chester, Delaware and Bucks, Hoffman said the courts should prepare for increased filings and more backlog.

"It leaves families in tremendous limbo," Hoffman said.

Doherty, although she was not surprised the Supreme Court took the action, did not see a viable alternative to fill the upcoming void.

"Am I shocked the Supreme Court has done this? No," Doherty said. "But do I think we have a solution yet? No."

***Ben Present** can be contacted at 215-557-2315 or bpresent@alm.com. Follow him on Twitter @BPresentTLI.*

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0001

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff(s),

-vs-

VIVIAN MARIE LEE HARRISON,

Defendant(s).

CASE NO. D443611

DEPT. NO. Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR OPPOSITION TO MODIFY

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded.** (NRS 19.0312)

***NOTICE:***

*If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*

**Mark correct answer with an "X."**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed solely to adjust the amount of support for a child. No other request is made.
☐ YES ☒ NO

3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 21st of April, 2014

Carol Navarro
Printed Name of Preparer

Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

FILE COPY
MAY 12 2014

OPP

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Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

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

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

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

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

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

Dated this 7 day of April, 2014

RADFORD J. SMITH, CHARTERED

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

## I.

## INTRODUCTION

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

## II.

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

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

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

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

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

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

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

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

Further, the parties' stipulated parenting plan reads:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.
>
> 6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.
>
> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator.

> Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.
>
> 6.4. **In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator**, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

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

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

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

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

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

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

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

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

*Id.* at 1153-1154.[1]

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

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

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

*Id.* at 1157

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

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

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

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

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

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

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

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

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

## III.

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

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

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

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

---

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

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

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

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

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

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

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

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

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

## IV.

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

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

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

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

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

Dated this 9 day of April, 2014

RADFORD J. SMITH, CHARTERED

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*Attorney for Vivian Harrison*



A.App. 1445

## CERTIFICATE OF SERVICE

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

I served the foregoing document described as:

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

on March 31, 2014, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

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

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

Edward L. Kainen, Esq.
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F: (702) 823-4488
Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

# EXHIBIT "A"

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GARIMA VARSHNEY, ESQ.
JOLENE HOEFT, PARALEGAL
KENNETH F. SMITH, PARALEGAL

VIA FACSIMILE
Margaret Pickard, Esq.

April 7, 2014

*Re: Harrison Parenting Coordination*

Dear Margaret:

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

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

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

Further, the parties' stipulated parenting plan reads:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.
>
> 6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.
>
> 6.4. **In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator**, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

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

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

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

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

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

Regards,

RADFORD J. SMITH, CHARTERED

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

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

Hello All,

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

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

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

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

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

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

*Margaret*

Margaret E. Pickard, Esq.
Mediator
Parenting Coordinator

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MARGARET PICKARD

**Mediation – Parenting Coordination**

*NevadaMediator@gmail.com*

# EXHIBIT "B"

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# Email Report

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Date Printed: 5/09/2014
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Date 3/14/2014 Time 4:58PM 12:00AM Duration 0.00 (hours) Code Case Related
Subject Harrison Parent Coordination Agreement Staff Radford J Smith
Client Vivian Harrison MatterRef Harrison adv. Harrison MatterNo D-11-443611-D
From Margaret Pickard <nevadamediator@gmail.com>
To ed@kainenlawgroup.com; tjs@standishlaw.com; Radford Smith; gary silverman <silverman@silverman-de
CC To
BCC To
Reminders (days before) Follow Done Notify Hide Trigger Private Status

Custom1 Custom3
Custom2 Custom4

Hello All,

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

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

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

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

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

All my best,

Margaret

Margaret E. Pickard, Esq.
Mediator
Parenting Coordinator

Adjunct Faculty
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Duke University
University of California, Davis

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# EXHIBIT "C"

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2013

PHILADELPHIA, TUESDAY, JULY 9, 2013

An ALM Publication

# Family Law

## Parenting Coordination Eliminated in Pennsylvania

BY KELLEY L. MENZANO
*Special to the Legal*

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

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

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

### PARENTING COORDINATION IN PENNSYLVANIA

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

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

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

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

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

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

The Legal Intelligencer

## POSITIVES AND NEGATIVES

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

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

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

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

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

## POSSIBLE MODIFICATIONS

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

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

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

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

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

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

## HIGH-CONFLICT CUSTODY CASES

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

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

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**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition : ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

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

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

*NOTICE:*

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this __ day of May, 2014

Jolene Hoeft
Printed Name of Preparer

Signature of Preparer



A.App. 1458

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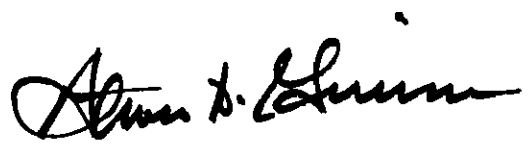

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

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

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

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

. . .

. . .

. . .

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

DATED this 14th day of May, 2014.

KAINEN LAW GROUP, PLC

By: _____
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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. ARGUMENT

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

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

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

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

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

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

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

. . .

. . .

. . .

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A.App. 1461

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. CONCLUSION

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

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

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

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

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

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

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

DATED this 14th day of May, 2014.

KAINEN LAW GROUP, PLLC

By: _____

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**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-44361-D

DEPT.: Q

**FAMILY DIVISION**

ORAL ARGUMENT REQUESTED

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

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

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

## I.

## INTRODUCTION

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

## II.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plain construction of the English language informs us that the sentence "[T]he parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home" (Parenting Plan, paragraph 6.1) means that they could either request **or** make adjustments. As argued by Vivian the first two times she was required to oppose Kirk's newly minted argument that he and his lawyers did not

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

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

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

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

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

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

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

It is submitted that the pleading reflect that Kirk actively dislikes or abhors Vivian, and it follows that the girls' desire to live with Vivian is fueled by their reluctance to live in a home where they may not openly and unconditionally love their mother. *See* Reply to Plaintiff's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues for an Interview of the Minor Children, and for Attorney's Fees and Sanctions, filed on October 28, 2013, Page 4, lines 24-28, incorporated by this reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## IV.

## CONCLUSION

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

Dated this 20th day of May, 2014.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
GARIMA VARSHNEY, ESQ.
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Attorney for Defendant

## CERTIFICATE OF SERVICE

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

I served the foregoing document described as:

**DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND SANCTIONS** on May 20, 2014, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

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

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

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

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

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

An employee of Radford J. Smith, Chartered

# EXHIBIT "A"

# RADFORD J. SMITH, CHARTERED

*A Professional Corporation*

**THIS FACSIMILE IS CONFIDENTIAL.**

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## FACSIMILE TRANSMITTAL SHEET

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

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

**DOCUMENT(S) ATTACHED:**

**CORRESPONDENCE WITH STIPULATION AND ORDER ATTACHED**

64 NORTH PECOS ROAD·SUITE 700 • HENDERSON, NEVADA 89074
(702) 990-6448 • FAX (702) 990-6456

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

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*Attorneys at Law*

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RSMITH@RADFORDSMITH.COM

May 25, 2012

**VIA FACSIMILE**
Thomas Standish, Esq.

*Re: Harrison v. Harrison*

Dear Tom:

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

Please review and advise.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:
Enc: as stated

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

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*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO.: D-11-443611-D<br>DEPT NO.: Q<br><br>**FAMILY DIVISION** |

**STIPULATION AND ORDER RESOLVING PARENT/CHILD ISSUES**

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

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



A.App. 1489

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

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

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

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

2.2. The parents shall jointly select all schools, day care providers, and counselors for the children. In the event the parents cannot agree to the selection of a school, the child(ren) shall remain in the school she is (or they are) then attending pending mediation and/or further court order.

2.3. The parents shall jointly select all health care providers for the children, including all medical providers, dentists or orthodontists, optical care providers, psychological counselors and

mental health providers, and neither parent shall seek non-emergency health care, whether physical or mental, for the children without the knowledge and consent of the other.

2.4. Each parent shall be empowered to obtain emergency health care for either child without the consent of the other parent. Each parent shall notify the other parent as soon as reasonably possible of any illness or injury of either child requiring emergency medical attention, the location of any emergency care of either child, and the result of such care.

2.5. Each parent shall provide the other parent, upon receipt, with any information concerning the care, education, or activities of the children, including, but not limited to, copies of report cards, school meeting notices, vacation schedules, class programs, requests for teacher conferences, results of standardized or diagnostic tests, notices or schedules of activities, samples of school work, order forms for school pictures, all communications from health care providers, and, the names, addresses, and telephone numbers of all of the children's schools, health care providers, regular day care providers, and counselors.

2.6. Each parent shall advise the other parent of school, athletic, church, and social events in which the children participate, and each agrees to notify the other parent within a reasonable time after first learning of such event so as to allow the other parent to make arrangements to attend the event if he or she chooses to do so. Both parents may participate in and attend activities involving the children, including, but not limited to, activities such as open house, school and church activities and events, athletic events, school plays, graduation ceremonies, school carnivals, and any other activities involving the children. Regardless of what parent has the custodial care of the children on the date of such event, each parent shall be afforded a reasonable time to greet, congratulate, take pictures, or participate in other normal activities with the children acknowledging or memorializing the event.

2.7. Each parent shall provide the other parent with the address and telephone number at which the minor children reside, and each shall notify the other parent at least thirty (30) days prior to any change of address of the children, and shall provide the telephone number of such address change as soon as it is assigned.

2.8. Each parent shall provide the other parent with a travel itinerary and, whenever reasonably possible, telephone numbers at which either child can be reached, whenever either child will be away from that parent's home for a period of twenty-four (24) hours or more. The parties each acknowledge that pursuant to current federal law, each will need to seek the written permission of the other party for any travel with the children outside of the United States, which written permission shall not be unreasonably withheld.

2.9. Each parent shall encourage liberal communication between both children and the other parent. Each parent shall be entitled to reasonable telephone communication with the children. Each parent agrees to be restrained, and is restrained, from unreasonably interfering with the children's right to privacy during such telephone conversations.

2.10. Neither parent shall interfere with the right of the children to transport clothing, toys and other personal belongings freely between the parents' respective homes.

2.11. Neither parent shall disparage the other in the presence of either child, nor shall either parent make any comment of any kind that would demean the other parent in the eyes of either child. Additionally, each parent agrees to instruct their respective family and friends that no disparaging remarks are to be made regarding the other parent in the presence of either child.

2.12. The parents further agree to communicate directly with each other regarding the needs and well being of their children, and each parent agrees that he or she shall not to use either child to

communicate with the other parent regarding parental issues, or to transfer notes, payments, or other documents to the other parent without the other parent's consent.

3. *Therapist for the Minor Children*: The parents agree that, if necessary, the minor children shall engage in therapeutic sessions with a mutually agreed-upon child psychologist or psychiatrist. The determination of the need for the children to engage in therapy shall be at the discretion of the therapist, unless otherwise agreed in writing by the parties. The therapist shall not be called as a witness in the case in the absence of an issue requiring mandatory reporting under NRS 432B.220. In the absence of a mandatory reporting issue, the therapist shall be immune from process in this matter, and shall not be called as a witness. The therapist's role would be entirely therapeutic and one to which the children would address any issues or problems for peaceful resolution. In any instance in which the therapist believes that he or she must address the behavior of either parent, the psychologist shall direct any discussion, suggestions, or questions to the parties' Parenting Coordinator appointed pursuant to paragraph 4 below. Neither party shall directly contact the therapist in the absence of a written agreement to that effect. The parties shall equally divide the cost of such therapy.

4. *Parenting Coordinator:* The parties shall engage a Parenting Coordinator to resolve disputes between the parties regarding the minor children. The parties shall make best efforts to mutually agree upon a Parenting Coordinator, but in the absence of such agreement, the Court shall retain jurisdiction to appoint a Parenting Coordinator. The Parenting Coordinator shall serve pursuant to the terms of an order in the form attached as Exhibit "1" hereto.

5. *Weekly Division of Time with the Minor Child:* The parties shall share joint physical custody of the minor children. KIRK shall have the children in his care each Monday from after school, or 9:00 a.m. when the children are not in school, until Wednesday after school, or Wednesday at 9:00 a.m. when the children are not in school. VIVIAN shall have the children in her care from Wednesday after

school, or at 9:00 a.m. when the children are not in school, until Friday after school, or Friday at 9:00 a.m. when the children are not in school. The parties shall alternate weekends with the children, from Friday after school, or Friday at 9:00 a.m. when the children are not in school, until Monday after school, or Monday at 9:00 a.m. when the children are not in school.

6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the amount of time the child desires to spend with each parent, with the understanding that the parents will work together to encourage frequent contact and communication between each parent and the child. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the amount of time the child desires to spend with each parent once that child reaches 14 years of age

7. *Holiday Time with the Minor Children:* Holidays and special times shall take precedence over but not break the continuity of the plan. The parties will discuss and agree on a schedule of holiday visitation for any holiday not specifically addressed herein.

7.1. *Summer Vacation or Intersession Break*: The parties shall each be entitled to two weeks of uninterrupted visitation with the children during the children's Summer Vacation/Intersession periods. The party exercising such visitation shall advise the other party, in writing, thirty (30) days in advance of the visitation. The parties shall alternate yearly having the priority for scheduling visitation, with Kirk having the priority in even-numbered years, and Vivian having priority in odd-numbered years. That priority in scheduling must be exercised by notice to the other party by March 1 of each year, and if the party with priority fails to notify the other party of a summer vacation schedule by that time, then priority in that year shall be granted to the first party to notice the other of such vacation plans. The two

week period may be broken into two one-week periods, but no smaller unit. The visitation periods shall not be taken during the other parties' holiday visitation periods outlined herein. In addition, VIVIAN shall be entitled to attend the sewing camp with the children each year that she and the children have previously participated in. VIVIAN shall advise KIRK of the dates of the sewing camp as soon as she learns of them so that the parties may schedule summer vacation periods. Also, because of the proximity of the date of this Agreement, for the Summer Break 2012 Vivian shall have the children in her care from August 5 through August 19 for her two week vacation period, and July 21 through July 31 for sewing camp. Kirk shall have the children in his care for the two week period beginning _ _ and ending on _____.

7.2. *Winter Break*: The Winter Break shall be defined utilizing the nine-month school year calendar for the Clark County, Nevada school district. The holiday shall be divided into two periods, the first beginning after school the day school recesses for the Winter Break, and ending December 25th at noon. The second period shall be defined as commencing December 25th at noon, and ending at 7:00 p.m. the day before school recommences. The parties shall alternate care of the child during those periods, with KIRK having the children during the first period in even-numbered years, and for the second period in odd-numbered years. VIVIAN shall have the children during the first period in odd-numbered years, and for the second period in even-numbered years.

7.3. *Thanksgiving Visitation*: The Thanksgiving holiday shall be defined as commencing after school (or at 3:00 p.m. if the children are not in school) on the Wednesday before Thanksgiving, and ending the Sunday following Thanksgiving at 7:00 p.m. The parties shall alternate having the children during the Thanksgiving holiday, with KIRK having the children in his care during the Thanksgiving holiday in odd-numbered years, and VIVIAN having the children in her care during the Thanksgiving holiday in even-numbered years. In odd-numbered years, the parties shall switch visitation

periods as follows: If KIRK's regularly-scheduled weekend immediately follows Thanksgiving, VIVIAN shall receive KIRK's Monday to Wednesday visitation preceding Thanksgiving, and KIRK shall receive VIVIAN's Wednesday to Friday visitation (encompassing Thanksgiving Day). If VIVIAN's regularly scheduled weekend immediately follows Thanksgiving, VIVIAN shall receive KIRK's Friday to Wednesday visitation, and KIRK shall receive VIVIAN's Wednesday to Monday visitation (encompassing Thanksgiving Day).

7.4. *Spring Break*: The Spring Break vacation shall be based upon the nine-month school calendar in Clark County, Nevada. The Spring Break period shall be defined as commencing the Friday that school recesses before the vacation period, and shall end on at 7:00 p.m. the Sunday before school recommences. KIRK shall have the children during the Spring Break vacation period in even-numbered years, and VIVIAN shall have the children during the Spring Break vacation period in odd-numbered years.

7.5. *Independence Day*: The Independence Day holiday shall be defined as commencing July 4th at 9:00 a.m., and ending July 5th at 10:00 a.m. KIRK shall have the children in his care for the Independence Day holiday during odd-numbered years, and VIVIAN shall have the children in her care for the Independence Day holiday in even-numbered years.

7.6. *Veteran's Day*: The parties shall alternate having the children on Veteran's Day, which shall be defined as November 11 from 9:00 a.m. to 7:00 p.m. KIRK shall have the children in his care on Veteran's Day in even-numbered years, and VIVIAN shall have the children in her care on Veteran's Day during odd-numbered years.

7.7. *Other Nationally And State-Observed Holidays*: With respect to such nationally observed holidays and holidays observed by the State of Nevada, such as Martin Luther King Day, President's Day, Memorial Day, Labor Day, Nevada Admission Day, and any other such holiday where

the Monday or Friday of any particular week is observed as a national or state holiday, the parent who has the actual physical custody of the children during the immediately preceding weekend shall continue to have the physical custody of the child until 7:00 p.m. on such holiday.

7.8. *Father's Day*: Regardless of which parent is entitled to have the children on the Sunday which is designated "Father's Day," the KIRK shall be entitled to have the children from at least 10:00 a.m. until 8:00 p.m. that day.

7.9. *Mother's Day*: Regardless of which parent is entitled to have the children on the Sunday designated as "Mother's Day," the VIVIAN shall be entitled to have the children from at least 10:00 a.m. until 8:00 p.m. that day.

7.10. *Children's Birthdays*: The parties shall alternate having the children for the children's birthdays. KIRK shall have the children for their birthday in odd-numbered years, and VIVIAN shall have the children for their birthday in even-numbered years. The children's birthday shall be defined as beginning at 9:00 a.m. on the birthday, and ending at 9:00 p.m. on that day.

8. *Miscellaneous Provisions Regarding Care of Children*:

8.1. While the parties recognize that the majority of exchanges shall be effectuated by dropping off and picking up the children at school, when school is not in session, the parents agree that in effectuating and implementing the aforementioned custody arrangements, the parent to whom the physical custody of the children is to be transferred at any such time that the physical custody of the children is to be changed from one parent to the other shall be responsible for picking up the children at the other parent's residence (i.e., when KIRK is to have the actual physical custody of the children, KIRK shall be responsible for picking up the children at VIVIAN's residence; and, conversely, when VIVIAN is to have the physical custody of the children, VIVIAN shall be responsible for picking up the children at KIRK's residence.

8.2. The parents agree that the children shall be picked up, and shall be available to be picked up, at the designated times set forth above. Should a delay become necessary, the parent responsible for such a necessary delay shall immediately notify the other parent to advise him or her of the problem. For example, if the receiving parent is unable to pick up the children at the designated time, such receiving parent shall immediately notify the other parent of that fact. Conversely, if the children are not available for the receiving parent to pick up at the designated time, the receiving parent shall be notified immediately by the other parent. Moreover, in the event any scheduled time cannot be kept due to the illness or other unavailability of a child and/or the receiving parent, the parent unable to comply with the schedule shall notify the other parent and the children as soon as reasonably possible. In the event the time-shared arrangement cannot be kept due to the illness or other unavailability of a child, the receiving parent shall be entitled to comparable time within thirty (30) days after the occurrence of such missed time with the child(ren).

9. *Child Support:* Based upon the current financial condition of the parties, and the fact that neither party currently engages in full time employment, neither party shall be required to pay child support to the other.

9.1. The provisions regarding child support herein are consistent with the statutory requirements of NRS 125B.070 and NRS 125B.080, as applied in *Wright v. Osburn,* 114 Nev. 1367, 970 P.2d 1071 (1998), and *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).

10. *Tax Exemption*: The parties shall alternate annually the ability to claim the minor children as dependents for purposes of income tax deductions. VIVIAN shall be entitled to claim the children as dependents in the 2013 tax year and all odd tax years. KIRK shall be entitled to claim the children as dependents in the 2012 tax year and all even tax years.

11. *Health Insurance:* Kirk shall maintain the children on the current policy of health insurance. Kirk shall be responsible for any premiums for such insurance, and the parties shall be equally responsible for deductibles or co-pays required by the insurance policy, and any and all expenses for the healthcare costs of the minor children not covered by the insurance, including orthodontic and optical expenses, until such time as each child, respectively, reaches the age of eighteen (18), or if still in high school, the age of nineteen (19), marries, or otherwise becomes emancipated. Until such resolution, all such costs shall continued to be paid by KIRK from the parties' community funds.

11.1. Documentation of Out-of-Pocket Expenses Required: A party who incurs an out-of-pocket expense for medical care is required to document that expense and provide the other party proof of payment of that expense. A receipt of payment from the health care provider is sufficient to prove the expense so long as it has the name of the child on it and shows an actual payment by the party seeking reimbursement.

11.2. Timely Submission of Requests for Reimbursement: The party who has paid or incurred a health care expense for a minor child must submit a claim for reimbursement to the insurance company within the deadline required for reimbursement by the insurance policy. If a party fails to timely submit such a claim for reimbursement, and the claim is denied by the insurance company as untimely, that party shall pay the entire amount which would have been paid by the insurance company as well as one-half of the expense which would not have been paid by insurance if the claim had been timely filed.

11.3. Mitigation of Health Expenses Required; Use of Covered Insurance Providers: Each party has a duty to mitigate medical expenses incurred by or for the minor children. Absent compelling circumstances, a party must take the minor children to a health care provider covered by the insurance in effect and use preferred or covered providers, if available, in order to minimize the cost of healthcare for the minor children. The burden is on the party using a non-covered health care provider to demonstrate

that the choice not to use a covered provider, or the lowest cost option under the policy, was reasonably necessary in the particular circumstances. If the Court finds the choice of a non-covered or more expensive covered provider was not reasonably necessary, then the Court may impose a greater portion of financial responsibility for the cost of that health care on the party who incurred that expense up to the full amount which would have been provided by the lowest cost insurance choice.

11.4. Sharing of Insurance Information Required: The party providing insurance coverage for the children has a continuing obligation to provide insurance information to the other party including, but not limited to, copies of policies and policy amendments as they are received, claim forms, preferred provider lists (as modified from time to time), and identification cards. If the insuring party fails to timely supply any of the above items to the other party, and that failure results in a denial of a claim because of the non-insuring party's failure to comply with the procedures required by the amended or updated insurance policies, the party providing insurance shall be responsible for all healthcare expenses incurred by the minor child for any claim that would have been covered by insurance.

11.5. Reimbursement For Out-of-Pocket Expenses: A party that seeks reimbursement for one-half of an unreimbursed healthcare expense he or she has incurred on behalf of a minor child must submit such request for reimbursement to the other party within thirty (30) days of incurring such expense or being advised by the provider that such expense would not be reimbursed. If a party fails to request such reimbursement with that time period, that party shall forfeit any right to seek reimbursement. A party who receives a written request for contribution for an unreimbursed health care expense for a child incurred by the other party must reimburse the other party one-half of that expense within thirty (30) days of receipt of the written request for contribution. The party receiving the request for contribution must raise any objection to the request for contribution within the thirty (30) day period after the request for

contribution is received or shall be deemed to have waived such objection. Any objection to the request for contribution must be made in writing.

11.6. Sharing Insurance Reimbursement: Any reimbursements for payments made directly by a party or the parties to any healthcare provider for a minor child shall be distributed according to the amount of payment by each party. If a party receives such a reimbursement, that party shall distribute the reimbursement within seven (7) days of its receipt.

11.7. Effect of Not Obtaining or Maintaining Required Health Insurance Coverage: If either party is individually required to provide health insurance or pay other health care related costs for the parties' minor children and fails to do so, that party shall be responsible for that portion of any medical expense that would have been paid by a reasonably priced insurance policy available at the time. Should the party obligated to provide health insurance for the minor children lose that ability, the parties shall jointly choose and pay for an alternative policy. The Court shall reserve jurisdiction to resolve any dispute relating to alternative insurance.

***Mandatory provisions***: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor children with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by a category D felony as provided in NRS 193.130.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference on Private International Law are applicable to the parties:

> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purpose of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents pose an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada in the United States of America is the habitual residence of the parties' children.

The parties, and each of them, are hereby placed on notice that, pursuant to NRS 125.450, a parent responsible for paying child support is subject to NRS 31A.010 through NRS 31A.340, inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes, regarding the withholding of wages and commissions for the delinquent payment of support, that these statutes and provisions require that, if a parent responsible for paying child support is delinquent in paying the support of a child that such person has been ordered to pay, then that person's wages or commissions shall immediately be subject to wage assignment and garnishment, pursuant to the provisions of the above-referenced statutes.

The parties acknowledge, pursuant to NRS 125B.145, that an order for the support of a child, upon the filing of a request for review by:

> (a) The welfare division of the department of human resources, its designated representative or the district attorney, if the welfare division or the district attorney has jurisdiction in the case; or,
>
> (b) a parent or legal guardian of the child,

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

must be reviewed by the court at least every 3 years pursuant to this section to determine whether the order should be modified or adjusted. Further, if either of the parties is subject to an order of child support, that party may request a review pursuant the terms of NRS 125B.145. An order for the support of a child may be reviewed at any time on the basis of changed circumstances.

IT IS SO STIPULATED.

SMITH & TAYLOR

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
(702) 990-6448
*Attorney for Defendant Vivian Harrison*

JOLLEY, URGA, WIRTH, WOODBURY & STANDISH

THOMAS J. STANDISH, ESQ.
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3800 Howard Hughes Parkway - 16th Floor
Las Vegas, Nevada 89169
(702) 699-7500
*Attorney for Plaintiff Kirk Harrison*

VIVIAN HARRISON

KIRK HARRISON

Good Cause appearing,

IT IS SO ORDERED this____ day of_____, 2012.

DISTRICT JUDGE

*Respectfully submitted:*

SMITH & TAYLOR

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorneys for Defendant Vivian Harrison*

# Send Result Report

MFP

TASKalfa 500ci

Firmware Version 2H7_2F00.012.012 2011.07.14

05/25/2012 15:53
[2H7_1000.023.003] [2H7_3100.002.003] [2H7_7000.012.012]

Job No.: 030427 Total Time: 0°04'24" Page: 018

# Complete

Document: doc20120525154756

RADFORD J. SMITH, CHARTERED

*A Professional Corporation*

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FACSIMILE TRANSMITTAL SHEET

| TO: | FROM: |
|---|---|
| Thomas Standish, Esq. | Jolene<br>For Radford J. Smith, Esq. |
| COMPANY: | DATE: |
| Jolley, Urga, Wirth, Woodbury & Standish | MAY 25, 2012 |

| No. | Date and Time | Destination | Times | Type | Result | Resolution/ECM |
|---|---|---|---|---|---|---|
| 001 | 05/25/12 15:48 | 6997555 | 0°04'24" | FAX | OK | 200x100 Normal/On |

# EXHIBIT "B"

R. GARDNER JOLLEY
WILLIAM R. URGA
BRUCE L. WOODBURY
THOMAS J. STANDISH
BRIAN E. HOLTHUS
MARTIN A. LITTLE
L. CHRISTOPHER ROSE
DAVID J. MALLEY

JENNIFER POYNTER-WILLIS
ALEXANDER VILLAMAR
MELISSA L. WAITE
HOLLY A. FIC
TYLER N. URE
MICHAEL R. ERNST
JASON VAN METTREN

JOLLEY URGA WIRTH
WOODBURY & STANDISH
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BILL SPOHRER, SPHR
DIRECTOR OF ADMINISTRATION

OF COUNSEL
CHARLES F. COOK
ROGER A. WIRTH

May 31, 2012

**VIA EMAIL**
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Fax: (702) 990-6456
rsmith@radfordsmith.com

**Re:** Proposed Parenting Plan

Dear Mr. Smith:

I am in receipt of your letter with the proposed parenting plan in the above-referenced matter. This letter is written in response thereto, making suggested revisions in the hope of finalizing this agreement. The suggestions reference only three paragraphs which are specifically identified below.

With respect to paragraph 5, Kirk would prefer to have his custodial periods be inclusive of Wednesday/Thursday each week, rather than Monday/Tuesday. Kirk has no problem paying for 100% of Brooke and Rylee's health insurance, pursuant to Paragraph 11. However, Kirk only has the ability to obtain a group health insurance plan through Harrison Dispute Resolution if he continues to mediate cases. Kirk is already only doing about six or seven mediations each year and it is his experience that attorneys and their clients prefer doing mediations earlier in the week. Moreover, Kirk routinely has mediations go well into the night and therefore there is a strong resistance to scheduling any mediations on Fridays (people seem more willing to mess up their work week, than their weekend). Accordingly, Kirk would request that the designated fixed periods be switched.

As regards paragraph 6, Kirk and I both feel that the uncertainty about the future for minor children particularly Rylee and Brookes, is one of the difficulties of divorce litigation, particularly protracted litigation. Kirk views the proposed "teenage discretion" paragraph 6 as unnecessarily continuing that uncertainty for Brooke and Rylee, as well as for he and Vivian.

Kirk also believes that it is not in Brooke's best interest to foist the responsibility upon her to choose which parent she wants to live with more than the other parent at a particular point in time. Such a decision would force Brooke to choose between living with Rylee all of the time or leaving Rylee to spend more time with one parent than the other, or could lead to one parent or the other "lobbying" Brooke or Rylee, or trying to curry favor with one or both of them.

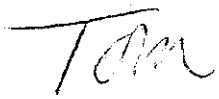
Overall, it is Kirk's earnest desire to move forward with as positive of an arrangement as possible, and therefore, because he views this provision as being potentially divisive, he is concerned that it may perpetuate some measure of the conflict and stress of this case. Accordingly, as Kirk would very much like to finalize an agreement on custody, he respectfully urges Vivian to reconsider this provision.

In addressing paragraph 7.1, Kirk would like to be able to have a similar annual time set aside with Brooke and Rylee, and proposes that each parent, in addition to the annual two week vacation, get 10 days each summer with the children to do an annual activity.

I look forward to hearing from you.

Sincerely,

JOLLEY URGA WIRTH WOODBURY & STANDISH



Thomas J. Standish, Esq.

TJS/kg

# EXHIBIT "C"

RADFORD J. SMITH, CHARTERED
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## FACSIMILE TRANSMITTAL SHEET

| | |
|---|---|
| TO: Thomas Standish, Esq. | FROM: Jolene For Radford J. Smith, Esq. |
| COMPANY: Jolley, Urga, Wirth, Woodbury & Standish | DATE: JUNE 1, 2012 |
| PHONE NUMBER: 699-7500 | FAX NUMBER: 699-7555 |
| RE: *Harrison v. Harrison* | CASE NUMBER: D-11-443611-D |
| | TOTAL NO. OF PAGES INCLUDING COVER: 3 |

☐ URGENT ✓ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

DOCUMENT(S) ATTACHED: CORRESPONDENCE FROM RADFORD J. SMITH, ESQ., DATED TODAY 6/1/12

64 NORTH PECOS ROAD-SUITE 700 • HENDERSON, NEVADA 89074
(702) 990-6448 • FAX (702) 990-6456

RADFORD J. SMITH, ESQ.
DANIELLE TAYLOR, ESQ.
GARIMA VARSHNEY, ESQ.
JOLENE HOEFT, PARALEGAL

SMITH & TAYLOR
*Attorneys at Law*

64 NORTH PECOS ROAD, SUITE 700
HENDERSON, NEVADA 89074

TELEPHONE: (702) 990-6448
FACSIMILE: (702) 990-6456
RSMITH@RADFORDSMITH.COM

June 1, 2012

**VIA FACSIMILE**
Thomas Standish, Esq.

*Re: Harrison v. Harrison*

Dear Tom:

Thank you for your letter of May 31, 2012. I have had an opportunity to review the letter with Vivian. As I understand Kirk's position, he is requesting three modifications to the proposed MSA I forwarded to you on Friday, May 25, 2012:

1) He seeks to eliminate the "teenage discretion" language set forth in paragraph 6 of the draft parenting plan;

2) He seeks an additional 10 day period of care during the summer vacation months; and,

3) He seeks to change his time to have the girls in his care from Monday and Tuesday to Wednesday and Thursday of each week.

Let me address each of those requests individually:

1) *Teenage Discretion*: As we have discussed over the last several weeks, part of Vivian's reluctance to enter into a final agreement without the input from Dr. Paglini was based upon what appears to be Brooke's deteriorating relationship with Kirk. Brooke has regularly indicated to Vivian that she desires spend more time with Vivian. Vivian has compromised in large part based upon the desire of the other members of the family to see this matter close. She still has significant concerns about Kirk's relationship with and care of Brooke, but she has listened to the advice that the resolution of the matter would lead to an improvement of that relationship.

   What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care -- we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.

   Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. The provision does not place the responsibility of choosing on Brooke, it simply gives each child discretion after 14 to spend more time with one parent or the other, a request that will likely be granted to them in any event by the Court. Again, the provision is designed to avoid litigation.

2) *Summer vacation:* The girls have attended sewing camp with Vivian in the past. Brooke has gone to the camp for four years since she was eight years old, and Rylee attended last year at eight years old. It is an activity both girls enjoy, and sewing is considered a life skill. In order for the children to go to this camp, Vivian must accompany them, and she must enroll in the program. The camp is filled with days of instruction and sewing. Kirk is welcome to attend the camp. If the children do not want to attend the camp in the future, this issue is moot. Vivian does not feel it is in the best interest of the children at this time to expand the summer visitation periods, particularly in light of Brooke's current difficulty in her relationship with Kirk.

3) *Days of the Week:* Vivian too desires to have the children on Wednesday and Thursday of each week. She permitted Kirk to choose between an alternating week schedule and a five/two - two/five schedule, and she feels she should be able to choose which weekdays she has the children. Moreover, it is not our experience that mediations occur more often on Monday and Tuesday, and because there are so few there does not appear to be a substantial need to change the proposed plan. Vivian would be willing to work with Kirk to arrange exchanges in those instances that Kirk has a mediation that is going to last into the evening after the children are out of school.

Please call with questions.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc: Gary Silverman, Esq.
Vivian Harrison

# Send Result Report

MFP

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Firmware Version 2H7_2F00.012.012 2011.07.14 [2H7_1000.023.001] [2H7_1100.002.003] [2H7_7000.012.012]

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# Complete

Document: doc20120601154639

**RADFORD J. SMITH, CHARTERED**

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| TO: | FROM: |
|---|---|
| Thomas Standish, Esq. | Jolene<br>For Radford J. Smith, Esq. |
| COMPANY: | DATE: |
| Jolley, Urga, Wirth, Woodbury & | JUNE 1, 2012 |

| No. | Date and Time | Destination | Times | Type | Result | Resolution/ECM |
|---|---|---|---|---|---|---|
| 001 | 06/01/12 15:47 | **6997555** | 0°00'52" | FAX | OK | 200x100 Normal/On |

# EXHIBIT "D"

R. GARDNER JOLLEY
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BILL SPOHRER, SPHR
DIRECTOR OF ADMINISTRATION

OF COUNSEL
CHARLES T. COOK
ROGER A. WIRTH

June 7, 2012

**VIA EMAIL**
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Fax: (702) 990-6456
rsmith@radfordsmith.com

**Re: Harrison v Harrison**

Dear Rad Smith,

The purpose of this letter is to respond to your correspondence dated June 1, 2012.

Summer Vacation:
Kirk is amenable to the girls attending Sewing Camp with Vivian. The camp is approximately 10 days. Kirk, however, would propose that he have the girls each August for the Utah/Lagoon trip that he has taken with them the last two years. This trip typically lasts approximately 7 days and occurs in late August. Outside of those allocations, Kirk proposes that each party have summer vacations with the girls for two weeks each year (either an uninterrupted two week vacation or two one week vacations). In all fairness, to allow both parties to have substantial, equal and meaningful time with the children this summer, Vivian may have to reschedule the dates of her proposed European trip with the girls. As of now, Vivian has the girls scheduled to do dance classes, sewing camp and traveling leaving only a week or two open for Kirk at the end of June.

Timeshare:
Regarding the joint physical timeshare, Kirk has seriously considered the options and because the parties did not agree on the weekday portion of the timeshare, he would now like to propose that the parties observe a week on/week off schedule. This schedule would consist of each party having 7 days with the children with the exchange occurring on Sunday evening.

Teenage Discretion:
Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First - Kirk proposes that the age for consideration of teenage discretion be **16 years old**.

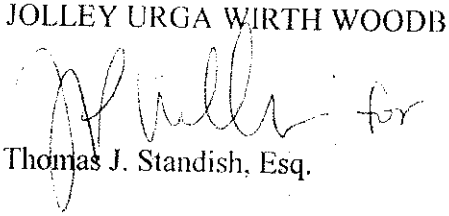
Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (Page 6, beginning at line 10). It would read as follows:

Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator,** it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the amount of time the child desires to spend with each parent once that child reaches **16** years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

As always, should you have any questions or concerns, please feel free to contact this office.

Sincerely,

JOLLEY URGA WIRTH WOODBURY & STANDISH



Thomas J. Standish, Esq.

TJS/kg

# EXHIBIT "E"

Filters Used:
1 Tagged Record

# Email Report

Form Format

Date Printed: 5/20/2014
Time Printed: 2:17PM
Printed By: GVARSHNEY

Date 7/03/2012 Time 5:28PM 12:00AM Duration 0.00 (hours) Code Case Related
Subject Harrison Stipulation Staff Radford J Smith
Client Thomas J. Standish MatterRef Harrison adv. Harrison MatterNo D-11-443611-D
From "Thomas J. Standish" <TJS@juww.com>
To "rsmith@radfordsmith.com" <rsmith@radfordsmith.com>
CC To
BCC To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

Custom1 Custom3
Custom2 Custom4

Rad:

Sorry, I got dragged into a couple of emergencies on other cases, and then left town yesterday on vacation. I should have done a quick e-mail to you earlier than now.

We did meet with Kirk and I believe that we are settled. The only thing I would add to your stipulation would be the provision that Kirk could remove the girls from school on two Fridays before two of his weekends during the school year, so that he could have two 3-day weekends, since Vivian will effectively have "his" two 3-day weekends with Monday holidays during the year.

Are you the office Thursday and Friday? I have my laptop with me on vacation and I can respond to e-mails. I will also be glad to have somebody take a shot at revising the stipulation if that will help you.

Let me know.

I think it is still vital that we confirm we have a settlement, and then sign the Stipulation as soon as we can, before anybody changes their mind! I hope that Vivian is still on board, and that you will tell her that I apologize for the delay in getting back to you. We are also responding to Gary's letter to assure him that Kirk will be in touch with Brian Boone and we will move forward promptly on those financial issues.

Have a good 4th-- hopefully I can hear from you on Thursday. You can also call my cell if that is helpful. Thanks again for all your perseverance on this.

Electronically Filed
06/13/2014 04:34:51 PM

CLERK OF THE COURT

ORDR
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*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D
DEPT NO.: Q

**FAMILY DIVISION**

RECEIVED
JUN 10 2014
FAMILY COURT
DEPARTMENT Q

**ORDER FROM HEARING**

DATE OF HEARING: December 18, 2013
TIME OF HEARING: 11:00 a.m.

This matter, having coming on for hearing for Plaintiff's Motion for Judicial Determination of the Teenage Discretion and Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment and for Defendant's Countermotion for Attorney's Fees and Defendant's Countermotion to Clarify Orders on the

18th day of December, 2013; Plaintiff, Kirk Harrison, being present and represented by Thomas Standish, Esq., of Standish Law Group and by Edward L. Kainen, Esq., of the Kainen Law Group; and Defendant, Vivian Harrison, being present and represented by Radford J. Smith, Esq., of Radford J. Smith, Chartered, and by Gary Silverman, Esq., of Silverman, Decaria & Kattleman; the Court, having heard the arguments of counsel, having reviewed the pleadings and papers on file in this matter, and being fully advised in the premises, and good cause appearing therefore, makes the following findings and orders:

1. In regards to TEENAGE DISCRETION; the parties had resolved parent/child issues and a Stipulation was entered on July 11, 2012. Section 6 of that agreement addresses the issue of TEENAGE DISCRETION and in review of that section, the Court does not view that language as giving the minor child authority to make decisions or to change custody. The parties agreed to the language and part of that included implementation of a counselor and parenting coordinator. The process to implement those has been delayed and is to be implemented forthwith. Court views the language as that, the counselor (Dr. Ali has been selected) would be involved in the TEENAGE DISCRETION process, as would the parenting coordinator. The purpose for such would be to avoid the Court's intervention, though those processes would not supplant this Court's authority and the parties may still petition the Court to address any issues they may have.

2. The request to suspend, remove or otherwise modify the TEENAGE DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and the Court expects the counselor to be involved in this process. The purpose of TEENAGE DISCRETION is not to remove blocks of time from a party and if a party is being removed for a period of time (aside from vacations), then the Court would be concerned. TENAGE DISCRETION should be implemented from time-to-time and there should not be any issues

should Brooke wish to make a modification for a few hours and the Court would expect communication in this regard. Again, the counselor and the parenting coordinator are to be engaged in this process.

3. Per STIPULATION, accounts ending 8278 and 2521 are Plaintiff's sole and separate property.

4. With regard to accounts ending 8682, 1275 and 2713; to the extent that these accounts were Plaintiff's prior to the marriage, then they are his sole and separate property. It is the Defendant's burden to show that any community property funds were deposited or placed into those accounts which would create a community property interest in those accounts. Otherwise, it is clear to the Court that those three accounts are the Plaintiff's sole and separate property and the Decree of Divorce shall be corrected to reflect such. Court views this issue as an issue that did not need to be brought before the Court.

5. The Decree of Divorce is to be corrected to reflect that The Measo Associates is held in both parties name.

6. With regard to the A/B list; to the extent items were not included in the list prepared by Joyce Newman, absent an agreement between the parties, those items are to be divided by way of an A/B list (which was the intent of the Court's Order).

7. With regard to the provision regarding reimbursement; the Court views this is a mutual provision. To the extent there is a dispute as to any items that should be reimbursed, the items may be submitted to the Court on a separate list with an explanation and the Court would make the determination as to whether or not it needs to be reimbursed. It is the Court's understanding that this process with Melissa Attanasio and Cliff Beadle has not been completed yet. The accounting by Ms. Attanasio and Mr. Beadle is to be completed by January 31, 2014. The Court expects an exchange of information and

documents which are lacking. Again, this provision is mutual and the items are limited to what was in the Temporary Order and to the extent there is a reimbursable expense, there must be some backup to demonstrate that the expense was covered by the Temporary Orders.

8. The matter is set for a two hour Evidentiary Hearing on January 22, 2014 at 1:30 p.m. regarding the monies placed into Tahnee's account for the purpose of her education (after the initiation of this litigation, but prior to the Joint Preliminary Injunction). To be clear, the Court shall not be seeking to take money away from Tahnee. The issue shall be whether or not there needs to be a reimbursement for one-half of those monies that were paid to create this account. The Court must determine whether or not there was an agreement that these funds were to be used solely for medical school education purposes or not. At this time, the Court views this as an omitted asset as Plaintiff's name was also on the account.

9. Discovery is open as to Tahnee's account and how it was created and the account history.

10. The Parties are to provide their proposed exhibits to the Court Clerk by the close of business on January 17, 2014.

11. The Court shall allow out of state witnesses to testify by way of video (Skype or Facetime), so long as the Court is able to see the individual and have them sworn in. The Court would expect to hear from Ms. Attanasio and Mr. Beadle.

12. With regard to any Ranch items which may have belonged to the Plaintiff's father, the Court views those items as the Plaintiff's sole and separate property. The Court shall review the prove-up hearing in this regard as Plaintiff is indicating that all the property located at the Ranch was to be awarded to him. The Court shall address this issue at the Evidentiary Hearing after it has reviewed the record. To be clear, this issue shall not be a part of the hearing.

*Mandatory Provisions*: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by a category D felony as provided in NRS 193.130.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference on Private International Law are applicable to the parties:

> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purpose of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents pose an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an

amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

The State of Nevada in the United States of America is the habitual residence of the parties' children.

IT IS SO ORDERED.

Dated this _____ day of JUN 11 2014, 2014.

DISTRICT COURT JUDGE

*Submitted by:*

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791 11878
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorneys for Defendant*

*Approved as to Form and Content:*

KAINEN LAW GROUP, PLLC

EDWARD L. KAINEN, ESQ.
Nevada State Bar No. 005029
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
*Attorneys for Plaintiff*

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CLERK OF THE COURT

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JUN 16 2014

**NEOJ**
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RADFORD J. SMITH, ESQ.
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6140 Plumas St.#200
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silverman@silverman-decaria.com
*Attorneys for Defendant*

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY DIVISION**

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 13TH day of June, 2014, the Honorable Judge Duckworth entered an Order From Hearing, a copy of which is attached hereto.

Dated this 16th day of June, 2014.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791 11878
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of RADFORD J. SMITH, CHARTERED ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "NOTICE OF ENTRY OF ORDER" on this 12th day of June, 2014 to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

☐ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

Tom J. Standish, Esq.
Standish Law Group
1635 Village Center Circle, Suite 180
Las Vegas, Nevada 89134
tjs@standishlaw.com
Attorney for Plaintiff

Edward L. Kainen, Esq.
Kainen Law Group
10091 Park Run Dr., #110
Las Vegas, Nevada 89145
ed@kainenlawgroup.com
Attorney for Plaintiff

An employee of RADFORD J. SMITH, CHARTERED

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CLERK OF THE COURT

ORDR
RADFORD J. SMITH, CHARTERED
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silverman@silverman-decaria.com

*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D
DEPT NO.: Q

**FAMILY DIVISION**

RECEIVED
JUN 10 2014
FAMILY COURT
DEPARTMENT Q

**ORDER FROM HEARING**

DATE OF HEARING: December 18, 2013
TIME OF HEARING: 11:00 a.m.

This matter, having coming on for hearing for Plaintiff's Motion for Judicial Determination of the Teenage Discretion and Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment and for Defendant's Countermotion for Attorney's Fees and Defendant's Countermotion to Clarify Orders on the

18th day of December, 2013; Plaintiff, Kirk Harrison, being present and represented by Thomas Standish, Esq., of Standish Law Group and by Edward L. Kainen, Esq., of the Kainen Law Group; and Defendant, Vivian Harrison, being present and represented by Radford J. Smith, Esq., of Radford J. Smith, Chartered, and by Gary Silverman, Esq., of Silverman, Decaria & Kattleman; the Court, having heard the arguments of counsel, having reviewed the pleadings and papers on file in this matter, and being fully advised in the premises, and good cause appearing therefore, makes the following findings and orders:

1. In regards to TEENAGE DISCRETION; the parties had resolved parent/child issues and a Stipulation was entered on July 11, 2012. Section 6 of that agreement addresses the issue of TEENAGE DISCRETION and in review of that section, the Court does not view that language as giving the minor child authority to make decisions or to change custody. The parties agreed to the language and part of that included implementation of a counselor and parenting coordinator. The process to implement those has been delayed and is to be implemented forthwith. Court views the language as that, the counselor (Dr. Ali has been selected) would be involved in the TEENAGE DISCRETION process, as would the parenting coordinator. The purpose for such would be to avoid the Court's intervention, though those processes would not supplant this Court's authority and the parties may still petition the Court to address any issues they may have.

2. The request to suspend, remove or otherwise modify the TEENAGE DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and the Court expects the counselor to be involved in this process. The purpose of TEENAGE DISCRETION is not to remove blocks of time from a party and if a party is being removed for a period of time (aside from vacations), then the Court would be concerned. TENAGE DISCRETION should be implemented from time-to-time and there should not be any issues

should Brooke wish to make a modification for a few hours and the Court would expect communication in this regard. Again, the counselor and the parenting coordinator are to be engaged in this process.

3. Per STIPULATION, accounts ending 8278 and 2521 are Plaintiff's sole and separate property.

4. With regard to accounts ending 8682, 1275 and 2713; to the extent that these accounts were Plaintiff's prior to the marriage, then they are his sole and separate property. It is the Defendant's burden to show that any community property funds were deposited or placed into those accounts which would create a community property interest in those accounts. Otherwise, it is clear to the Court that those three accounts are the Plaintiff's sole and separate property and the Decree of Divorce shall be corrected to reflect such. Court views this issue as an issue that did not need to be brought before the Court.

5. The Decree of Divorce is to be corrected to reflect that The Measo Associates is held in both parties name.

6. With regard to the A/B list; to the extent items were not included in the list prepared by Joyce Newman, absent an agreement between the parties, those items are to be divided by way of an A/B list (which was the intent of the Court's Order).

7. With regard to the provision regarding reimbursement; the Court views this is a mutual provision. To the extent there is a dispute as to any items that should be reimbursed, the items may be submitted to the Court on a separate list with an explanation and the Court would make the determination as to whether or not it needs to be reimbursed. It is the Court's understanding that this process with Melissa Attanasio and Cliff Beadle has not been completed yet. The accounting by Ms. Attanasio and Mr. Beadle is to be completed by January 31, 2014. The Court expects an exchange of information and

documents which are lacking. Again, this provision is mutual and the items are limited to what was in the Temporary Order and to the extent there is a reimbursable expense, there must be some backup to demonstrate that the expense was covered by the Temporary Orders.

8. The matter is set for a two hour Evidentiary Hearing on January 22, 2014 at 1:30 p.m. regarding the monies placed into Tahnee's account for the purpose of her education (after the initiation of this litigation, but prior to the Joint Preliminary Injunction). To be clear, the Court shall not be seeking to take money away from Tahnee. The issue shall be whether or not there needs to be a reimbursement for one-half of those monies that were paid to create this account. The Court must determine whether or not there was an agreement that these funds were to be used solely for medical school education purposes or not. At this time, the Court views this as an omitted asset as Plaintiff's name was also on the account.

9. Discovery is open as to Tahnee's account and how it was created and the account history.

10. The Parties are to provide their proposed exhibits to the Court Clerk by the close of business on January 17, 2014.

11. The Court shall allow out of state witnesses to testify by way of video (Skype or Facetime), so long as the Court is able to see the individual and have them sworn in. The Court would expect to hear from Ms. Attanasio and Mr. Beadle.

12. With regard to any Ranch items which may have belonged to the Plaintiff's father, the Court views those items as the Plaintiff's sole and separate property. The Court shall review the prove-up hearing in this regard as Plaintiff is indicating that all the property located at the Ranch was to be awarded to him. The Court shall address this issue at the Evidentiary Hearing after it has reviewed the record. To be clear, this issue shall not be a part of the hearing.

*Mandatory Provisions*: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by a category D felony as provided in NRS 193.130.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference on Private International Law are applicable to the parties:

> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purpose of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents pose an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an

amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

The State of Nevada in the United States of America is the habitual residence of the parties' children.

IT IS SO ORDERED.

Dated this _____ day of JUN 11 2014, 2014.

DISTRICT COURT JUDGE

*Submitted by:*

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorneys for Defendant*

*Approved as to Form and Content:*

KAINEN LAW GROUP, PLLC

EDWARD L. KAINEN, ESQ.
Nevada State Bar No. 005029
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
*Attorneys for Plaintiff*



A.App. 1532

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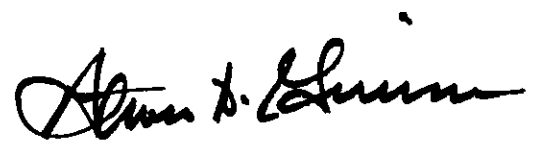

CLERK OF THE COURT

**SNTC**
EDWARD L. KAINEN, ESQ.
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Co-counsel for Plaintiff

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Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: N/A
Time of Hearing: N/A

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiff appeals to the Nevada Supreme Court from the following:

1. Order for Appointment of Parenting Coordinator filed on October 29, 2013, a copy of which is attached hereto as **Exhibit "1."** [1]

. . .

[1] The Order from which this appeal is taken may have been a non-final Order and was entered prior to the Decree of Divorce (said Decree was filed on October 31, 2013); said Decree was subject to a Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time until the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

2. Decree of Divorce entered on October 31, 2013, only to the extent it deals with child custody related matters, a copy of which is attached hereto as **Exhibit "2."** [2]

3. Order, filed December 17, 2013, denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, a copy of which is attached hereto as **Exhibit "3."**;[3]

4. Order from Hearing, related to Plaintiff's Motion For A Judicial Determination of the Teenage Discretion Provision, filed on June 13, 2014, a copy of which is attached hereto as **Exhibit "4."**[4]

Plaintiff also appeals from all other rulings and orders made final and appealable by the foregoing.[5]

Dated this 17th day of July, 2014.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ., #5029
ANDREW L. KYNASTON, ESQ., #8147
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff

KAINEN LAW GROUP, PLLC
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

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[2] The Decree of Divorce from which this appeal is taken was filed on October 31, 2013; said Decree was subject to a Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time until the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

[3] The Order from which this appeal is taken may have been a non-final Order and was entered after the Decree of Divorce (said Decree was filed on October 31, 2013), but during the time that said Decree was subject to a Motion to Alter, Amend, Correct and Clarify Judgment, resulting in the tolling of the appeal time until the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

[4] The Order from which this appeal is taken may have been a non-final Order and was entered after the Decree of Divorce (said Decree was filed on October 31, 2013), but concurrent with the resolution of the Motion to Alter, Amend, Correct and Clarify Judgment, the Notice of Entry of the Order resolving the tolling motion which was served on June 16, 2014.

[5] Plaintiff previously filed a notice of appeal from certain orders dealing with attorneys' fee issues. The present appeal is entirely separate, dealing only with child custody issues.



A.App. 1534

# EXHIBIT "1"

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

NOTICE OF ENTRY OF
ORDER FOR APPOINTMENT OF
PARENTING COORDINATOR

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the Order For Appointment of Parenting Coordinator and this Notice of Entry of Order For Appointment of Parenting Coordinator to be:

☒ Placed in the folder(s) located in the Clerk's Office of the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE
MILY DIVISION, DEPT. O
F VEGAS, NEVADA 89101

☒ Mailed postage prepaid, addressed to the following attorney:

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, NV 89519

*Kimberly Weiss*

Kimberly Weiss
Judicial Executive Assistant
Department Q

ORDR

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10/29/2013 11:54:30 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

ORDER FOR APPOINTMENT OF PARENTING COORDINATOR

On July 11, 2012, this Court entered the parties' Stipulation and Order Resolving Parent/Child Issues (hereinafter referred to as "Parenting Plan"). Said Parenting Plan expressly mandated that the parties "hire a Parenting Coordinator to resolve disputes between the parties regarding the minor children." Parenting Plan 5:17-18 (Jul. 11, 2012). Thus, pursuant to the express terms of their Parenting Plan, the parties consented to the appointment of a Parenting Coordinator to resolve disputes, and not merely to provide mediation services. As this Court's Order, the resolution of disputes contemplates decision-making authority pursuant to the terms and limitations set forth herein. The Court having considered all of the pleadings on file herein, and good cause appearing, does hereby Order the appointment of a Parenting Coordinator under the following terms and conditions:

YCE C. DUCKWORTH
DISTRICT JUDGE
MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

1.0 APPOINTMENT AND DESIGNATION OF TERMS

Margaret Pickard is hereby appointed as Parenting Coordinator in this matter (said appointee hereinafter referred to as the "Parenting Coordinator"). The Parenting Coordinator's full name, title, mailing addresses and phone numbers are as follows:

Name: Margaret Pickard

Street Address: 10120 S. Eastern Ave #200

City: Henderson State: Nevada Zip Code: 89052

Telephone #: (701) 595-6771 Fax # (702) 605-7321

E-mail: margaretpickard@aol.com

2.0 PARENTING COORDINATOR FEES/EXPENSE SHARING

Hourly fees for the services of the Parenting Coordinator shall be set by the Parenting Coordinator pursuant to a written agreement with the parties. All fees shall be advanced equally by the parties. The Parenting Coordinator may recommend a re-allocation of fees and costs on any single issue if it appears that the conduct of one party warrants same.

3.0 GENERAL AUTHORITY

The Parenting Coordinator shall have the general authority to recommend a resolution to parent/child and custody/visitation issues, as set forth below and within the following guidelines:

3.1 Facilitate the resolution of disputes regarding the implementation of the parenting plan, the schedule, or parenting issues, provided such resolution does not involve a substantive change to the shared parenting plan. A substantive change is

defined as a modification to the parenting plan that (a) significantly changes the timeshare of the children with either parent; or (b) modifies the timeshare such that it amounts to a change in the physical custody designation.

3.2 Recommend the implementation of non-substantive changes to, and/or clarify, the parenting plan, including but not limited to issues such as:

(a) transitions/exchanges of the children including date, time, place, means of transportation and transporter;

(b) holiday sharing;

(c) summer or track break vacation sharing and scheduling;

(d) communication between the parents;

(e) health care management issues, including choice of medical providers and payment of unreimbursed medical expenses (including dental, orthodontic, psychological, psychiatric or vision care), pursuant to the Court's order for payment of said expenses;

(f) education or day care including but not limited to, school choice, tutoring, summer school, and participation in special education testing and programs; as well as allocation of the cost for the foregoing items;

(g) children's participation in religious observances and religious education;

(h) children's participation in extracurricular activities, including camps and jobs;

(i) children's travel and passport issues;

(j) purchase and sharing of children's clothing, equipment and personal possessions, including possession and transporting of same between households;

(k) children's appearance and/or alteration of children's appearance, including haircuts, tattoos, ear, face or body piercing;

(l) communication between the parents including telephone, fax, e-mail, etc. as well as communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when the children are not in that parent's care; and

(m) contact with significant other(s) and/or extended families.

4.0 PROCEDURES AND RELATED REQUIREMENTS

4.1 Each party may provide the Parenting Coordinator with copies of pertinent pleadings and orders which relate to the issues to be brought to the Parenting Coordinator. The Parenting Coordinator shall also have direct access to all pertinent orders and pleadings on file in the case, including files under a Sealing Order of the Court.

4.2 All written communications by a party to the Parenting Coordinator shall be copied or provided to the other party, concurrently.

4.3 Each parent is responsible for contacting the Parenting Coordinator within ten (10) days of entry of this order to schedule an initial meeting. The parties shall make themselves and the minor children available for meetings and/or appointments as deemed necessary by the Parenting Coordinator. The Parenting Coordinator shall determine in each instance whether an issue warrants a meeting with the parties.

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DISTRICT JUDGE

MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

4.4. The parties shall participate in good faith in an initial mediation/conflict resolution process with the Parenting Coordinator in an effort to resolve a dispute.

(a) Should mediation result in an agreement, the Parenting Coordinator shall prepare a simple "Agreement" on the subject for signature by each party and the Parenting Coordinator. The Parenting Coordinator shall send a copy of the Agreement to each party; the parties shall each sign the Agreement, and return their copy to the Parenting Coordinator within fourteen (14) days from the date of receipt.

(b) Should the mediation not result in an Agreement, the Parenting Coordinator shall prepare and send to the parties a written decision in the form of a "Recommendation," as well as a courtesy copy to the Court, resolving the dispute. Said Recommendation shall set forth the reasons for the Parenting Coordinator's decision.

(i) Within ten (10) days after the issuance of a Recommendation, any party may file with the Court and serve upon the other party and Parenting Coordinator a notice of Objection to the recommendation. The Parenting Coordinator shall be given a copy of the Objection and notice of the hearing at least ten (10) days prior to the hearing, unless otherwise ordered by the Court. The notice must include:

(1) A copy of the Recommendation;

(2) A concise statement setting forth the reasons that the party disagrees with the Recommendation; and

(3) A statement of the relief requested.

. . .

. . .

(ii) If, within ten (10) days after issuance of the Recommendation, a Notice of Objection is not filed, the Recommendation shall be deemed approved by the Court and shall become an Order of the Court.

4.5 The parties understand that the Parenting Coordinator's Recommendation is not a final decision and is not immediately effective, but rather can be reviewed by the Court through the objection procedure. However, the parties are on notice and understand that the purpose and intent of the Court in appointing a Parenting Coordinator pursuant to the terms of their Parenting Plan is to resolve disputes between the parties without the expense of litigation. Therefore, the Court will overturn a Recommendation of the Parenting Coordinator only upon the showing of evidence to the satisfaction of the Court to warrant such a result.

4.6 The parties shall provide in a timely manner any documents requested by the Parenting Coordinator and/or execute any releases required for the Parenting Coordinator to directly obtain documents or records which the Parenting Coordinator deems relevant to the submitted issues. Failure to do so may result in imposition of sanctions by the Court.

4.7 The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others.

. . .

5.0 PARENTING COORDINATOR APPEARANCES IN COURT

5.1 In the event that the testimony of the Parenting Coordinator is required for any hearing, including depositions, or other Court action by one or both parties, the Parenting Coordinator's fees for such services shall be paid by both parties, in advance, according to the estimate by the Parenting Coordinator. The Court shall determine the ultimate allocation of such fees between the parties.

5.2 A Parenting Coordinator directed by the Court to testify in a Court proceeding shall not be disqualified from participating in further parenting coordination efforts with the family, but the Court in its discretion may order the substitution of a new Parenting Coordinator or may relieve the Parenting Coordinator of his/her duties or the Parenting Coordinator may voluntarily determine that such substitution would be appropriate.

6.0 GRIEVANCES

6.1 The Parenting Coordinator may be disqualified on any of the grounds applicable to the removal of a Judge, Referee, Arbitrator, or Mediator, except that no peremptory challenge shall be permitted.

6.2 Complaints or grievances from any party regarding the performance, actions or billing of the Parenting Coordinator shall only be determined according to the following procedure:

(a) A person having a complaint or grievance regarding the Parenting Coordinator must discuss the matter with the Parenting Coordinator in person before pursuing it in any other manner;

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DISTRICT JUDGE
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VEGAS, NEVADA 89101



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(b) If after discussion the party decides to pursue a complaint, that party must first submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the parties;

(c) The Parenting Coordinator shall then provide a written response to the grievance to the party or parties within thirty (30) days of the written complaint or grievance; and

(d) If the grievance or complaint is not resolved after this exchange, the complaining party may proceed by noticed motion to the Court addressing the issues raised in the complaint or grievance.

6.3 Neither party may initiate a Court proceeding for a complaint or grievance regarding the Parenting Coordinator without following the preceding procedure. Failure to comply with said procedure may result in sanctions by the Court.

6.4 Neither party shall file any complaint or make any written submission regarding the Parenting Coordinator to the Parenting Coordinator's licensing board without first complying with these grievance procedures.

7.0 TERMS OF APPOINTMENT

7.1 The Parenting Coordinator is appointed until discharged by the Court. The Parenting Coordinator may apply directly to the Court for a discharge, and shall provide the parties with notice of the application for discharge. The Court may discharge the Parenting Coordinator without a hearing unless either party requests a hearing in writing within ten (10) days from the application for discharge.

. . .

7.2 Either party may seek to suspend or terminate the Parenting Coordinator process by filing a motion with the Court. The Parenting Coordinator's services may not be terminated without order of the Court.

7.3 In the event that the Parenting Coordinator is discharged, the Court will furnish a copy of the Order of termination of the Parenting Coordinator.

DATED this 29th day of October, 2013.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

# EXHIBIT “2”

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

NOTICE OF ENTRY OF
DECREE OF DIVORCE

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Decree of Divorce** and this **Notice of Entry of Decree of Divorce** to be:

☒ Placed in the folder(s) located in the Clerk's Office of the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

☒ Mailed postage prepaid, addressed to the following attorney:

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, NV 89519

*Kimberly Weiss*

Kimberly Weiss
Judicial Executive Assistant
Department Q

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

DECREE OF DIVORCE

The above-entitled cause having come on regularly for hearing on the 3rd day of December, 2012, before the above-entitled Court, Plaintiff, KIRK ROSS HARRISON ("Kirk") appearing in person and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm of JOLLEY, URGA, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE LEE HARRISON ("Vivian") appearing in person and through her attorney, RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED; Vivian's Answer having been entered, and the parties having waived the making, filing and service of Findings of Fact and Conclusions of Law, and the giving of any and all notices required by law or rules of the District Court; the Court having heard the testimony of witnesses sworn and examined in open Court, the cause having been submitted for decision and judgment, and the Court being fully advised, finds:

Other
Dismissed - Want of Prosecution
Involuntary (Statutory) Dismissal
Default Judgment
Transferred

Settled/Withdrawn:
Without Judicial Conf/Hrg
With Judicial Conf/Hrg
By ADR

Disposed After Trial Start
Judgment Reached by Trial

Trial Dispositions:

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That the Court has jurisdiction in the premises, both as to the subject matter thereof as well as the parties thereto; that Kirk has been domiciled in this State for more than six weeks preceding the commencement of this action, and that Kirk is now domiciled in and is an actual, bona fide resident of the State of Nevada; that the Kirk is entitled to an absolute Decree of Divorce on the grounds set forth in Kirk's Complaint.

The Court further finds that there are two minor children the issue of this marriage, to-wit: EMMA BROOKE HARRISON ("Brooke"), born June 26, 1999, and RYLEE MARIE HARRISON ("Rylee"), born January 24, 2003. There are no adopted children of the parties and to the best of her knowledge, Vivian is not currently pregnant.

The Court further finds that the child custody, support and related issues regarding the parties' two minor children previously were resolved by way of the Stipulation and Order Resolving Parent/Child Issues entered into between the parties, and filed on July 11, 2012.

The Court further finds that each party has warranted that the property adjudicated in this Decree of Divorce constitutes all property belonging to the parties, and there is no other property (inclusive of any ventures and/or enterprises that might come to fruition at a later time), income, claims, or intangible rights owed or belonging to either party not set forth herein. The Court further finds that the adjudication of property herein is based on the agreement of the parties as reflected in the record made by the parties at the hearing on December 3, 2012, as well as the common terms set forth in their proposed Decrees submitted to the Court. The Court further finds that,

based on representations made to the Court (and excluding the equalizing division of retirement accounts to be effectuated by entry of a QDRO), the parties have effectuated the equal division of the financial accounts adjudicated in this Decree. Further, an equalizing payment previously was made to equalize the division of assets pursuant to NRS 125.150, including the division of real and personal property. This Court further finds that, except for those child-related accounts specifically referenced herein, no other account for which a child of the parties is an intended beneficiary is adjudicated herein.

This Court further finds that each party hereto has represented and warranted to the other party that he or she has made full and fair disclosure of the property and interests in property owned or believed to be owned by him and/or her, either directly or indirectly. The parties have acknowledged that they are aware that each has methods of discovery available to him or her in the prosecution of their divorce action to investigate the community and separate assets of the other. Both have acknowledged that they are entering this settlement without performing any additional discovery, and that they have instructed their counsel to forego such additional discovery.

This Court further finds that each party has admitted and agreed that they each have had the opportunity to discuss and consult with independent tax counselors, other than the attorneys of record in the divorce action between the parties, concerning the income tax and estate tax implications and consequences with respect to the agreed upon division of the properties and indebtedness herein, and that Jolley, Urga, Wirth, Woodbury & Standish, Kainen Law Group, PLLC, Radford J. Smith, Chartered, and

. . .

Silverman, Decaria & Kattelman were not expected to provide and, in fact, did not provide tax advice concerning this Decree of Divorce.

Based on the foregoing findings, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore and now existing between Kirk and Vivian be, and the same are hereby wholly dissolved, and an absolute Decree of Divorce is hereby granted to the parties, and each of the parties hereto is hereby restored to the status of a single, unmarried person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the terms and provisions of the Stipulation and Order Resolving Parent/Child Issues entered into between the parties, and filed on July 11, 2012, are hereby incorporated by reference as if fully stated herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties complete the seminar for separating parents as required by EDCR 5.07 within 30 days from the date of entry of this Decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, should either party intend to move his or her residence to a place outside the State of Nevada, and take the minor children with him or her, said party must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give that consent, the party planning the move shall, before he or she leaves the State with the minor children, petition the Eighth Judicial District Court of the State of Nevada, in and for the County

of Clark, for permission to move the children. The failure of the party planning the move to comply with this provision may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations planned by either party outside the State of Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are subject to the provision of NRS 125.510(6) for violation of the Court's Order:

PENALTY FOR VIOLATION OF ORDER:

> The abduction, concealment or detention of a child in violation of this Order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

> "Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of

locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada is the habitual residence of the minor children herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon the current financial condition of the parties, and the fact that neither party currently engages in full-time employment, neither party shall be required to pay child support to the other.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a parent responsible for paying child support is subject to wage assignment with their employer pursuant to NRS 31A.025 to 31A.190, inclusive, should they become thirty (30) days delinquent in their child support payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of child support in this matter shall be reviewed every three (3) years pursuant to NRS 125B.145.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions regarding child support in this matter conform to the statutory guidelines as set forth in NRS 125B, as applied in *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998) and *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human

Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. Each party shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to the agreement placed on the record before this Court, each party hereby irrevocably waives, releases and relinquishes any rights which either party may have acquired by virtue of their marriage, to any alimony or spousal support of any kind, including lump sum alimony or periodic payments, or to any other Court-ordered compensation or support intended to act as or supplant alimony or spousal support. Each party herein irrevocably waives and releases to the other party all claims, rights and demands of every character or description with respect to alimony or spousal support of any type, now or hereafter, based on any and all circumstances in the present or future, whether foreseeable or unforeseeable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall have confirmed to her as her sole and separate property, free of any claims by Kirk, the sole ownership in and to the following:

1. A one-half interest in the income and distributions of Kirk's business interest in the Tobacco Contract, which Kirk has warranted and represented is the only asset of the business known as Harrison, Kemp & Jones Chartered. Kirk shall pay to Vivian one-half of all net income and

distributions therefrom, net of the maximum tax rate. To the extent the actual taxes attributable to the income and distributions are less than the maximum tax rate, Kirk shall refund to Vivian the corresponding amount associated with her one-half interest. There shall be an annual accounting of said income and distributions to determine the extent of any refund.

2. The prior balance in the business account associated with Harrison Dispute Resolution at Bank of America ending in 4668 was previously equally divided between the parties whereby each party received $115,836.47 on or about December 24, 2012.

3. A twelve and one-half percent (12.5%) interest in The Measo Associates, a Nevada General Partnership, currently held in Kirk's sole name. The parties currently have a 25% interest in The Measo Associates. Following the entry of the Decree of Divorce, the interest shall be equally divided, allocating 12.5% to each party as his or her respective sole and separate property.

4. The approximate nine percent (9% ) interest in Geothermic Solution, LLC, currently held in Kirk's sole name, shall be placed in a trust whereby Kirk and Vivian shall each receive any and all rights or benefits to one-half of said interest. If, for any reason, it is illegal, will jeopardize the legal status of the LLC, or is otherwise impermissible under the organizational documents of Geothermic Solution, LLC, to transfer the interest into a trust, then the parties agree to work with one another so that Vivian is



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equitably entitled to one-half of the approximate 9% interest in Geothermic Solution, LLC, either directly or by control of any and all rights or benefits arising from that interest.

5. One-half of the balance in the Boulder Dam Credit Union savings account ending in 9005, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

6. One-half of the balance in the Boulder Dam Credit Union DDA account ending in 9005, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

7. One-half of the balance in the Bank of America DDA account ending in 1400, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

8. The prior balance in the Bank of America money market account ending in 5111 was previously equally divided between the parties, whereby each party received $124,809.55 on or about December 24, 2012.

9. One-half of the balance in the Bank of America checking account ending in 4040, with a balance of $36,346.02 as of February 5, 2013.

10. One-half of the balance in the Bank of America account ending in 8682, with a balance of $6,638.54 as of January 7, 2013.

11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of $740.42 as of February 4, 2013.

12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of $16,360.45 as of February 5, 2013.

13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of $28,809.58 as of February 5, 2013.

14. One-half of the balance of the Bank of America account ending in 8278, with a balance of $46,622.74 as of February 14, 2013.

15. The prior balance in the UBS RMA account ending in 7066 was previously equally divided between the parties, whereby each party received $455,727.35 on or about September 14, 2012.

16. The prior balance in the UBS RMA account ending in 3201 was previously equally divided between the parties, whereby each party received $51,458.17 on or about September 11, 2012.

17. The prior balance in the Vanguard account ending in 4530/3952 was previously equally divided between the parties, whereby each party received, on or about September 27, 2012, the following: $365,071.73; one thousand shares of GLD, $37,500.00 par value Missouri State Water Pollution Control municipal bonds, and $37,500.00 par value Elgin, Texas School District municipal bonds.

18. The prior balance in the Charles Schwab account ending in 4245 was previously equally divided between the parties, whereby each party received $386,293.42 on or about September 11, 2012.

19. With respect to the Legacy Treasury Direct account ending in 6330, this account previously had a balance of $4,200,000.00. Of this amount, $3,200,00.00 was equally divided by the parties whereby each party received $1,600,000.00 on or about September 17, 2012. Following the settlement between the parties and after the division of assets was memorialized on the record during the hearing before the Court on December 3, 2012, the then remaining balance of the Legacy Treasury Direct account ending in 6330, which was "reserved to equalize the division of assets," was utilized to equalize the division of assets between the parties with Vivian receiving $470,800.00 and Kirk receiving $529,200.00 on or about December 20, 2012. Said distributions fully liquidated the Legacy Treasury Direct account ending in 6330 and it no longer exists.

20. The entire balance in Vivian's Charles Schwab IRA account ending in 2759. Said account is in Vivian's name and Vivian shall retain the account.

21. A portion of Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of $797,335.53 as of December 31, 2012, which shall be utilized to equalize the difference between the combined total of Kirk's UBS IRA



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account ending 3211 and UBS KJ&C Pooled account ending 722-140 with Vivian's Charles Schwab IRA account ending 2759. Following entry of the Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall be utilized for the division of this account. A QDRO has been prepared, circulated, and is in the process of being finalized. This Court shall retain jurisdiction to enter said qualified order.

22. One-half of the gold and silver coins acquired by the parties during marriage. Vivian has received the following gold coins: 55 American Eagle gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African Krugerrand gold coins. Vivian has received 2,500 Silver Eagle silver coins.

23. The 2011 Toyota Avalon.

24. The Colt Government Model 380 semi-automatic pistol and the Smith & Wesson Model 37 – 38 caliber Chief's Special Airweight revolver.

25. All personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume I of II" with an effective date of November 20, 2012, except for the following enumerated items: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on

paper; 116 Chest Table; 117 Side Table; 121 Side Table; 126 Rug; 127 Rug; 129 Side Table; 130 Bedroom Suite; 131 Iron bed; 132 Armchair.

26. Except as provided otherwise herein, any and all Vivian's clothing, jewelry, articles of personal adornment, miscellaneous personal possessions, and personal affects, including family heirlooms and personal property received by gift or inheritence.

27. The residence located at 1514 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-501-004), with a stipulated value of $760,000.00, together with all improvements thereon and all appurtenances thereto. Kirk shall execute a quitclaim deed waiving and releasing any interest whatsoever in the residence located at 1514 Sunrise Circle, Boulder City, Nevada.

28. The residence located at 213 Jasmine Way, Boulder City, Nevada (Parcel #186-04-516-097), together with all improvements thereon and all appurtenances thereto.

29. The residence located at 1521 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-510-011), together with all improvements thereon and all appurtenances thereto.

30. The money and/or property each party receives pursuant to this Decree shall be included for all purposes in the amount each party receives as part of the ultimate resolution in the divorce between the parties, including any and all entities or properties formed or purchased with their respective portions of the distribution identified herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall have confirmed to him as his sole and separate property, free of any claims by Vivian, the sole ownership in and to the following:

1. A one-half interest in the income and distributions of Kirk's business interest in the Tobacco Contract, which Kirk has warranted and represented is the only asset of the business known as Harrison, Kemp & Jones Chartered. Kirk shall pay to Vivian one-half of all net income and distributions therefrom, net of the maximum tax rate. To the extent the actual taxes attributable to the income and distributions are less than the maximum tax rate, Kirk shall refund to Vivian the corresponding amount associated with her one-half interest. There shall be an annual accounting of said income and distributions to determine the extent of any refund.

2. The entire interest in Harrison Dispute Resolution, LLC. The prior balance in the business account associated with Harrison Dispute Resolution at Bank of America ending in 4668 was previously equally divided between the parties whereby each party received $115,836.47 on or about December 24, 2012. Kirk shall retain this account.

3. A twelve and one-half percent (12.5%) interest in The Measo Associates, a Nevada General Partnership, currently held in Kirk's sole name. The parties currently have a 25% interest in The Measo Associates. Following the entry of the Decree of Divorce, the interest shall be equally divided,

. . .

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S VEGAS, NEVADA 89101

allocating 12.5% to each party as his or her respective sole and separate property.

4. The approximate nine percent (9% ) interest in Geothermic Solution, LLC, currently held in Kirk's sole name, shall be placed in a trust whereby Kirk and Vivian shall each receive any and all rights or benefits to one-half of said interest. If, for any reason, it is illegal, will jeopardize the legal status of the LLC, or is otherwise impermissible under the organizational documents of Geothermic Solution, LLC, to transfer the interest into a trust, then the parties agree to work with one another so that Vivian is equitably entitled to one-half of the approximate 9% interest in Geothermic Solution, LLC, either directly or by control of any and all rights or benefits arising from that interest.

5. One-half of the balance in the Boulder Dam Credit Union savings account ending in 9005, as of September 11, 2012.

6. One-half of the balance in the Boulder Dam Credit Union DDA account ending in 9005, as of September 11, 2012.

7. One-half of the balance in the Bank of America DDA account ending in 1400, as of September 11, 2012.

8. The entire balance in the Bank of America money market account ending in 5111. The prior balance in the Bank of America money market account ending in 5111 was previously equally divided between the parties,

whereby each party received $124,809.55 on or about December 24, 2012. Said account is in Kirk's name and Kirk shall retain this account.

9. One-half of the balance in the Bank of America checking account ending in 4040, with a balance of $36,346.02 as of February 5, 2013. Following the equal division of the balance contained in the account, Kirk shall retain this account.

10. One-half of the balance in the Bank of America account ending in 8682, with a balance of $6,638.54 as of January 7, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of $740.42 as of February 4, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of $16,360.45 as of February 5, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of $28,809.58 as of February 5,

. . .

2013. Said account is currently in Kirk's name. Follwoing the division of the balance contained in the account, Kirk shall retain this account.

14. The prior balance in the UBS RMA account ending in 7066 was previously equally divided between the parties, whereby each party received $455,727.35 on or about September 14, 2012. Said account is in Kirk's name and Kirk shall retain this account.

15. The entire balance in Kirk's separate property Bank of America account ending in 2521, with a balance of $112,024.01 as of February 14, 2013. Said account is currently in Kirk's name and Kirk shall retain this account.

16. One-half of the balance of the Bank of America account ending in 8278, with a balance of $46,622.74 as of February 14, 2013. Said account is currently in Kirk's name. Following the division of the balance contained in the account, Kirk shall retain this account.

17. The entire balance in Kirk's separate property UBS RMA account ending in 8538, with a balance of $382,166.83 as of January 31, 2013. Said account is in Kirk's name and Kirk shall retain this account.

18. The prior balance in the UBS RMA account ending in 3201 was previously equally divided between the parties, whereby each party received $51,458.17 on or about September 11, 2012. Said account is in Kirk's name and Kirk shall retain this account.

19. The entire balance in the Vanguard account ending in 4530/3952. The prior balance in the Vanguard account ending in 4530/3952 was previously

equally divided between the parties, whereby each party received, on or about September 27, 2012, the following: $365,071.73, one thousand shares of GLD, $37,500.00 par value Missouri State Water Pollution Control municipal bonds, and $37,500.00 par value Elgin, Texas School District municipal bonds. Said account is in Kirk's name and Kirk shall retain the account.

20. The entire balance in the Charles Schwab account ending in 4245. The prior balance in the Charles Schwab account ending in 4245 was previously equally divided between the parties, whereby each party received $386,293.42 on or about September 11, 2012. Said account is in Kirk's name and Kirk shall retain the account.

21. With respect to the Legacy Treasury Direct account ending in 6330, this account previously had a balance of $4,200,000.00. Of this amount, $3,200,00.00 of that amount was equally divided by the parties whereby each party received $1,600,000.00 on or about September 17, 2012. Following the settlement between the parties and after the division of assets was memorialized on the record during the hearing before the Court on December 3, 2012, the then remaining balance of the Legacy Treasury Direct account ending in 6330, which was "reserved to equalize the division of assets," was utilized to equalize the division of assets between the parties with Vivian receiving $470,800.00 and Kirk receiving $529,200.00 on or about December 20, 2012. Said distributions fully

liquidated the Legacy Treasury Direct account ending in 6330 and it no longer exists.

22. The entire balance in Kirk's UBS IRA account ending in 3211, with a balance of $142,404.91 as of January 31, 2013. Said account is in Kirk's name and Kirk shall retain the account.

23. The entire balance in Kirk's UBS KJ&C Pooled account ending in 722-140, with a balance of $14,011.95 as of September 30, 2012. Said account is in Kirk's name and Kirk shall retain the account.

24. Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of $797,335.53 as of December 31, 2012, subject to Vivian's right to that portion of said account necessary to equalize the difference between the combined total of Kirk's UBS IRA account ending 3211 and UBS KJ&C Pooled account ending 722-140 with Vivian's Charles Schwab IRA account ending 2759. Following entry of the Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall be utilized for the division of this account. A QDRO has been prepared, circulated, and is in the process of being finalized. This Court shall retain jurisdiction to enter said qualified order.

25. One-half of the gold and silver coins acquired by the parties during marriage. Kirk has received the following gold coins: 55 American Eagle gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African Krugerrand gold coins. Kirk has received 2,500 Silver Eagle silver coins.

26. The 2009 Chevrolet Z71 Crew Cab pickup truck.

27. The 2008 Acura MDX.

28. The 2000 Chevrolet Z71 Extended Cab pickup truck.

29. All personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume II of II" with an effective date of November 20, 2012.

30. All of the guns (except for the Colt Government Model 380 and the Smith & Wesson Model 37 – 38 caliber Airweight which have been previously provided to Vivian), together with all accessories, including, but not limited to all ammunition, gun cleaning supplies, scopes, cases, etc.

31. All of the furniture Kirk received from his parents including: his parent's bedroom set (which was in the guest bedroom); his mother's alder china cabinet and buffet; his mother's needlepoint bench that was made by her brother Ray; his mother's small wooden rocking chair; and his father's high back wooden chair with red needlepoint.

32. The following personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume I of II" with an effective date of November 20, 2012: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on

paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on paper; 116 Chest Table; 117 Side Table; 121 Side Table; 126 Rug; 127 Rug; 129 Side Table; 130 Bedroom Suite; 131 Iron bed; 132 Armchair.

33. Except as provided otherwise herein, any and all of Kirk's clothing, jewelry, articles of personal adornment, miscellaneous personal possessions, and personal affects, including family heirlooms and personal property received by or inheritance.

34. Parcel #6050-A-1, consisting of approximately 107.26 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including Water Right #208 (Harrison Spring) and Water Right #71-4172 (5 acre feet), subject to Vivian's community property interest therein, as well as any and all reimbursement claims to the ranch property, the total amount of which the parties stipulated to being $285,000.00.

35. Parcel #6052, consisting of approximately 39.91 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including Water Right #413 (Unnamed Spring) and Water Rights #71-4450 and #71-4173 (total of 4 acre feet for #71-4450 & #71-4173).

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36. Parcel #6050-C, consisting of approximately 3.23 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto including Water Right #71-3613.

37. Parcel #6050-B, consisting of approximately .87 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto.

38. Parcel #6049, consisting of approximately 50.62 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights, including, but not limited to, the following water rights: Water Right #138 (Tullis Spring Area), Water Right #295 (Silent Spring), Water Right #296 (Tullis Spring), Water Right #297 (Tullis Gulch), and Water Right #299 (Hideout Spring).

39. Parcel #6050-D, consisting of approximately 4.36 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

40. Parcel #6050-E, consisting of approximately 20.65 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

41. Parcel #6050-F, consisting of approximately 41.20 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

42. Vivian shall execute a quitclaim deed waiving and releasing any interest whatsoever in the Utah ranch, including any and all water rights (to include all parcels necessary).

43. The money and/or property each party receives pursuant to this Decree shall be included for all purposes in the amount each party receives as part of the ultimate resolution in the divorce between the parties, including any and all entities or properties formed or purchased with their respective portions of the distribution identified herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any personal property not identified and appraised by Joyce Newman in her Summary Appriasl Report and not divided or otherwise confirmed to either party pursuant to the terms set forth above shall be divided by way of an A/B List.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following accounts were established by Kirk for Brooke and Rylee under the Nevada Uniform Act on Transfers to Minors (NUATM), and Kirk and Vivian have previously funded these accounts, through annual gifts:

1. Charles Schwab Custodial Account of Kirk R. Harrison as Custodian for Emma Brooke Harrison UNVUTMA until age 18, ending in 6622, with a balance of $33,251.70 as of December 31, 2012.

2. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma B. Harrison NV Unif Trans Min Act until age 18, ending in 0709, with a balance of $75,115.06 as of December 31, 2012.

3. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma B. Harrison NV Unif Trans Min Act until age 25, ending in 4276, with a balance of $210,664.16 as of December 31, 2012.

4. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Rylee M. Harrison NV Unif Tras Min Act until age 25, ending in 4250, with a balance of $210,094.80 as of December 31, 2012.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as Rylee has $108,936.12 [(33,251.70 + 75,115.06 + 210,664.16) – 210,094.80] less in her accounts than Brooke has in her accounts (as a consequence of the difference in their ages), Kirk and Vivian shall each make the following annual gifts (deposits) into Rylee's account ending in 4250: (1) for tax year 2012, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2013; (2) for tax year 2013, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2014; (3) for tax year 2014, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2015; (4) for tax year 2015, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2016; (5) for tax year 2016, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2017; and (6) for tax year 2017, a deposit of $5,000.00, which deposit shall be made prior to April 15, 2018.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a third party custodian shall be appointed for each of the accounts identified above. If possible, the parties shall designate a custodian who does not charge a custodial fee.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that the following 4-year tuition plans were established by Vivian for Brooke and Rylee with the Nevada Prepaid Tuition Program, and and Kirk and Vivian have fully funded said plans:

1. Contract Number 10002618, Purchaser: Vivian L. Harrison, Beneficiary: Emma B. Harrison; Tuition Plan: 4 Year University Plan; the Contract has been paid in full with total contract payments of $7,365.00.

2. Contract Number 10400042, Purchaser: Vivian L. Harrison; Beneficiary: Rylee M. Harrison; Tuition Plan: 4 Year University Plan; the Contract has been paid in full with total contract payments of $12,750.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these accounts shall continue to be overseen by Vivian with copies of the Annual Statements of Account being provided to Kirk within 10 days of receipt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall sell Parcel #4025-A, consisting of approximately 60 acres, in Washington County, Utah, together with Water rights #81-4115 (2 acre feet) and #81-433 (5 acre feet). IT IS FURTHER ORDERED that Parcel #4025-A and Water rights #81-4115 and #81-433 shall be listed for sale for Two Hundred Forty-Nine Thousand Dollars ($249,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall sell Parcel #181-28-810-002, the residential lot located at 610 Lido Drive, Boulder City, Nevada. Said Parcel #181-28-810-002 shall be listed for sale for Three Hundred Eighty-Nine Thousand Dollars ($389,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Parcel #4025-A and Parcel #181-28-810-002 shall be listed with a mutually selected real estate broker for a period of six months. In the event either or both subject properties has not been sold or is not in escrow to be sold during any six month listing period, then beginning 10 days after the expiration of the prior listing, said property or properties shall be listed with the same real estate broker or, at the parties' mutual election, another real estate broker, and the listed price of the subject property or properties shall be 5% less than the list price during the prior six month period. IT IS FURTHER ORDERED that each party shall equally share the net proceeds from the sale of each subject property. IT IS FURTHER ORDERED that, upon the expiration of each six month listing period, in the event the subject property has not been sold or is not in escrow to be sold, either party hereto shall have the right to purchase the subject property for the listed price, without the payment of or obligation to pay any real estate commission, upon written notice to the other party within 5 days of the expiration of the listing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the furniture and furnishings in each of the children's bedrooms are the personal property of that respective child.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to the family photographs and videos of the older children when they were younger, which are in Kirk's possession, and the family photographs, all of the negatives of the family photographs, and all of the videos of Brooke and Rylee, which are in Vivian's possession, each party hereto shall pay one-half of the cost to transfer all of the

photographs (utilizing the negative whenever it is in existence) and all videos containing one or more of the children to electronic storage and/or data base and to produce a total of seven copies of that entire data base so that each party hereto and each of the children have a copy. Each party shall fully cooperate with the other to facilitate the transfer and copying of all photographs (negatives whenever possible) and videos which are the subject of this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party hereto is solely personally responsible for any debt (including any and all credit card debt) he or she has at the time this Decree of Divorce is entered. The parties agree and acknowledge that the joint credit card account with Nordstrom Bank has been previously closed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall remove her name from Kirk's Costco membership on or before November 1, 2013.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall be responsible for maintaining his own medical insurance following the entry of this Decree of Divorce, and Vivian shall be responsible for maintaining her own medical insurance following the entry of this Decree of Divorce.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall file separate tax returns for the tax year 2012 and each year thereafter. Until such time as Brooke is no longer eligible as a tax dependent, Vivian shall be entitled to claim Rylee as a dependent each year on her tax return, and Kirk shall be entitled to claim Brooke each year as a dependent on his tax return. In the year following the last year that

Trooke is eligible to be claimed as a tax dependent, the parties shall begin alternating Rylee as a dependent with Vivian claiming Rylee in the first year.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Joint Preliminary Injunction that was previously issued in this matter on September 9, 2011, is dissolved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction to adjudicate any reimbursement owed to Vivian for community expenses paid from separate property monies prior to November 30, 2012. The parties have designated Cliff Beadle, CPA (for Kirk), and Melissa Attanasio, CFP, (for Vivian), to meet and confer to prepare an accounting of said community expenses paid from separate property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction to divide any property (or debt) later discvoered that has not been specifically addressed in this Decree. If the Court finds that either party has willfully withheld disclosure of any property or property interests, the Court may, in its discretion, award all of that property to the other party. Further, in the event of such willful non-disclosure, the Court may require the non-disclosing party to pay all reasonable fees and costs incurred by the other party in pursuing his or her right to a division or distribution of such property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties have reserved the issue of attorney's fees incurred in the divorce action. IT IS FURTHER ORDERED that, pursuant to the terms of the agreement placed on the

record, either party (or both parties) may file a motion with the Court seeking an award of fees. This Court shall enter a separate order addressing the issue of attorney's fees and costs. Independent of either party's pursuit of said fees and costs, IT IS FURTHER ORDERED that, should either party be required to commence an action to enforce or interpret the terms of this Decree, the Court shall order the non-prevailing party in that action to pay the reasonable attorney's fees and costs incurred by the prevailing party, including those fees and costs expended during notification or negotiation of the issue presented to the Court in the aciton.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties hereto shall each execute quitclaim deeds, stock transfers, and any and all other instruments that may be required in order to effectuate transfer of any and all interest either may have in and to the said property hereby conveyed to the other as hereinabove specified. Should either party fail to execute any of said documents to transfer interest to the other, this Decree of Divorce shall constitute a full and complete transfer of the interest of one to the other as hereinabove provided. Upon failure of either party to execute and deliver any such deed, conveyance, title, certificate or other document or instrument to the other party, this Decree of Divorce shall constitute and operate as such properly executed document and the County Assessor and County Recorder and any and all other public and private officials are hereby authorized and directed to accept this Decree of Divorce, or a properly certified copy thereof, in lieu of the document regularly required for such conveyance or transfer.

. . .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except as otherwise specified herein, any and all property acquired, income received or liabilities incurred by either of the parties hereto from and after the date of the entry of this Decree of Divorce, will be the sole and separate property of the one so acquiring the same, and each of the parties hereto respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same and holds harmless and agrees to indemnify the other party from any and all liabilities incurred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any claim, action or proceeding is brought seeking to hold one of the parties hereto liable on account of any debt, obligation, liability, act or omission assumed by the other party, the responsible party will, at his or her sole expense, defend the innocent party against any such claim or demand and he or she will indemnify, defend and hold harmless the innocent party.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall retain her married name of Vivian Marie Lee Harrison.

DATED this 31st day of October, 2013.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q



YCE C. DUCKWORTH
DISTRICT JUDGE
MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

# EXHIBIT "3"

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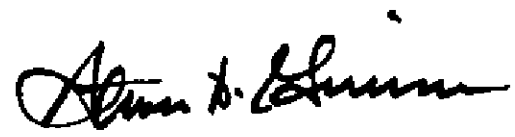

CLERK OF THE COURT

**NOE**
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: 12/18/2013
Time of Hearing: 11:00 a.m.

**NOTICE OF ENTRY OF ORDER**

TO: VIVIAN MARIE LEE HARRISON, Defendant; and

TO: RADFORD SMITH, ESQ., and GARY SILVERMAN, ESQ., Defendant's Attorneys:

PLEASE TAKE NOTICE that on the 17th day of December, 2013, the Honorable Bryce Duckworth entered an Order, a copy of which is attached hereto.

DATED this 19th day of December, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 19th day of December, 2013, I served a true and correct copy of the foregoing *Notice of Entry of Order* via the United States Mail, in a sealed envelope, first class, postage prepaid to the following:

Radford J. Smith, Esq.
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, Nevada 89519

An Employee of
KAINEN LAW GROUP, PLLC

**KAINEN LAW GROUP, PLLC**
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CLERK OF THE COURT

**ORDR**
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: 10/30/13
Time of Hearing: 10:00 a.m.

**ORDER**

This matter having come on for hearing this 30th day of October, 2013, before the Honorable Bryce Duckworth, Plaintiff, KIRK ROSS HARRISON ("Father"), present and represented by and through his attorneys, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS STANDISH, ESQ., of the law firm of JOLLEY URGA WIRTH WOODBURY & STANDISH, and Defendant, VIVIAN MARIE HARRISON ("Mother"), present and represented by and

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DEPARTMENT Q

through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED, and GARY SILVERMAN, ESQ., of the law firm of SILVERMAN, DECARIA & KATTELMAN, CHARTERED; the Court having reviewed the papers and pleadings on file herein, being fully advised in the premises, and good cause appearing, makes the following Orders:

IT IS HEREBY ORDERED that Father's "Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" and Mother's "Countermotion to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions" are denied.

IT IS FURTHER ORDERED that the Court will address the issue of a Parenting Coordinator and therapist for the children in separate, independent Orders.

IT IS FURTHER ORDERED that, with respect to any future filings with the Court, both parties shall adhere to the 30-page limit unless they have received permission from the Court to exceed said 30-page limit.

IT IS FURTHER ORDERED that the Court will issue a separate written Order regarding each party's request for attorney's fees and costs herein.

DATED this DEC 12 2013 day of December, 2013.

DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
Las Vegas, Nevada 89145
Attorney for Plaintiff

Approved as to form and content:

RADFORD J. SMITH, CHARTERED

By: _____
RADFORD J. SMITH, ESQ.
Nevada Bar No. 2791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
Attorney for Defendant

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# EXHIBIT “4”

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CLERK OF THE COURT

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**NEOJ**
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RADFORD J. SMITH, ESQ.
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silverman@silverman-decaria.com
*Attorneys for Defendant*

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY DIVISION**

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 13TH day of June, 2014, the Honorable Judge Duckworth entered an Order From Hearing, a copy of which is attached hereto.

Dated this 16 day of June, 2014.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791 11878
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of RADFORD J. SMITH, CHARTERED ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "NOTICE OF ENTRY OF ORDER" on this 12th day of June, 2014 to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

☐ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

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CLERK OF THE COURT

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*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D
DEPT NO.: Q

**FAMILY DIVISION**

RECEIVED
JUN 10 2014
FAMILY COURT
DEPARTMENT Q

**ORDER FROM HEARING**

DATE OF HEARING: December 18, 2013
TIME OF HEARING: 11:00 a.m.

This matter, having coming on for hearing for Plaintiff's Motion for Judicial Determination of the Teenage Discretion and Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment and for Defendant's Countermotion for Attorney's Fees and Defendant's Countermotion to Clarify Orders on the

18th day of December, 2013; Plaintiff, Kirk Harrison, being present and represented by Thomas Standish, Esq., of Standish Law Group and by Edward L. Kainen, Esq., of the Kainen Law Group; and Defendant, Vivian Harrison, being present and represented by Radford J. Smith, Esq., of Radford J. Smith, Chartered, and by Gary Silverman, Esq., of Silverman, Decaria & Kattleman; the Court, having heard the arguments of counsel, having reviewed the pleadings and papers on file in this matter, and being fully advised in the premises, and good cause appearing therefore, makes the following findings and orders:

1. In regards to TEENAGE DISCRETION; the parties had resolved parent/child issues and a Stipulation was entered on July 11, 2012. Section 6 of that agreement addresses the issue of TEENAGE DISCRETION and in review of that section, the Court does not view that language as giving the minor child authority to make decisions or to change custody. The parties agreed to the language and part of that included implementation of a counselor and parenting coordinator. The process to implement those has been delayed and is to be implemented forthwith. Court views the language as that, the counselor (Dr. Ali has been selected) would be involved in the TEENAGE DISCRETION process, as would the parenting coordinator. The purpose for such would be to avoid the Court's intervention, though those processes would not supplant this Court's authority and the parties may still petition the Court to address any issues they may have.

2. The request to suspend, remove or otherwise modify the TEENAGE DISCRETION provision is DENIED. To be clear, the minor child(Brooke) does not control and the Court expects the counselor to be involved in this process. The purpose of TEENAGE DISCRETION is not to remove blocks of time from a party and if a party is being removed for a period of time (aside from vacations), then the Court would be concerned. TENAGE DISCRETION should be implemented from time-to-time and there should not be any issues

should Brooke wish to make a modification for a few hours and the Court would expect communication in this regard. Again, the counselor and the parenting coordinator are to be engaged in this process.

3. Per STIPULATION, accounts ending 8278 and 2521 are Plaintiff's sole and separate property.

4. With regard to accounts ending 8682, 1275 and 2713; to the extent that these accounts were Plaintiff's prior to the marriage, then they are his sole and separate property. It is the Defendant's burden to show that any community property funds were deposited or placed into those accounts which would create a community property interest in those accounts. Otherwise, it is clear to the Court that those three accounts are the Plaintiff's sole and separate property and the Decree of Divorce shall be corrected to reflect such. Court views this issue as an issue that did not need to be brought before the Court.

5. The Decree of Divorce is to be corrected to reflect that The Measo Associates is held in both parties name.

6. With regard to the A/B list; to the extent items were not included in the list prepared by Joyce Newman, absent an agreement between the parties, those items are to be divided by way of an A/B list (which was the intent of the Court's Order).

7. With regard to the provision regarding reimbursement; the Court views this is a mutual provision. To the extent there is a dispute as to any items that should be reimbursed, the items may be submitted to the Court on a separate list with an explanation and the Court would make the determination as to whether or not it needs to be reimbursed. It is the Court's understanding that this process with Melissa Attanasio and Cliff Beadle has not been completed yet. The accounting by Ms. Attanasio and Mr. Beadle is to be completed by January 31, 2014. The Court expects an exchange of information and

documents which are lacking. Again, this provision is mutual and the items are limited to what was in the Temporary Order and to the extent there is a reimbursable expense, there must be some backup to demonstrate that the expense was covered by the Temporary Orders.

8. The matter is set for a two hour Evidentiary Hearing on January 22, 2014 at 1:30 p.m. regarding the monies placed into Tahnee's account for the purpose of her education (after the initiation of this litigation, but prior to the Joint Preliminary Injunction). To be clear, the Court shall not be seeking to take money away from Tahnee. The issue shall be whether or not there needs to be a reimbursement for one-half of those monies that were paid to create this account. The Court must determine whether or not there was an agreement that these funds were to be used solely for medical school education purposes or not. At this time, the Court views this as an omitted asset as Plaintiff's name was also on the account.

9. Discovery is open as to Tahnee's account and how it was created and the account history.

10. The Parties are to provide their proposed exhibits to the Court Clerk by the close of business on January 17, 2014.

11. The Court shall allow out of state witnesses to testify by way of video (Skype or Facetime), so long as the Court is able to see the individual and have them sworn in. The Court would expect to hear from Ms. Attanasio and Mr. Beadle.

12. With regard to any Ranch items which may have belonged to the Plaintiff's father, the Court views those items as the Plaintiff's sole and separate property. The Court shall review the prove-up hearing in this regard as Plaintiff is indicating that all the property located at the Ranch was to be awarded to him. The Court shall address this issue at the Evidentiary Hearing after it has reviewed the record. To be clear, this issue shall not be a part of the hearing.

*Mandatory Provisions*: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by a category D felony as provided in NRS 193.130.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference on Private International Law are applicable to the parties:

> Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purpose of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents pose an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an

amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

The State of Nevada in the United States of America is the habitual residence of the parties' children.

IT IS SO ORDERED.

Dated this _____ day of JUN 11 2014, 2014.

DISTRICT COURT JUDGE

*Submitted by:*

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
64 N. Pecos Road, Suite 700
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*Attorneys for Defendant*

*Approved as to Form and Content:*

KAINEN LAW GROUP, PLLC

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

FINDINGS AND ORDERS RE:
MAY 21, 2014 HEARING

Plaintiff and Defendant appeared before this Court on May 21, 2014,[1] for a hearing on Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for

[1]Since the hearing on May 21, 2014, both parties have sought appellate relief from the Supreme Court of the State of Nevada. On July 7, 2014, Plaintiff filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). On July 17, 2014, Plaintiff filed a Notice of Appeal regarding the Decree of Divorce (Oct. 31, 2013), and orders entered on October 29, 2013, December 17, 2013, and June 13, 2014. On July 21, 2014, Defendant filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). At the time of the hearing, this Court orally issued findings and orders resolving all issues raised by way of the papers filed by the parties, save and except the amount of attorney's fees awarded to the Defendant. Following the hearing, this Court issued amended minutes setting forth additional findings. These amended minutes were issued prior to the Plaintiff's filing of his Notice of Appeal (Jul. 7, 2014). The findings and orders set forth herein are ancillary to the issues currently on appeal. In this regard, with the exception of the ***amount*** of attorney's fees awarded to the Defendant, the findings and orders set forth herein are simply a memorialization of the findings and orders stemming from the hearing on May 21, 2013. As to the amount of attorney's fees awarded, the said amount similarly is ancillary to the issues on appeal as it relates solely to Plaintiff's Motion to Modify Order Resolving Parent Child Issues and for Other Equitable Relief (Apr. 21, 2014). Alternatively, this Court finds that said amount is the amount this Court would be inclined to award pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) (clarified by *Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453 (2010).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Other Equitable Relief (Apr. 21, 2014); Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions (May 9, 2014); Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions (May 14, 2014); and Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions (May 20, 2014). Plaintiff, KIRK ROSS HARRISON ("Father"), was present and represented by and through his attorney, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE HARRISON ("Mother"), was present and represented by and through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED.

This Court, being fully advised in the premises, and good cause appearing therefore, makes the following findings:[2]

In July 2012, Father and Mother expressly agreed that it is in their children's best interest to appoint a Parenting Coordinator. *See* Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) (hereinafter referred to as "Parenting Plan"). Father and Mother further expressly agreed that it is in the children's best interest to grant the children "teenage discretion" at age fourteen (14), subject to the parameters specified in the Parenting Plan. The language regarding "teenage discretion" to which the parties'

[2]At the time of the hearing, this Court established the protocol for the preparation of the Order therefrom. Nevertheless, it remains this Court's prerogative to memorialize and construe this Court's findings and orders that are consistent with the Court's intent.

expressly agreed (as set forth in the Parenting Plan), is significantly more detailed and thorough than the single sentence that is typically submitted to the Court. Indeed, the specificity of the "teenage discretion" provisions set forth in the Parenting Plan is not commonplace and is largely unseen.

The exercise of "teenage discretion" should not be used as a tool to remove blocks of time from either party that would result in a modification of the underlying joint physical custody arrangement. This Court would be concerned if the exercise of "teenage discretion" was regular and pervasive so as to cause a *de facto* modification of the underlying custody arrangement. Although this Court expressed its concern about the two day incident described in the papers, it does not view the "teenage discretion" provision as having been abused by Brooke. Further, a child's preference standing alone is generally not a basis to entertain a modification of custody. In summary, the exercise of "teenage discretion" should not be a tool or resource to undermine the underlying custody arrangement.

This Court finds that there is not a sufficient basis to interview Brooke or Rylee at this time. Further, there is no present basis for the children to be interviewed by the Parenting Coordinator at this time.

Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) should be denied. The parties should proceed with the Parenting Coordinator process as previously ordered. There is not a sufficient basis to modify the terms of the Order Appointing Parenting Coordinator (Oct. 29, 2013), and the parties should abide by said terms. The authority of the Parenting Coordinator is

defined in the Order Appointment Parenting Coordinator (Oct. 29, 2013), together with the limitations imposed therein. Neither party should be compelled to sign any agreements that exceed the Parenting Coordinator's authority as defined in the Order Appointing Parenting Coordinator (Oct. 28, 2013).

This Court does not find that there is a basis to modify the provisions of the Parenting Plan regarding the "teenage discretion" provisions agreed upon by the parties. If either party believes the teenage discretion provision is being abused, the Parenting Coordinator may assist to bring that to light.

When school is in session, all child custody exchanges should take place at school and there should be no exchanges at either party's residence. The issue of the minor children needing to pick up items from the non-custodial parent's residence after school is an example of the type of issue that is appropriate for discussion with the Parenting Coordinator.

At the time of the May 21, 2014 hearing, this Court was inclined to strike Mother's Reply (May 20, 2014) and Dr. Roitman's report attached to Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014). Nevertheless, the parties stipulated that both papers would remain part of the record. The issue of expert reports attached to papers filed in this case has been prominent throughout the history of this case. As this Court reviewed and prepared its decision regarding the issue of attorneys' fees and costs associated with Mother's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013), the heightened conflict generated by the ***unilateral*** reports submitted by ***both parties*** was evident. Indeed, the parties would

have benefitted (and the conflict perhaps would have been ratcheted down) from this Court striking every report submitted by both parties at the moment each report was introduced into the record. The existence of these ***unilateral*** reports submitted for the purpose of influencing custody determinations without the involvement or input of the other party has engendered unnecessary angst, anxiety, and litigation in this matter.

Finally, at the May 21, 2014 hearing, this Court found that Mother was entitled to an award of attorney's fees (pursuant to EDCR 7.60). This Court directed each party to file additional papers relative to the issue of attorney's fees. Thereafter, Mother filed her Memorandum of Fees and Costs (Jun. 9, 2014), and Father filed his Response to Defendant's Memorandum of Fees and Costs (Jun. 23, 2014). This Court has had the opportunity to consider and evaluate the papers filed by both parties in relation to the provisions of EDCR 7.60, which provides, in pertinent part, as follows:

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> * * * *
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

The Court also has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Specifically, both parties were represented by experienced attorneys during these proceedings. Mother submitted

a sufficiently detailed statement of fees and costs that reflected the amount of fees incurred in connection with the issues before the Court. The work actually performed is adequately represented in Mother's Memorandum (Jun. 9, 2014). Finally, the Court has reviewed the results obtained.

On October 1, 2013, Father filed a Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (hereinafter referred to as "Father's First Motion"). A hearing was scheduled on Father's First Motion (Oct. 1, 2013) for October 30, 2013. This Court disposed of Father's First Motion by way of this Court's Order Re: Appointment of Therapist (Oct. 29, 2013) and the Order (Dec. 17, 2013). On November 18, 2013, Father filed a Motion for a Judicial Determination of the Teenage Discretion Provision (hereinafter referred to as "Father's Second Motion"). The hearing on Father's Second Motion (Nov. 18, 2013) was held on December 18, 2013. Father's present Motion (Apr. 21, 2014) re-asserts similar issues and concerns previously adjudicated by this Court at the December 18, 2013 hearing. *See* Order from Hearing (Jun. 13, 2014). The results of Father's First Motion (Oct. 1, 2013) and Father's Second Motion (Nov. 18, 2013) were similar.

Although this Court recognizes that Father's present Motion (Apr. 21, 2014) cites to facts arising after the December 18, 2013 hearing, those facts did not justify the filing of the present Motion (Apr. 21, 2014). Father's present Motion (Apr. 21, 2014) was unnecessary and unwarranted. Mother should receive the sum of $5,000 in attorney's fees and costs associated with defending the present Motion (Apr. 21, 2014).

. . .

Based on the foregoing Findings, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) is hereby DENIED.

It is further ORDERED that Defendant is awarded the sum and amount of $5,000.00 from the Plaintiff as and for attorney's fees. IT IS FURTHER ORDERED that said sum is reduced to judgment in Defendant's favor, with interest accruing thereon at the legal rate.

It is further ORDERED that the parties are subject to the following mandatory provisions: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

> Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY BY UP TO 6 YEARS IN PRISON. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child

from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not less than $1,000 nor more than $5,000, or by both fine and imprisonment.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

"Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents poses and imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada in the United States of America is the habitual residence of the parties' children

DATED this 29th day of September, 2014.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

NOTICE OF ENTRY OF
FINDINGS AND ORDERS RE: MAY 21, 2014 HEARING

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that a Findings and Orders Re: May 21, 2014 Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Findings and Orders Re: May, 21, 2014 Hearing** and this **Notice of Entry of Findings and Orders Re: May 21, 2014** to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

RYCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

☒ E-Served pursuant to NEFCR 9 on, or mailed postage prepaid, addressed to, the following attorney:

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, NV 89519

/s/ Kimberly Weiss
Kimberly Weiss
Judicial Executive Assistant
Department Q

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

FINDINGS AND ORDERS RE:
MAY 21, 2014 HEARING

Plaintiff and Defendant appeared before this Court on May 21, 2014,[1] for a hearing on Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for

[1]Since the hearing on May 21, 2014, both parties have sought appellate relief from the Supreme Court of the State of Nevada. On July 7, 2014, Plaintiff filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). On July 17, 2014, Plaintiff filed a Notice of Appeal regarding the Decree of Divorce (Oct. 31, 2013), and orders entered on October 29, 2013, December 17, 2013, and June 13, 2014. On July 21, 2014, Defendant filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). At the time of the hearing, this Court orally issued findings and orders resolving all issues raised by way of the papers filed by the parties, save and except the amount of attorney's fees awarded to the Defendant. Following the hearing, this Court issued amended minutes setting forth additional findings. These amended minutes were issued prior to the Plaintiff's filing of his Notice of Appeal (Jul. 7, 2014). The findings and orders set forth herein are ancillary to the issues currently on appeal. In this regard, with the exception of the ***amount*** of attorney's fees awarded to the Defendant, the findings and orders set forth herein are simply a memorialization of the findings and orders stemming from the hearing on May 21, 2013. As to the amount of attorney's fees awarded, the said amount similarly is ancillary to the issues on appeal as it relates solely to Plaintiff's Motion to Modify Order Resolving Parent Child Issues and for Other Equitable Relief (Apr. 21, 2014). Alternatively, this Court finds that said amount is the amount this Court would be inclined to award pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) (clarified by *Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453 (2010).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Other Equitable Relief (Apr. 21, 2014); Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions (May 9, 2014); Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions (May 14, 2014); and Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions (May 20, 2014). Plaintiff, KIRK ROSS HARRISON ("Father"), was present and represented by and through his attorney, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE HARRISON ("Mother"), was present and represented by and through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED.

This Court, being fully advised in the premises, and good cause appearing therefore, makes the following findings:[2]

In July 2012, Father and Mother expressly agreed that it is in their children's best interest to appoint a Parenting Coordinator. *See* Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) (hereinafter referred to as "Parenting Plan"). Father and Mother further expressly agreed that it is in the children's best interest to grant the children "teenage discretion" at age fourteen (14), subject to the parameters specified in the Parenting Plan. The language regarding "teenage discretion" to which the parties'

[2]At the time of the hearing, this Court established the protocol for the preparation of the Order therefrom. Nevertheless, it remains this Court's prerogative to memorialize and construe this Court's findings and orders that are consistent with the Court's intent.

expressly agreed (as set forth in the Parenting Plan), is significantly more detailed and thorough than the single sentence that is typically submitted to the Court. Indeed, the specificity of the "teenage discretion" provisions set forth in the Parenting Plan is not commonplace and is largely unseen.

The exercise of "teenage discretion" should not be used as a tool to remove blocks of time from either party that would result in a modification of the underlying joint physical custody arrangement. This Court would be concerned if the exercise of "teenage discretion" was regular and pervasive so as to cause a *de facto* modification of the underlying custody arrangement. Although this Court expressed its concern about the two day incident described in the papers, it does not view the "teenage discretion" provision as having been abused by Brooke. Further, a child's preference standing alone is generally not a basis to entertain a modification of custody. In summary, the exercise of "teenage discretion" should not be a tool or resource to undermine the underlying custody arrangement.

This Court finds that there is not a sufficient basis to interview Brooke or Rylee at this time. Further, there is no present basis for the children to be interviewed by the Parenting Coordinator at this time.

Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) should be denied. The parties should proceed with the Parenting Coordinator process as previously ordered. There is not a sufficient basis to modify the terms of the Order Appointing Parenting Coordinator (Oct. 29, 2013), and the parties should abide by said terms. The authority of the Parenting Coordinator is

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101



A.App. 1606

defined in the Order Appointment Parenting Coordinator (Oct. 29, 2013), together with the limitations imposed therein. Neither party should be compelled to sign any agreements that exceed the Parenting Coordinator's authority as defined in the Order Appointing Parenting Coordinator (Oct. 28, 2013).

This Court does not find that there is a basis to modify the provisions of the Parenting Plan regarding the "teenage discretion" provisions agreed upon by the parties. If either party believes the teenage discretion provision is being abused, the Parenting Coordinator may assist to bring that to light.

When school is in session, all child custody exchanges should take place at school and there should be no exchanges at either party's residence. The issue of the minor children needing to pick up items from the non-custodial parent's residence after school is an example of the type of issue that is appropriate for discussion with the Parenting Coordinator.

At the time of the May 21, 2014 hearing, this Court was inclined to strike Mother's Reply (May 20, 2014) and Dr. Roitman's report attached to Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014). Nevertheless, the parties stipulated that both papers would remain part of the record. The issue of expert reports attached to papers filed in this case has been prominent throughout the history of this case. As this Court reviewed and prepared its decision regarding the issue of attorneys' fees and costs associated with Mother's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013), the heightened conflict generated by the ***unilateral*** reports submitted by ***both parties*** was evident. Indeed, the parties would

have benefitted (and the conflict perhaps would have been ratcheted down) from this Court striking every report submitted by both parties at the moment each report was introduced into the record. The existence of these ***unilateral*** reports submitted for the purpose of influencing custody determinations without the involvement or input of the other party has engendered unnecessary angst, anxiety, and litigation in this matter.

Finally, at the May 21, 2014 hearing, this Court found that Mother was entitled to an award of attorney's fees (pursuant to EDCR 7.60). This Court directed each party to file additional papers relative to the issue of attorney's fees. Thereafter, Mother filed her Memorandum of Fees and Costs (Jun. 9, 2014), and Father filed his Response to Defendant's Memorandum of Fees and Costs (Jun. 23, 2014). This Court has had the opportunity to consider and evaluate the papers filed by both parties in relation to the provisions of EDCR 7.60, which provides, in pertinent part, as follows:

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> * * * *
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

The Court also has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Specifically, both parties were represented by experienced attorneys during these proceedings. Mother submitted

a sufficiently detailed statement of fees and costs that reflected the amount of fees incurred in connection with the issues before the Court. The work actually performed is adequately represented in Mother's Memorandum (Jun. 9, 2014). Finally, the Court has reviewed the results obtained.

On October 1, 2013, Father filed a Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (hereinafter referred to as "Father's First Motion"). A hearing was scheduled on Father's First Motion (Oct. 1, 2013) for October 30, 2013. This Court disposed of Father's First Motion by way of this Court's Order Re: Appointment of Therapist (Oct. 29, 2013) and the Order (Dec. 17, 2013). On November 18, 2013, Father filed a Motion for a Judicial Determination of the Teenage Discretion Provision (hereinafter referred to as "Father's Second Motion"). The hearing on Father's Second Motion (Nov. 18, 2013) was held on December 18, 2013. Father's present Motion (Apr. 21, 2014) re-asserts similar issues and concerns previously adjudicated by this Court at the December 18, 2013 hearing. *See* Order from Hearing (Jun. 13, 2014). The results of Father's First Motion (Oct. 1, 2013) and Father's Second Motion (Nov. 18, 2013) were similar.

Although this Court recognizes that Father's present Motion (Apr. 21, 2014) cites to facts arising after the December 18, 2013 hearing, those facts did not justify the filing of the present Motion (Apr. 21, 2014). Father's present Motion (Apr. 21, 2014) was unnecessary and unwarranted. Mother should receive the sum of $5,000 in attorney's fees and costs associated with defending the present Motion (Apr. 21, 2014).

. . .

Based on the foregoing Findings, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) is hereby DENIED.

It is further ORDERED that Defendant is awarded the sum and amount of $5,000.00 from the Plaintiff as and for attorney's fees. IT IS FURTHER ORDERED that said sum is reduced to judgment in Defendant's favor, with interest accruing thereon at the legal rate.

It is further ORDERED that the parties are subject to the following mandatory provisions: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

> Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY BY UP TO 6 YEARS IN PRISON. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child

from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not less than $1,000 nor more than $5,000, or by both fine and imprisonment.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

"Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents poses and imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada in the United States of America is the habitual residence of the parties' children

DATED this 29th day of September, 2014.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

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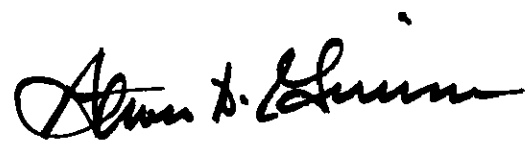

CLERK OF THE COURT

**ANOT**
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ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
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Co-counsel for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: N/A<br>Time of Hearing: N/A |

**AMENDED OR SUPPLEMENTAL NOTICE OF APPEAL**

Plaintiff KIRK ROSS HARRISON hereby amends or supplements his prior notice of appeal filed on July 17, 2014 (Nevada Supreme Court No. 66157). Plaintiff hereby appeals to

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3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

the Nevada Supreme Court from the district court's order entered on September 29, 2014, entitled "Findings and Orders re: May 21, 2014 Hearing." (Attached hereto as **Exhibit "1"**).

DATED: Oct. 16, 2014

By: _____
EDWARD L. KAINEN, ESQ.
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3303 Novat Street, #200
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Attorney for Plaintiff

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# EXHIBIT “1”

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

FINDINGS AND ORDERS RE:
MAY 21, 2014 HEARING

Plaintiff and Defendant appeared before this Court on May 21, 2014,[1] for a hearing on Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for

[1]Since the hearing on May 21, 2014, both parties have sought appellate relief from the Supreme Court of the State of Nevada. On July 7, 2014, Plaintiff filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). On July 17, 2014, Plaintiff filed a Notice of Appeal regarding the Decree of Divorce (Oct. 31, 2013), and orders entered on October 29, 2013, December 17, 2013, and June 13, 2014. On July 21, 2014, Defendant filed a Notice of Appeal regarding this Court's Findings, Conclusions and Orders (Feb. 10, 2014). At the time of the hearing, this Court orally issued findings and orders resolving all issues raised by way of the papers filed by the parties, save and except the amount of attorney's fees awarded to the Defendant. Following the hearing, this Court issued amended minutes setting forth additional findings. These amended minutes were issued prior to the Plaintiff's filing of his Notice of Appeal (Jul. 7, 2014). The findings and orders set forth herein are ancillary to the issues currently on appeal. In this regard, with the exception of the ***amount*** of attorney's fees awarded to the Defendant, the findings and orders set forth herein are simply a memorialization of the findings and orders stemming from the hearing on May 21, 2013. As to the amount of attorney's fees awarded, the said amount similarly is ancillary to the issues on appeal as it relates solely to Plaintiff's Motion to Modify Order Resolving Parent Child Issues and for Other Equitable Relief (Apr. 21, 2014). Alternatively, this Court finds that said amount is the amount this Court would be inclined to award pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) (clarified by *Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453 (2010).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Other Equitable Relief (Apr. 21, 2014); Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions (May 9, 2014); Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief and Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions (May 14, 2014); and Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions (May 20, 2014). Plaintiff, KIRK ROSS HARRISON ("Father"), was present and represented by and through his attorney, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE HARRISON ("Mother"), was present and represented by and through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED.

This Court, being fully advised in the premises, and good cause appearing therefore, makes the following findings:[2]

In July 2012, Father and Mother expressly agreed that it is in their children's best interest to appoint a Parenting Coordinator. *See* Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012) (hereinafter referred to as "Parenting Plan"). Father and Mother further expressly agreed that it is in the children's best interest to grant the children "teenage discretion" at age fourteen (14), subject to the parameters specified in the Parenting Plan. The language regarding "teenage discretion" to which the parties'

[2]At the time of the hearing, this Court established the protocol for the preparation of the Order therefrom. Nevertheless, it remains this Court's prerogative to memorialize and construe this Court's findings and orders that are consistent with the Court's intent.



BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

expressly agreed (as set forth in the Parenting Plan), is significantly more detailed and thorough than the single sentence that is typically submitted to the Court. Indeed, the specificity of the "teenage discretion" provisions set forth in the Parenting Plan is not commonplace and is largely unseen.

The exercise of "teenage discretion" should not be used as a tool to remove blocks of time from either party that would result in a modification of the underlying joint physical custody arrangement. This Court would be concerned if the exercise of "teenage discretion" was regular and pervasive so as to cause a *de facto* modification of the underlying custody arrangement. Although this Court expressed its concern about the two day incident described in the papers, it does not view the "teenage discretion" provision as having been abused by Brooke. Further, a child's preference standing alone is generally not a basis to entertain a modification of custody. In summary, the exercise of "teenage discretion" should not be a tool or resource to undermine the underlying custody arrangement.

This Court finds that there is not a sufficient basis to interview Brooke or Rylee at this time. Further, there is no present basis for the children to be interviewed by the Parenting Coordinator at this time.

Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) should be denied. The parties should proceed with the Parenting Coordinator process as previously ordered. There is not a sufficient basis to modify the terms of the Order Appointing Parenting Coordinator (Oct. 29, 2013), and the parties should abide by said terms. The authority of the Parenting Coordinator is

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

defined in the Order Appointment Parenting Coordinator (Oct. 29, 2013), together with the limitations imposed therein. Neither party should be compelled to sign any agreements that exceed the Parenting Coordinator's authority as defined in the Order Appointing Parenting Coordinator (Oct. 28, 2013).

This Court does not find that there is a basis to modify the provisions of the Parenting Plan regarding the "teenage discretion" provisions agreed upon by the parties. If either party believes the teenage discretion provision is being abused, the Parenting Coordinator may assist to bring that to light.

When school is in session, all child custody exchanges should take place at school and there should be no exchanges at either party's residence. The issue of the minor children needing to pick up items from the non-custodial parent's residence after school is an example of the type of issue that is appropriate for discussion with the Parenting Coordinator.

At the time of the May 21, 2014 hearing, this Court was inclined to strike Mother's Reply (May 20, 2014) and Dr. Roitman's report attached to Father's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014). Nevertheless, the parties stipulated that both papers would remain part of the record. The issue of expert reports attached to papers filed in this case has been prominent throughout the history of this case. As this Court reviewed and prepared its decision regarding the issue of attorneys' fees and costs associated with Mother's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013), the heightened conflict generated by the ***unilateral*** reports submitted by ***both parties*** was evident. Indeed, the parties would

have benefitted (and the conflict perhaps would have been ratcheted down) from this Court striking every report submitted by both parties at the moment each report was introduced into the record. The existence of these ***unilateral*** reports submitted for the purpose of influencing custody determinations without the involvement or input of the other party has engendered unnecessary angst, anxiety, and litigation in this matter.

Finally, at the May 21, 2014 hearing, this Court found that Mother was entitled to an award of attorney's fees (pursuant to EDCR 7.60). This Court directed each party to file additional papers relative to the issue of attorney's fees. Thereafter, Mother filed her Memorandum of Fees and Costs (Jun. 9, 2014), and Father filed his Response to Defendant's Memorandum of Fees and Costs (Jun. 23, 2014). This Court has had the opportunity to consider and evaluate the papers filed by both parties in relation to the provisions of EDCR 7.60, which provides, in pertinent part, as follows:

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> * * * *
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

The Court also has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Specifically, both parties were represented by experienced attorneys during these proceedings. Mother submitted

a sufficiently detailed statement of fees and costs that reflected the amount of fees incurred in connection with the issues before the Court. The work actually performed is adequately represented in Mother's Memorandum (Jun. 9, 2014). Finally, the Court has reviewed the results obtained.

On October 1, 2013, Father filed a Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (hereinafter referred to as "Father's First Motion"). A hearing was scheduled on Father's First Motion (Oct. 1, 2013) for October 30, 2013. This Court disposed of Father's First Motion by way of this Court's Order Re: Appointment of Therapist (Oct. 29, 2013) and the Order (Dec. 17, 2013). On November 18, 2013, Father filed a Motion for a Judicial Determination of the Teenage Discretion Provision (hereinafter referred to as "Father's Second Motion"). The hearing on Father's Second Motion (Nov. 18, 2013) was held on December 18, 2013. Father's present Motion (Apr. 21, 2014) re-asserts similar issues and concerns previously adjudicated by this Court at the December 18, 2013 hearing. *See* Order from Hearing (Jun. 13, 2014). The results of Father's First Motion (Oct. 1, 2013) and Father's Second Motion (Nov. 18, 2013) were similar.

Although this Court recognizes that Father's present Motion (Apr. 21, 2014) cites to facts arising after the December 18, 2013 hearing, those facts did not justify the filing of the present Motion (Apr. 21, 2014). Father's present Motion (Apr. 21, 2014) was unnecessary and unwarranted. Mother should receive the sum of $5,000 in attorney's fees and costs associated with defending the present Motion (Apr. 21, 2014).

. . .

Based on the foregoing Findings, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief (Apr. 21, 2014) is hereby DENIED.

It is further ORDERED that Defendant is awarded the sum and amount of $5,000.00 from the Plaintiff as and for attorney's fees. IT IS FURTHER ORDERED that said sum is reduced to judgment in Defendant's favor, with interest accruing thereon at the legal rate.

It is further ORDERED that the parties are subject to the following mandatory provisions: The following statutory notices relating to custody/visitation of the minor children are applicable to the parties herein:

> Pursuant to NRS 125C.200, the parties, and each of them, are hereby placed on notice that if either party intends to move their residence to a place outside the State of Nevada, and take the minor child with them, they must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give such consent, the moving party shall, before they leave the State with the children, petition the Court for permission to move with the children. The failure of a party to comply with the provision of this section may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations outside the State of Nevada planned by either party.

The parties, and each of them, shall be bound by the provisions of NRS 125.510(6) which state, in pertinent part:

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY BY UP TO 6 YEARS IN PRISON. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child

from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not less than $1,000 nor more than $5,000, or by both fine and imprisonment.

Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

"Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parents poses and imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada in the United States of America is the habitual residence of the parties' children

DATED this 29th day of September, 2014.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

KIRK ROSS HARRISON,

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

_____/

NO. 72880

Electronically Filed
Oct 24 2017 04:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

# CHILD CUSTODY FAST TRACK STATEMENT

# APPENDIX – VOLUME 6

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Nevada Bar No. 0861
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702-271-6000
kharrison@harrisonresolution.com

*ATTORNEYS FOR APPELLANT*

## CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX


| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 1. | Complaint for Divorce | 03/18/11 | 1 | 1-7 |
| 2. | Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence | 09/14/11 | 1<br>2 | 8-220<br>221-361 |
| 3. | Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees | 10/31/11 | 2<br>3 | 362-418<br>419-652 |
| 4. | Answer to Complaint for Divorce and Counterclaim for Divorce | 11/22/11 | 3 | 653-659 |
| 5. | Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees | 01/04/12 | 4<br>5 | 660-907<br>908-929 |
| 6. | Court Minutes [All Pending Motions] | 02/24/12 | 5 | 930-933 |
| 7. | Stipulation and Order Resolving Parent/Child Issues | 07/11/12 | 5 | 934-950 |
| 8. | Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees | 05/10/13 | 5 | 951-984 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 9. | Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 985-994 |
| 10. | Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief | 05/28/13 | 5 | 995-1009 |
| 11. | Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees | 07/19/13 | 5 | 1010-1044 |
| 12. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees | 09/09/13 | 5 | 1045-1053 |
| 13. | Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to | 09/11/13 | 5 | 1054-1059 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| | Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief | | | |
| 14. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 10/01/13 | 5 | 1060-1080 |
| 15. | Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/17/13 | 5 | 1081-1149 |
| 16. | Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief | 10/21/13 | 6 | 1150-1171 |
| 17. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions | 10/23/13 | 6 | 1172-1223 |
| 18. | Order for Appointment of Parenting Coordinator | 10/29/13 | 6 | 1224-1232 |
| 19. | Notice of Entry of Decree of Divorce | 10/31/13 | 6 | 1233-1264 |

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
|---|---|---|---|---|
| 20. | Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits) | 11/14/13 | 6 | 1265-1281 |
| 21. | Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision | 11/18/13 | 6 | 1282-1316 |
| 22. | Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees | 12/06/13 | 6 | 1317-1339 |
| 23. | Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees | 12/13/13 | 6 | 1340-1354 |
| 24. | Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions] | 12/17/13 | 6 | 1355-1356 |
| 25. | Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief | 04/21/14 | 6<br>7 | 1357-1388<br>1389-1431 |
| 26. | Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions | 05/09/14 | 7 | 1432-1458 |
| 27. | Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions | 05/14/14 | 7 | 1459-1472 |

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| 28. | Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions | 05/20/14 | 7 | 1473-1518 |
| 29. | Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/13/14 | 7 | 1519-1524 |
| 30. | Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision] | 06/16/14 | 7 | 1525-1532 |
| 31. | Notice of Appeal | 07/17/14 | 7 | 1533-1593 |
| 32. | Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1594-1601 |
| 33. | Notice of Entry of Findings and Orders re: May 21, 2014 Hearing | 09/29/14 | 7 | 1602-1611 |
| 34. | Amended or Supplemental Notice of Appeal | 10/16/14 | 7 | 1612-1622 |
| 35. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 | 08/21/15 | 8 | 1623-1673 |
| 36. | Order to Appear and Show Cause | 09/01/15 | 8 | 1674-1675 |
| 37. | Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor | 09/14/15 | 8 | 1676-1692 |

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| | Child, Emma Brooke Harrison ("Brooke") | | | |
| 38. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") | 09/18/15 | 8 | 1693-1738 |
| 39. | Notice of Entry of Order from Hearing | 10/01/15 | 8 | 1739-1743 |
| 40. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 10/12/15 | 8 | 1744-1758 |
| 41. | Order to Appear and Show Cause | 10/14/15 | 8 | 1759-1760 |
| 42. | Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing | 10/15/15 | 8 | 1761-1851 |
| 43. | Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing | 11/02/15 | 9 | 1852-1879 |
| 44. | Dr. Paglini Letter to Court | 11/23/15 | 9 | 1880-1881 |
| 45. | Notice of Entry of Order from Domestic Court Minutes | 12/02/15 | 9 | 1882-1886 |
| 46. | Supplement to Plaintiff's Motion for an Order to Show Cause Why | 12/10/15 | 9 | 1887-1903 |

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| | Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | | | |
| 47. | Reply to Opposition to Motion for Clarification; Motion to Amend Findings | 12/10/15 | 9 | 1904-1920 |
| 48. | Court Minutes [All Pending Motions] | 12/14/15 | 9 | 1921-1922 |
| 49. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 12/16/15 | 9 | 1923-1942 |
| 50. | Notice of Entry of Order from Domestic Court Minutes | 12/17/15 | 9 | 1943-1947 |
| 51. | Court Minutes [All Pending Motions] | 01/26/16 | 9 | 1948-1949 |
| 52. | Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing | 05/25/16 | 9 | 1950-1958 |
| 53. | Letter from John Paglini, Psy.D. to Court | 05/31/16 | 9 | 1959-1961 |
| 54. | Notice of Entry of Order re John Paglini, Psy.D. Letter | 06/21/16 | 9 | 1962-1963 |
| 55. | Notice of Appeal | 06/27/16 | 9 | 1964-1975 |
| 56. | Plaintiff's Motion for Reunification Therapy for Minor Children and Father | 07/26/16 | 9 | 1976-2076 |
| 57. | Notice of Entry of Order re: August 24, 2016 Hearing | 08/19/16 | 9 | 2077-2079 |

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| 58. | Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order | 08/30/16 | 9 | 2080-2095 |
| 59. | Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 08/30/16 | 10 | 2096-2196 |
| 60. | Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order | 09/23/16 | 10 | 2197-2206 |
| 61. | Plaintiff's Motion for an Order to Nullify and Void Expert Report | 09/28/16 | 10 | 2207-2292 |
| 62. | Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 | 09/30/16 | 10 | 2293-2316 |
| 63. | Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for | 09/30/16 | 10 | 2317-2321 |

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| | Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13 | | | |
| 64. | Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report | 10/18/16 | 10 | 2322-2337 |
| 65. | Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016 | 10/19/16 | 11 | 2338-2358 |
| 66. | Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report | 11/02/16 | 11 | 2359-2381 |
| 67. | Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit | 11/04/16 | 11 | 2382-2423 |
| 68. | Court Minutes [All Pending Motions] | 11/07/16 | 11 | 2424-2426 |
| 69. | Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 12/29/16 | 11 | 2427-2440 |
| 70. | Plaintiff's Pre-Trial Memorandum | 01/17/17 | 11 | 2441-2457 |
| 71. | Prehearing Memorandum | 01/17/17 | 11 | 2458-2477 |
| 72. | Court Minutes [Evidentiary Hearing] | 01/18/17 | 11 | 2478-2479 |


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| 73. | Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 01/31/17 | 11 | 2480-2489 |
| 74. | Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2490-2507 |
| 75. | Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 01/31/17 | 11 | 2508-2512 |
| 76. | Court Minutes [All Pending Motions] | 02/01/17 | 11 | 2513-2514 |
| 77. | Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing | 02/13/17 | 11 | 2515-2537 |
| 78. | Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions | 02/13/17 | 11 | 2538-2556 |
| 79. | Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 02/15/17 | 11 | 2557-2563 |
| 80. | Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions | 02/17/17 | 12 | 2564-2595 |

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| 81. | Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees | 03/06/17 | 12 | 2596-2602 |
| 82. | Defendant's Opposition to Motion to Strike; Countermotion for Sanctions | 03/13/17 | 12 | 2603-2608 |
| 83. | Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/15/17 | 12 | 2609-2617 |
| 84. | Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing] | 03/16/17 | 12 | 2618-2627 |
| 85. | Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017 | 03/28/17 | 12 | 2628-2634 |
| 86. | Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017 | 04/10/17 | 12 | 2635-2638 |
| 87. | Notice of Appeal | 04/14/17 | 12 | 2639-2649 |
| **TRANSCRIPTS** | | | | |
| 88. | Transcript re: All Pending Motions | 10/30/13 | 12 | 2650-2688 |
| 89. | Transcript re: All Pending Motions | 05/21/14 | 12 | 2689-2744 |
| 90. | Transcript re: All Pending Motions | 09/22/15 | 13 | 2745-2823 |
| 91. | Transcript re: All Pending Motions | 12/14/15 | 13 | 2824-2886 |
| 92. | Transcript re: All Pending Motions | 01/26/16 | 13 | 2887-2928 |

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| 93. | Transcript re: All Pending Motions | 11/07/16 | 14 | 2929-3040 |
| 94. | Transcript re: Evidentiary Hearing - Vol.1 | 01/18/17 | 14 | 3041-3152 |
| 95. | Transcript re: Evidentiary Hearing - Vol. 2 | 01/18/17 | 14<br>15 | 3153-3178<br>3179-3315 |
| | Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [*Confidential*] SEALED | | 15 | 3316-3375 |
| | Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016 | | 15 | 3376-3377 |
| | Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016 | | 15 | 3378-3380 |
| | Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016 | | 15 | 3381-3384 |
| | Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [*Confidential*] SEALED | | 15 | 3385-3387 |
| | Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016 | | 15 | 3388-3389 |
| | Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015 | | 15 | 3390-3392 |
| | Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule | | 15 | 3393-3394 |
| | Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016 | | 15 | 3395-3416 |
| | Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016 | | 15 | 3417-3426 |
| 96. | Transcript re: All Pending Motions | 02/01/17 | 16 | 3427-3640 |

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| **ADDITIONAL DOCUMENTS[1]** | | | | |
| 97. | Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 | 07/24/17 | 16 | 3641-3647 |
| 98. | Plaintiff's Supplemental Filing | 08/24/17 | 16 | 3648-3666 |
| 99. | Supplemental Notice of Appeal | 08/24/17 | 17 | 3667-3676 |
| 100. | Notice of Entry of Order re: Expert Designation | 10/06/15 | 17 | 3677-3682 |
| 101. | Notice of Entry of Order re: Pending Motions | 01/04/17 | 17 | 3683-3693 |


[1]These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

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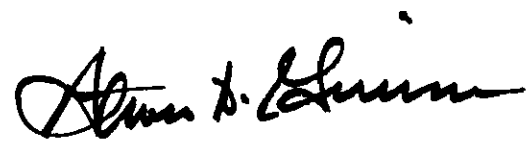

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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant

CASE NO.: D-11-443611
DEPT NO.: Q

Date of Hearing: 10/30/13
Time of Hearing: 10:00 a.m.

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF PLAINTIFF'S COUNTERMOTIONS FOR REASONABLE DISCOVERY AND EVIDENTIARY HEARING, EQUITABLE RELIEF, ATTORNEYS' FEES AND SANCTIONS, AND DECLARATORY RELIEF**

COMES NOW, Plaintiff Kirk Ross Harrison by and through his attorneys,, Thomas J. Standish, Esq., of the law firm of Jolley, Urga, Wirth, Woodbury & Standish, and Edward L Kainen, Esq., of the

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# UNNECESSARY

# PAGES OMITTED

Vivian's attorneys have unilaterally delayed this proceeding month after month. They have not honored the agreements they made with opposing counsel. They have employed reprehensible tactics to gain an unfair advantage in the briefing process. They are graciously given extensions of time within which to respond and then not only fail to comply with the extensions, but also fail to reciprocate. They have taken unsavory positions in an effort to deprive opposing counsel of the opportunity to file a responding brief or so severely limit their time to respond as to make it impossible to adequately respond. They have made one material misrepresentation after another to the Court, as if that is accepted practice and acceptable behavior. They have taken a case where the community assets were never in dispute and the opposition repeatedly tried to have custody expeditiously resolved by a third party neutral determination, and have now billed what is likely in excess of One Million Dollars ($1,000,000.00).

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### D. Despite Irrefutable Facts To The Contrary, Vivian's Attorneys Continue Their Baseless Assault Upon Kirk and Dr. Roitman

The Court should be aware that a lawsuit was filed on June 26, 2013, in the Second Judicial District in Washoe County, by Vivian Marie Lee Harrison against Norton A. Roitman, M.D. Vivian has not just attacked Dr. Roitman in the pleadings herein. Vivian actually filed a lawsuit against Dr. Roitman, in Reno, for the opinions he rendered in this case. This lawsuit is patently frivolous as Dr. Roitman, in rendering his opinions as an expert in this litigation, does not owe Vivian a tort duty.[13] A Motion to Dismiss is presently pending and awaiting a hearing.

#### 1. The True Genesis and Development of Dr. Roitman's Opinions

The Court will recall that Vivian's attorneys' frivolous allegations that Kirk "manufactured allegations," "manufactured theories," "invented a case," "developed a theory," "chose [a] personality disorder," and "chose a diagnosis" were made when Vivian's attorneys erroneously assumed there was no irrefutable paper trail as to how Dr. Roitman developed his opinions. Vivian's attorneys wrongly

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[13] One of Kirk's countermotions regarding attorneys' fees, filed May 28, 2013, is for a declaratory judgment that Kirk, upon entry of the divorce decree, has standing to sue Vivian's attorneys, **not for legal malpractice**, but rather for their over billing, as Kirk has paid the majority of their fees. Perhaps the frivolous lawsuit against Dr. Roitman, presumably for malpractice or some other tort, is in response to that countermotion.

assumed Kirk would be relegated to simply denying their baseless assertions. The only "evidentiary support" used for this make believe story was in paragraph 136 of Vivian's statement:

> 136. Approximately three years ago, as our marriage was clearly deteriorating, I saw Kirk with a book on narcissism. He claims that he got the book from Tahnee, but the book he identifies in his affidavit is different than the book he claims Tahnee gave him. From his affidavit, it appears that he looked at the characteristics of this "disorder" and then tried to mold facts to support his opinion.

(Vivian's opposition and countermotion re custody, Exh. A, p. 52, ¶52)

This is simply made up nonsense. This is the fictional story line that was falsely created, not based upon facts, but ill-advised unethical advocacy and Vivian's willingness to lie to the Court yet again. This paragraph is dripping with advocacy stating, "it appears that he looked at the characteristics of this "disorder" and then tried to mold facts to support his opinion."

The book on narcissism which Vivian references, was a book on narcissism that Tahnee was reading *in March of 2010 – not 2008!* On March 1, 2010, Kirk wrote, "Tahnee had me read sections from "Will I ever be good enough – healing the daughters of narcissistic mothers." (Exh. 1 to Kirk's motion re custody, filed 9.14.11, ¶103) Kirk did not read any books on narcissism until he received the books on narcissism he ordered after his meeting with Dr. Roitman in January and February of 2010. Unbeknownst to Vivian's attorneys and Vivian at the time they made these baseless allegations, is the letter of January 4, 2010, that Kirk had prepared and provided to Dr. Roitman. (Exhibit 9 to Kirk's reply re custody, filed 1.4.12) It was memorialized that Vivian refused to see anyone. Kirk was therefore relegated to preparing this letter and providing it to the best psychiatrist he could find in an effort to identify the causes of Vivian's aberrant behavior *and to get Vivian help.* The mere existence of this letter, which both Kirk and Dr. Roitman have had since January 2010, totally refutes this fabricated story by Vivian's attorneys.

What is indisputably clear from this letter to Dr. Roitman, is that Kirk was trying to solve an extremely difficult problem for his family. Kirk was not out to get Vivian. Contrary to what Vivian now alleges as fact, Kirk was trying to get help for Vivian and his children.

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**2. What Is Indisputably Clear From This Letter is That Until Kirk Sat Down With Dr. Roitman In January and February of 2010, Kirk Thought Vivian Was Bipolar Like her Older Sister**

Vivian had always told Kirk that her older sister, Cindy, was bipolar. In the letter to Dr. Roitman, Kirk wrote, "Vivian believes that Cindy was bipolar and insufferable to be around." When Kirk first met Cindy, Vivian told Kirk that Cindy had been a stripper at the Palomino Club in North Las Vegas and probably a prostitute. (Exhibit 9 to Kirk's reply re custody, filed 1.4.12, p. 4) Kirk would see Cindy each year on Christmas eve at Vivian's grandparents' home. Vivian warned Kirk, before he ever met Cindy, that Kirk and everyone else had to be very careful what they said in her presence as Cindy would go crazy. Cindy was unstable and volatile. Vivian had told Kirk that Cindy used the name "Angel" as a stripper. Believing he was being respectful, Kirk made the mistake of addressing Cindy as "Cindy," rather than "Angel," when he first met her. Cindy took off on Kirk screaming obscenities. Cindy was cold and uncaring. During those early years when Kirk first met Cindy, Cindy had a daughter and a younger son. It appeared to Kirk the children were having problems coping with their cold, uncaring, unstable and volatile mother. Vivian told Kirk that Cindy abused prescription drugs and alcohol. Cindy died from a prescription drug overdose, which was probably a suicide. At the time she died, Cindy had two additional young children. The social work people assigned to the case, told Vivian the children had been severely neglected, were in very rough shape, and intellectually underdeveloped for their ages.

It is very evident in Kirk's letter to Dr. Roitman of January 4, 2010, that Kirk believed that Vivian was bipolar like her older sister Cindy. In his questions to Dr. Roitman, Kirk wrote, "Vivian's behavior is **so much like the behavior** of her mother and **her sister Cindy**. Is it possible that it is genetic? Is it possible it is caused by a chemical imbalance?" . . ."**Is Vivian bipolar**, suffering from severe depression, or something else? Are the courses of treatment the same or different?" (Exhibit 9 to Kirk's reply re custody, filed 1.4.12, p. 37) (Emphasis added.) Consistent with this fact, is the entry Kirk made for November, 16, 2009 in the January 4, 2010 letter to Dr. Roitman, "Later last Friday night, Tahnee told me that she thinks Vivian is bi-polar/manic depressive." (Exh. 9 to Kirk's reply re custody, filed 1.4.12, p. 29) This same statement also appears in Kirk's affidavit. (Exh. 1 to Kirk's motion re custody, filed 9.14.11, ¶69) Kirk also made a similar entry on December 5, 2009, stating,

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"Tahnee said she thinks Vivian is manic-depressive because Vivian has all these times when she has to buy things." (Exh. 9 to Kirk's reply re custody, filed 1.4.12, p. 31) See also, (Exh. 1 to Kirk's motion re custody, filed 9.14.11, ¶75) Consistently, Kirk also wrote in the letter to Dr. Roitman the following:

> Postpartum triggered, stress induced, pre-menopausal, **bipolar**, average/unhealthy, severe depression, delusional – whatever the condition, whatever the diagnosis, Vivian is missing something inside. Some might say she has lost her soul. She is almost completely self-absorbed. Somehow this has got to be fixed. Intellectually, I believe she must be aware there is a problem, but doesn't know how to overcome her childhood. That is not to say at this point she even recognizes the correlation between her current problems and her childhood.

(Exh. 9 to Kirk's reply re custody, filed 1.4.12, p. 11)

At another point in the letter, Kirk wrote, "Though not trained in psychology other than a college entry level course, I believe Vivian is suffering from a psychosis that is rapidly worsening." (Exh. 9 to Kirk's reply re custody, filed 1.4.12, p. 20)

At a later point in the letter, sometime between November 8, 2009 and November 13, 2009, Kirk wrote:

> My belief is that Vivian's problems started when she gave birth to Brooke over ten years ago. Perhaps initially triggered by postpartum depression, the stress of a new baby, and/or the stress of dealing with teenage girls. However, she has really spiraled downward since Rylee was born on January 24, 2003. She is suffering from depression. **I don't know for sure the cause.** It was during this time and forward that the consequences of her childhood started to impact her and she started to act more based upon her unhealthy personality than any independent thought. Based upon the "Wisdom of the Enneagram" she is an average/unhealthy Eight, otherwise referred to as "The Challenger." She has been taking "speed" Phentermine for four to five years. This combination, in my opinion, led to her intellectual and emotional undoing.[14]

(Exh. 9 to Kirk's reply re custody, filed 1.4.12, p. 29) (Emphasis added.)

At that time, although it is clear Kirk thinks Vivian is bipolar like her sister, Cindy, it is also evident he doesn't know what is causing her behavior and that is why he is seeking Dr. Roitman's opinion and advice.

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[14] Kirk's close friend, Gard Jameson, recommended Kirk read the "Wisdom of the Enneagram." Kirk ordered this book from Amazon on April 24, 2009. A copy of the Amazon invoice is attached hereto as Exhibit "**28**." This book is **not** about narcissism and is the only book Kirk read in his effort to help Vivian, prior to reading the books on narcissism, borderline personality, etc. which Kirk ordered and read after meeting with Dr. Roitman in January and February of 2010.

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Despite this letter, Vivian's attorneys have continued to claim that Kirk developed the theory of narcissistic personality disorder – obviously unwilling to let something as insignificant as the **truth** stop them in their misguided and unethical zeal to make Kirk "the bad guy." (Kirk's reply re custody, filed 1.4.12, p. 3, footnote 3) The submission of a written motion to the Court by an attorney is a certification by that attorney that the factual contentions contained therein have evidentiary support and the attorney has made reasonable inquiry under the circumstances to confirm that those factual contentions are valid and correct. NRCP 11(b)(3) Vivian's attorneys had no evidentiary support for their spurious allegations in the first instance, and certainly, after being provided a copy of the letter of January 4, 2010, to Dr. Roitman, Vivian's attorneys knew their rank speculation, which had no basis whatsoever, was absolutely false.[15] Incredulously, despite knowing the truth, Vivian's attorneys continue to make these allegations to this day. As Vivian's attorneys continue to drag this skunk around the courtroom, they are apparently unaware it is they who are embedded with the stench.

Vivian's attorneys also attempt to shroud Kirk with a cloak of "bad faith" by arguing that Kirk did not include every sentence in the January 4, 2010 letter in his affidavit, including some sentences which put Vivian in a positive light. Vivian's attorneys argue that this was an attempt by Kirk to not provide Dr. Roitman with the positive things Vivian has done in an attempt to "shape" Dr. Roitman's opinions. This is also intellectually insulting. The January 4, 2010 letter is addressed to Dr. Roitman, was given to Dr. Roitman, and was read by Dr. Roitman. Dr. Roitman was well aware of all the positive

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[15] It is troubling that Vivian's attorneys believed that Vivian's fabricated statement that she saw Kirk reading a book on narcissism was sufficient evidentiary support to make such spurious allegations in the first place. The first time Kirk met Dr. Roitman was in January of 2010. Dr. Roitman is extremely well respected with an impeccable reputation. Kirk also enjoys an excellent reputation. Assume, *arguendo*, Kirk actually read a book on narcissism before meeting Dr. Roitman – which he did not. Merely reading a book on narcissism is not sufficient "evidentiary support" under Rule11 to justify claims that Kirk "manufactured allegations," "manufactured theories," "invented a case," "developed a theory," "chose [a] personality disorder," and "chose a diagnosis." Kirk also did not read a book on terrorism prior to the 9/11 attacks. However, if Vivian was willing to claim that she saw Kirk with a book on terrorism, that apparently, would not stop Vivian and Vivian's attorneys from claiming that he must have been responsible for the 9/11 attacks. Vivian's attorneys' conduct is far beyond the pale.

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things Kirk wrote about Vivian when Dr. Roitman rendered his opinions in this case. This Court was also obviously made aware of the contents of the January 4, 2010 letter to Dr. Roitman during the briefing of temporary custody, as Kirk attached it as Exhibit 9 to his Reply, filed 1.4.12.

A review of Kirk's letter to Dr. Roitman dated January 4, 2010, and Kirk's affidavit indicates he is memorializing events as they occur. Kirk never read a book about narcissism until after Dr. Roitman read Kirk's letter, and after Dr. Roitman recommended Kirk read writings by Dr. Otto Kernberg on narcissism.

### 3. Dr. Roitman's Opinions in this Case Were 100% the Opinions of Dr. Roitman – Dr. Roitman Originated Those Opinions, Developed Those Opinions, And Wrote Those Opinions

The true sequence of events confirm what Dr. Roitman has testified to under oath and as set forth in Dr. Roitman's June 4, 2012 letter to Radford Smith, Esq. (Exh. 6 to Kirk's countermotions, filed 5.28.13). The opinions Dr. Roitman rendered in this case were 100% his opinions. Dr. Roitman originated those opinions, developed those opinions and wrote those opinions. The true sequence of events reveals the truth and also reveals the falsity of Vivian and Vivian's attorneys representations to the Court:

| | |
|---|---|
| **6/26/99** | Brooke is born and Vivian's behavior is noticeably worse in the following years; Kirk initially thought Vivian was suffering from postpartum depression, her condition was temporary and she would get better over time; Vivian did not get better, but seemed to somewhat level off |
| **1/24/03** | Rylee is born and Vivian's behavior starts spiraling downward after that date getting worse and worse each succeeding year |
| **6/9/04** | Vivian starts taking Phentermine, Didrex, Bontril and Diethylproprion for the next seven years |
| **6 & 7/05** | Vivian abducts Brooke and Rylee from Kirk for approximately six weeks; Vivian agrees with Kirk to get counseling upon her return, but later refuses |
| **7/19/05** | Vivian starts taking an SRRI, Citalopram, for the next six years |
| **Summer 05** | Vivian loses any interest in the older children and Kirk, confirming this fact to Dr. Duffy; by the fall, Vivian is losing interest in Brooke and Rylee as well |
| **1/31/06** | In light of Vivian's unstable and volatile behavior and lack of interest in Brooke and Rylee, Kirk concludes he has no choice but to walk away from his practice and take care of Brooke and Rylee – from this point forward, Kirk takes them to and from school, to and from dance and sporting activities, cooks most of their meals, helps them with their homework, buys most of their clothes, plays games with them, takes them to the ranch |

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and on trips, takes them to movies, shopping, etc. Other than sporadic public appearances, Vivian has very little interaction with Brooke and Rylee on a day to day basis, other than sleeping with them when she is in town. All of this continues until mid-September of 2011, when Vivian starts becoming involved

**2006 thru mid-2008** Vivian's condition and behavior continued to deteriorate. Vivian continued to refuse to get help. Up until this point Kirk kept hoping Vivian's condition was "temporary" and she would improve. However, Vivian's condition was not getting any better, it was getting noticeably worse. Kirk decided he had to see the best psychiatrist he could find to determine the causes of the problems and to learn what had to be done to help Vivian. Since Vivian refused to see anyone, Kirk started to put together as much information as possible about Vivian. (Kirk's reply re custody, filed 1.4.12, p. 5, l. 14-27)

**12/09** Once the summary of everything Kirk knew about Vivian was completed, Kirk wanted to take it to the best psychiatrist he could find. Since Brooke and Rylee were the most adversely affected by Vivian's condition and aberrant behavior, Kirk wanted a psychiatrist that specialized in dealing with children and family matters. Kirk called Gard Jameson, who is a leader in the child advocacy effort in Southern Nevada.[16] Gard referred Kirk to Dr. Norton Roitman. For the same reasons, Kirk telephoned Jim Jimmerson, Esq., assuming he would have dealt with psychiatrists in a family context where children were being impacted. Mr. Jimmerson also referred Kirk to Dr. Roitman.

**1/4/10** Kirk hand-delivered the extensive summary he had prepared to Dr. Roitman's office (Exh. 9 to Kirk's reply re custody, filed 1.4.12)

**1/15/10 thru 2/11/10** Kirk and Dr. Roitman meet for two hours. During that meeting, in response to a question from Dr. Roitman, Kirk "indicated that he was dedicated to the marriage, at least for the sake of the children, and would very much like to have a good relationship back with his wife as well." (Roitman deposition, 4.27.12, p. 43, l. 7-10) A copy of the deposition transcript for Dr. Norton A. Roitman, dated April 27, 2012, is attached hereto as Exhibit "**29**." Kirk provides a supplement letter to the 1.4.12 letter to Dr. Roitman. Dr. Roitman meets with Kirk after Dr. Roitman has read and analyzed the extensive summary. Dr. Roitman advises Kirk that he thinks Vivian is pathologically narcissistic and advises Kirk to read articles and books by Otto Kernberg. Dr. Roitman also discusses the possibility that Vivian may have a borderline personality. Dr. Roitman also references Cluster B

**2010** After meeting with Dr. Roitman, Kirk orders books on narcissism by Dr. Otto Kernberg and two books on borderline personality; however, the books on narcissism are written for medical practitioners and Kirk soon learns he does not have the medical vocabulary to understand much of what he is trying to read. Kirk orders additional books on narcissism, borderline personality, the self-absorbed, etc. which are written more for the lay person. Included are books on coping with and living with a narcissistic personality disorder. Kirk and Dr. Roitman have a number of telephone calls concerning the literature that Dr. Roitman recommended. Kirk sees that most of the books on narcissism use the term "narcissistic personality disorder." Kirk telephones Dr. Roitman to confirm that the term "pathologically narcissistic," which is used by Dr. Kernberg, means the same thing as "narcissistic personality disorder" ("NPD"). Kirk reads a book that provides that NPD is extremely difficult, if not impossible to treat. Kirk telephones Dr.

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[16] Mr. Jameson was recently honored as the 2013 "Child Advocate of the Year."

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Roitman and asks if that is the current state of treatment or if strides in treatment had been made since the writing of that treatise. Kirk recalls talking to Dr. Roitman about the approach used by Dr. Kernberg as compared to the approach used by Dr. Masterson. These discussions took place in the context of Kirk trying to educate himself in order to address a problem for his family, they were not in the context of divorce. Although Kirk cannot recall when, Kirk recalls having telephone calls with Dr. Roitman about books written by Dr. Masterson and Dr. Lowen and specific passages in those books. Kirk recalls talking to Dr. Roitman about the presence of a "cold" mother being a common factor in people who develop NPD. Dr. Roitman and Kirk discussed the risk that Vivian's behaviors will cause Brooke and Rylee to similarly suffer.

**3/22/11** Tahnee and Whitney spend over two hours with Andrew Kynaston, Esq. reviewing and editing their affidavits

**4 & 5/11** Kirk hand delivers copies of Tahnee's affidavit, Whitney's affidavit, and the most current draft of Kirk's affidavit to Dr. Roitman. After Dr. Roitman had read and analyzed the affidavits, Dr. Roitman and Kirk had a lengthy discussion. Kirk believes this discussion was at Dr. Roitman's office, but it is possible it was over the telephone. Kirk asked Dr. Roitman his opinion of the cause of Vivian's behavior. Dr. Roitman reconfirmed his opinion was that she was suffering from a narcissistic personality disorder. Dr. Roitman noted that Vivian's behavior had significantly worsened since Dr. Roitman had read and analyzed Kirk's letter to him, dated January 4, 2010. Kirk asked Dr. Roitman what was causing the extremely delusional behavior, i.e., the young actor being her "soulmate," Vivian's fear the young actor would see her on a television show before she lost her weight, her fear Tahnee would smother her with a pillow and try to kill her, etc. Dr. Roitman told Kirk that he believed the long term Phentermine use was exacerbating Vivian's NPD behaviors.

Kirk asked Dr. Roitman if he would provide an expert report. Dr. Roitman responded that he would, but emphasized the importance of Dr. Roitman qualifying and limiting his opinions based upon the fact that he did not have the opportunity to directly examine Vivian. Kirk asked Dr. Roitman when he could provide the expert report. Dr. Roitman was pessimistic in light of his existing commitments. Kirk had been advised that in the event he was unable to settle the matter, it was important to be the moving party for temporary custody. Kirk was concerned that Bob Dickerson, Esq. was not genuinely interested in settling the case, and that Mr. Dickerson was possibly preparing a motion for temporary custody. Kirk asked Dr. Roitman if there was anything he could do to assist Dr. Roitman to facilitate Dr. Roitman's preparation of the report. Dr. Roitman replied that since Kirk already had the affidavits, if he could make an initial pass to resort the paragraphs under the DSM-IV nine criteria, that would help Dr. Roitman, who would then review and revise the data. It should be noted that Kirk just took the affidavit paragraphs as written and sorted them as Dr. Roitman directed. Kirk simply made the initial pass to sort the same facts under different categories. Upon examination of Dr. Roitman's report, the Court will note that Dr. Roitman paraphrased and shortened all of this language. As noted in his letter

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to Mr. Smith, the clerical function performed by Kirk are regularly performed by assistants. While resorting the paragraphs, Kirk noticed there were paragraphs in the affidavits that did not fit under any of the nine criteria, but were arguably relevant to Vivian's early childhood. Kirk telephoned Dr. Roitman and asked if Dr. Roitman wanted those included as well. He did, so Kirk placed those in a different section. When Kirk was attempting to sort the paragraphs, he telephoned Dr. Roitman stating he thought he might be doing it wrong as it seemed a significant number of the paragraphs were under Criterion 7 (lack of empathy). Dr. Roitman responded that was not unusual and to not worry as Kirk's placements were only preliminary as Dr. Roitman would review each and every entry. As Dr. Roitman noted in his letter to Radford Smith, Esq., Kirk was only about 70% accurate.

As there are factual statements regarding Vivian's behavior in the motion for custody, Kirk also provided Dr. Roitman a copy of the then current draft (dated, March, 2011) of Kirk's motion for custody. The section on narcissistic personality disorder is less than one page of the 39 page draft (appearing at the bottom of page 23 and the top of page 24) and consists primarily of quotes from the American Psychiatric Association, Dr. Alexander Lowen, and Dr. Elsa Ronningstam.

From about the first of May of 2011 until the final report was prepared and submitted by Dr. Roitman, Kirk had numerous telephone calls with Dr. Roitman. Based upon the telephone calls in early May, Kirk gained the understanding that Dr. Roitman intended to cite the treatises he had previously referred to Kirk, beginning in January and/or February of 2010, and that they had subsequently discussed. Without any request from Dr. Roitman, Kirk, unilaterally, highlighted passages or sections in those treatises and numerous other treatises that Kirk had read. Kirk highlighted those passages or sections in the books, put a post-it on those pages, and provided a box of all the books to Dr. Roitman for his consideration. In an effort to save typing or word processing time for Dr. Roitman, Kirk typed a number of those potential citations for Dr. Roitman's consideration so in the event, Dr. Roitman chose to use any of the quotations, he did not have to type them. Dr. Roitman did not use most of the submitted quotations, including rejecting almost all quotations from books written by authors who were not psychiatrists.

Kirk had worked with a number of experts (primarily construction and engineering) in the past, and had a general outline or format which those experts had utilized.. Having never worked with Dr.

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Roitman before and knowing Dr. Roitman was pressed for time, Kirk unilaterally prepared a general outline for a table of contents that Kirk had obtained from other experts (the construction and engineering experts) with whom he had worked that seemed to have a logical sequence. This table of contents is Exhibit G to Vivian's motion for fees, filed 4.3.13. A cursory review reveals that Dr. Roitman did not think much of Kirk's proposed outline or table of contents. First, Dr. Roitman did not use a table of contents in his report. Second, Dr. Roitman's report is organized and sequenced completely different than what Kirk proposed.

| **Kirk's proposed outline** | **Dr. Roitman's Report** |
|---|---|
| Qualifications | Identifying Data and Purpose |
| Documents Relied Upon | Limitations |
| Books & Treatises Reviewed | Sources of Information |
| Assumptions | Conclusions |
| Limitations on Opinions | History of the current condition |
| Preliminary Opinions | Developmental History |
| Analysis | Family History |
| NPD | Medical History |
| Characteristics | Review of materials |
| Created during childhood | NPD origins and impact |
| In early adulthood | Diagnostic criteria |
| Has disorder | (9 criteria) |
| (9 criteria) | Discussion |
| Difficult to treat | |
| Risk Brooke & Rylee suffer same fate | |
| Disturbing pattern of behavior | |
| Abnormal obsessive behavior | |

In retrospect, it was presumptuous on Kirk's part to even suggest an outline to Dr. Roitman, but Kirk was trying to save time for Dr. Roitman in Dr. Roitman's preparation of his report. Regardless, there is no doubt it was not utilized. This is yet another example where Vivian's attorneys have attempted to cloak Kirk with bad faith when there are simply no facts to support their position. They

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make much to do of this outline, but there is no doubt it was **not** utilized by Dr. Roitman in the preparation of his report. Another point needs to be made very clearly. Dr. Roitman had previously expressed to Kirk the opinions which are reflected in the latter proposed headings of the outline. For example, it has been previously noted that when Kirk read the treatises which provided that NPD is extremely difficult to treat, he telephoned Dr. Roitman and confirmed that was still the state of the treatment and that was Dr. Roitman's opinion as well. Kirk already knew it was Dr. Roitman's opinion that NPD was extremely difficult to treat when he submitted this outline to Dr. Roitman. Kirk did not originate this opinion or any other opinion in Dr. Roitman's report.

In summary, the opinions Dr. Roitman rendered in this case were 100% his opinions. Dr. Roitman originated those opinions, developed those opinions, and wrote those opinions. That is the truth and those are the facts. The fact that Kirk tried to help Dr. Roitman by making a preliminary pass at resorting the facts (which was only about 70% correct), typing quotes that Dr. Roitman might use (most of which he rejected), or submitting a suggested outline to Dr. Roitman (which he ignored) does not change those truthful facts.

**a. Despite the Fact That the Opinions Rendered in this Case Were 100% Dr. Roitman's Opinions and that Dr. Roitman Originated, Developed and Wrote Those Opinions, Vivian's Attorneys Now Falsely Accuse Kirk Of Suborning Dr. Roitman**

Not dissuaded by the truth or the facts, Vivian's attorneys actually accuse Kirk of suborning Dr. Roitman "to unethically diagnose Vivian with NPD without meeting her. . ." (Vivian's opposition to countermotions, p. 4, l. 2-3) Vivian's attorneys, who jointly took Dr. Roitman's deposition, know this accusation is unfounded, as Dr. Roitman testified:

> In the case of a personality disorder the collateral history is critical, because the person with the personality disorder has a certain blindness to themselves. They can't appreciate the context in which they're operating. Personality disorders have to be gauged based on long-term patterns of functioning first manifested at an early age. And so **collateral history** is one of the essential ingredients in a valid examination.
>
> (Dr. Roitman, depo. transcript, 4.27.12, p. 93, l. 18-25; p. 94, l. 1) (Emphasis added.)

As Dr. Roitman pointed out during his deposition, the glaring weakness in the reports of both Dr. Applebaum and Dr. Ronningstam is that the collateral history was made available to them, but they both chose to ignore it. (Roitman depo. transcript, p. 160, p. 17-25; p. 161, l. 1-25; p. 162, p. 1-22) Kirk

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respectfully submits Dr. Applebaum and Dr. Ronningstam turned a blind eye to the collateral history, because if they did not, they could not given the highly "qualified" opinions they did.[17] As opposed to Dr. Applebaum and Dr. Ronningstam, who made a conscious choice to ignore the collateral history that was made available to them, when Dr. Roitman rendered his, also highly "qualified" opinion, he was not able to interview Vivian. Dr. Roitman candidly admitted that his inability to interview Vivian at the time of his report was a weakness in his report, just like Dr. Applebaum's and Dr. Ronningstam's ignoring the collateral history was a weakness in their reports.

**b. Despite the Fact That the Opinions Rendered in this Case Were 100% Dr. Roitman's Opinions and that Dr. Roitman Originated, Developed and Wrote Those Opinions, Vivian's Attorneys Now Falsely Accuse Kirk Of "Shaping" Dr. Roitman's Report**

The basis for Vivian's attorneys accusation that Kirk "shaped" Dr. Roitman's report are some of the headings in Kirk's proposed outline ***that Dr. Roitman did not use***! These are the headings which contained some of the opinions which Dr. Roitman had previously related to Kirk. According to Vivian's attorneys, if Dr. Roitman's secretary had typed opinions articulated by Dr. Roitman to her and then provided that typed product to Dr. Roitman, Dr. Roitman's secretary would be "shaping" Dr. Roitman's report. This is nonsense. Vivian's attorneys want this Court to assume that Dr. Roitman and Kirk never met, never talked, and never had any telephone calls. For example, in 2010, Dr. Roitman told Kirk that NPD was extremely difficult, if not impossible to treat. However, Vivian's attorneys assert that this opinion "was actually first identified by ***Kirk*** in the report underlying his Table of Contents." (Vivian's opposition to countermotions, p. 13, l. 20-21)

Kirk respectfully submits that Vivian's attorneys do not earnestly believe that Kirk originated any of Dr. Roitman's psychiatric opinions. That proposition is simply too illogical on its face. Dr. Roitman, one of the most respected psychiatrists in this state, is not going to let anyone, including a lay person, who he met for the first time in connection with this case, whom he has had no contact with except in connection with this matter, tell him what is opinions are going to be in this case. It is as if

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[17] The Court will recall that Vivian lied to Dr. Thienhaus about her insomnia and the extent of her drug abuse. Dr. Thienhaus was very critical of Vivian's Phentermine use and Dr. Life. However, Dr. Thienhaus also, inexplicably, ignored Tahnee's and Whitney's affidavits.

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Vivian's attorneys are so embroiled in their desire to falsely make Kirk the "bad guy" they lose all sense of reality and common sense.

The next baseless assertion made by Vivian's attorneys is that, "Kirk intentionally "stacked the deck" when he gave Dr. Roitman only selected "facts" to support the diagnosis, and removed from his original letter to Dr. Roitman those facts in conflict with his narrative about Vivian." (Vivian's opposition to countermotions, filed 9.12.13, p. 14, l. 10-12) Dr. Roitman still had the January 4, 2010 letter from Kirk. Dr. Roitman produced it to Vivian's attorneys. Based upon that letter, Dr. Roitman made the preliminary opinion that Vivian was pathologically narcissistic. Dr. Roitman is the same Dr. Roitman who provided an opinion in this matter. Vivian's attorneys have criticized the length of Kirk's affidavit. Now they criticize Kirk for not putting the January 4, 2010 letter *en masse* into an affidavit.

**c. Vivian's Attorneys Chronology is Replete with Errors and Misrepresentations**

The chronology set forth on pages 16 through 22 is replete with errors and misrepresentations of fact. Kirk will not address each and every error and misrepresentation, as that would take too many pages, but will attempt to quickly address the most glaring.

1. Kirk never read a book about narcissism until after meeting with Dr. Roitman in January/February of 2010. Kirk **telephoned** Jim Jimmerson for the same reason he telephoned Gard Jameson, he wanted a psychiatrist and assumed Mr. Jimmerson would have dealt with psychiatrists in a family context where children were being impacted.

2. Despite the claims that Kirk never tried to get Vivian to a counselor, there are several entries in Kirk's affidavit regarding Vivian's refusal to go to counseling. When Vivian returned to the home after abducting Brooke and Rylee for six weeks in 2005, Vivian initially agreed to counseling, then later refused. There are paragraphs in the affidavit where Tahnee is telling Kirk he has to get Vivian into counseling and he is responding he has tried and she will not go and he has no way to make her go. (Kirk's motion for custody, filed 9.14.11, Tahnee aff. p. 4, l. 11-14)

3. Dr. Roitman opined in January/February 2010 that he thought Vivian was pathologically narcissistic, but also considered borderline personality and what he referred to as Cluster B.

4. Kirk testified that Vivian's threat of filing a complaint the day after Whitney's wedding caused the complaint to be filed when it was filed.

5. Kirk's lawyers did not revise the drafts of Tahnee's and Whitney's affidavits and they signed them. Tahnee and Whitney spent two hours reviewing and revising their own affidavits.

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6. Vivian's attorneys erroneously allege Kirk had no contact with Dr. Roitman between February of 2010 and May 5, 2011. In support of this assertion, Vivian's attorneys cite to pages 128-135 of Dr. Roitman's deposition. There is nothing there to indicate that Dr. Roitman and Kirk did not speak on the telephone numerous times during that period of time. As noted in the chronology above, which is based upon true facts, Kirk and Dr. Roitman had numerous telephone calls during that intervening period. Merely because Dr. Roitman did not bill Kirk for those numerous calls, does not mean they did not occur. Dr. Roitman later indicated that he had a bookkeeper who was not keeping track of the time and she had to be replaced. (Roitman depo. 4.27.12, p. 190, l. 13-14) For example, Kirk had four phone calls with Dr. Roitman in May of 2011 **before** May 5, 2011.

7. The "research" Kirk provided Dr. Roitman were the quotes from the treatises that Dr. Roitman had advised Kirk to read and they had previously discussed. Dr. Roitman rejected the offered quotes from other books that Kirk had read.

8. Contrary to Vivian's attorneys' assertion, Mr. Dickerson already knew there was a contention over custody before the conversation with Tom Standish. Mr. Standish testified that the subject was broached by Mr. Dickerson asking why there was a contention over custody. Mr. Standish simply responded by telling Mr. Dickerson **why** Kirk wanted primary custody.

9. As noted above, contrary to Vivian's attorneys' baseless assertions, Dr. Roitman did not use the same format for his report as in Kirk's proposed outline. The nine criteria are in the order set forth in the DSM-IV. Did Vivian' attorneys really expect Dr. Roitman to change that order? The evaluation is based upon those nine criteria in that order.

10. Mr. Silverman's referenced and quoted email of August 10, 2011 is replete with errors. For example, he alleges, "In their first mediation Husband asked Wife to sign an agreement giving each approximately $350,000.00 for attorneys fees." (Vivian's opposition, filed 9.12.13, p. 19, l. 16-17) *See also* p. 10, 8-11; p. 46, l. 5-6). The truth is that the proposal was the parties would each get $400,000.00. However, only $210,000.00 of that amount would be for attorneys' fees and $190,000.00 would be for each party's personal use. At that time Kirk explained he needed the $190,000.00 to buy the Forest Service land. Vivian came back and said she didn't want money divided for attorneys' fees, but had no problem with the parties each getting $190,000.00. Later, Mr. Silverman suggests $150,000.00 for each party for attorneys' fees. Elsewhere in their brief, Vivian's attorneys accuse Kirk of bad faith in proposing $350,000.00 each in attorneys' fees. Perhaps if Vivian's attorneys would stick to the truth, they would know Kirk proposed $210,000.00 for attorneys' fees as opposed to Mr. Silverman's proposal of $150,000.00. Of course, that would be turned and twisted as well to accuse Kirk of bad faith in some fabricated regard. A true and correct copy of the proposal Kirk made in May of 2011 is attached hereto as Exhibit "**30**" and by this reference incorporated herein.

11. Kirk did not know the condo purchase had already "gone in contract." The Court may recall the issue of money for the condo purchase has been previously briefed at length. *See* (Kirk's opposition to Vivian's emergency motion for distribution of funds, filed 10.24.11, p. 10, l. 4-28; p. 11, l. 1-15)

12. Kirk was advised to see Dr. Lenkiet and he did. The agreement between counsel was that each side was to provide expenses incurred for both testifying *and non-testifying experts*. In fact, the Court Minutes of 1/28/13, provide "*Counsel have also discussed experts which may have also acted in the role of consultant. There is an agreement that a billing statement should be produced, subject to argument as to whether a consultant's*

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*text or undisclosed expert's billing statement should be produced*." There was no oversight. Kirk disclosed what he was required to disclose.

13. Vivian's attorneys accuse Kirk stating, "This was Kirk's method; he presented anything he could to gain a favorable temporary order to "use as an advantage" in the custody determination." This was Kirk's first experience in family court. It is nonsensical to accuse Kirk of some grand scheme, when Kirk did everything he possibly could to not serve the complaint and to not file the motion for temporary custody. It was Kirk's hope to mediate and settle everything without filing a motion for custody. It is ironic that but for Vivian's attorneys' refusal to mediate until a motion for temporary custody was filed and their bad faith participation in the mediation, this case would have and should have been resolved at that time. Yet, Vivian's attorneys complain about the motion they forced Kirk to file.

14. It should be noted that none of the facts in Tahnee's, Whitney's, or Kirk's affidavits have been met by Vivian's attorneys. The sum and substance of all of her "friends" affidavits is that Vivian did things with Brooke and Rylee in public prior to 2009 and after mid-September of 2011. The notable exception being the perjurious statements of Heather Atkinson and Michelle Walker – one got a house and the other got lots of cash and a Mediterranean cruise. The submission of Exh. KK is an embarrassment. It contains the same misleading references that Vivian's attorneys submitted to the Court prior to the Court's determination of temporary custody. Incredulously, they even reference the statement of Lisbeth Castelan. She is the cleaning lady that came to the house each Wednesday, **after** Kirk had made Brooke and Rylee breakfast and taken them to school. However, Vivian's attorneys submitted a statement from Lizbeth, who speaks almost no English, describing all of the things that Vivian did with Brooke and Rylee before they went to school. *See* (Kirk's reply re custody, filed 1.4.12, p. 65, l. 13-28; p. 66, l. 1-27; 67, l. 1-7) Kirk's reply re custody has already addressed the issues in connection with each of the statements identified in Exh. KK and will not repeat it here. *See* (generally pages 63-78 of Kirk's reply re custody)

15 The findings of Vivian's own treating physicians – Dr. Duffy and Dr. Squitieri – have never been met as well. There is a reason Vivian's attorneys vigorously opposed an **independent** examination of Vivian.

**4. Drafts of Expert Reports are Not Discoverable, Let Alone Admissible – Drafts of Expert Reports Have No Evidentiary Value**

In Kirk's opposition and countermotion, Kirk addressed the fact that drafts of expert reports are not discoverable and, therefore, not maintaining a draft of an expert report on a computer is proper. More specifically Kirk wrote the following:

> Kirk did absolutely nothing improper when he deleted the draft he prepared for Dr. Roitman from his computer. FRCP 26(b)(4)(B) provides, "*Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded." **The standard of practice in state courts in Nevada is the same. The state courts in Nevada have consistently ruled that drafts of expert reports are not discoverable or admissible.**
>
> (Kirk's opposition and countermotions, filed 5.28.13, p. 81, l. 1-6) (Emphasis added.)

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Undaunted by the truth, Vivian's attorneys have continued their baseless attack on Kirk, writing, "Draft reports of an expert who is identified to appear at trial are discoverable under Nevada's rules." (Vivian's reply & opposition, filed 9.12.13, p. 12, l. 23-24) This assertion is simply wrong.

Thomas Biggar, Esq. was the Discovery Commissioner for the Eighth Judicial District Court for about 18 years – between 1988 until 2006. Attached hereto as Exhibit "**31**" is the affidavit of Thomas Biggar, Esq. In the third paragraph of this affidavit former Commissioner Biggar unequivocally states, "It is my recollection that during my tenure as Discovery Commissioner, I consistently ruled that drafts of expert reports were not discoverable." Obviously, Vivian's reliance upon Nev. Rules of Prof. Conduct 3.4 is misplaced, as drafts of an expert report are not evidence.

### E. Vivian's Attorneys' Argument That Kirk's Involvement In the Preparation Of Points and Authorities Is A Basis For An Award Of Fees Must Fail

As noted previously, there are only two bases upon which an award of attorneys fees can be made. First, if the action proceeds to judgment and there is a prevailing party. That did not happen here. Second, if there is an independent recognized basis for the award of attorneys fees. Absent an independent statute specifically authorizing the award of attorneys fees, then it can only be on the common law basis that the opposing party acted in bad faith by making frivolous allegations.

There is not an applicable independent specific statute which authorizes the award of attorneys' fees in this case. As noted in Kirk's opposition, NRS 125.150(3) permits such a motion to be filed, but does not provide that fees should be shifted without justification and without a legally recognized basis to do so. *See* (Kirk's opposition and countermotions, filed 5.28.13, p. 66, l. 5-28; p. 67, l. 1-4) Therefore, both Kirk and Vivian are relegated to arguing that the opposing party and/or their attorneys acted in bad faith by making frivolous allegations.

The fact that Kirk participated in the drafting of points and authorities does not constitute the requisite bad faith/frivolous conduct. Therefore, there is no recognized basis under Nevada law to award attorneys' fees to Vivian, and Vivian's attorneys cannot bootstrap an argument based upon "community efforts." If this were the law, as noted in Kirk's opposition and countermotions, then every party who did any work whatsoever on their case, such as preparing deposition questions, preparing responses to discovery, etc. would be subject to the same baseless argument.

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# UNNECESSARY

# PAGES OMITTED

# EXHIBIT 29

# Harrison v. Harrison

## Videotaped Deposition of Norton A. Roitman, MD

## April 27, 2012

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A. Yes.
Q. Not by Mr. Harrison?
A. We may have had a conversation. I don't have a distinct affirmative recollection of that one way or the other.
Q. When did you first learn how you -- how he had obtained your name?
A. When he met with me -- or maybe it was the preliminary phone call -- he told me he received my name from two people that -- that I was -- he thought I was credible.
Q. And did he tell you who those people were?
A. I thought it was Jim Jimmerson and Gar (phonetic) Jamison.
Q. You have a distinct recollection of that today?
A. I just don't know whether it was Mr. Harrison who told me that or another person who came to me for consultation. But I -- I'm pretty sure Jamison is -- was -- I'm almost positive Jamison referred me. Whether Jimmerson did or not, I'm not exactly sure.
Q. Okay. You have no recollection of speaking to Mr. Harrison before this first January 15th two-hour conversation?
A. No, but I couldn't refute it either. I just

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don't have a distinct memory one way or the other.
Q. We're going to come back to this. Has Mr. Standish or Mr. Harrison or Mr. Kainen told you that you're going to be asked to testify -- you will testify at trial in this case?
A. It's possible, is what I've been told.
Q. It's possible?
A. Yeah.
Q. They haven't said definitively one way or the other?
A. No. I don't have any time arranged. I don't have a request.
Q. Let's talk about your initial consultation with Mr. Harrison.
What time of the day?
A. I'll try to look it up if it's on my schedule. 1:00, 1:00 p.m.
Q. Okay. And it was a two-hour consultation?
A. Yes. Uh-huh.
Q. What did Mr. Harrison tell you?
A. Well, I'm left with impressions rather than details. He was really concerned about the changes his wife has undergone. He gave me many examples. And he was worried about the impact these changes would have on his children. He was seeking an

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explanation for the purpose of -- once he knew what was wrong, he would be able to help out and do something about it.
The -- I asked him early on -- because it's important -- whether he -- if the problems were so great he thought that they would be separating. And he indicated that he was dedicated to the marriage, at least for the sake of the children, and would very much like to have a good relationship back with his wife as well.
He's loquacious. And so a lot of -- of what he talked about were almost like at some emotional distance, describing events and circumstances, sometimes with worry, sometimes with slight degrees of anger. He had foundations for the things that he discussed with me, reasons and examples. So -- as opposed to a spouse that comes to me bereft and disorganized and not knowing what to do, he struck me more as a problem solver.
Am I giving a speech?
Q. No. I asked you to list what it is he told you, and you're doing that.
A. Okay. Now, the -- I was trying to organize the task that he was asking me for during this session in my mind, because oftentimes when people come for

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consultations, it's not to review materials, but it's to just talk one on one. And most of the time it's about a person's own issues and problems, not about someone else. But I would -- I thought that the agenda that he had and the method that he had for me to use, which was to look over the material, was reasonable and that it was within my scope and my experience. And so I took upon myself the agreement to read through it. I thought it would take about 10 hours to do so.
I asked if he wanted me to give him a written report when it was finished, which -- not that I recommended it, but it's always an option. And he said he just wanted to talk about it.
Q. Okay. So, he spent two hours with you?
A. Uh-huh.
Q. Talking the entire time?
A. Yes.
Q. Okay. And then he gave you a 38-page document to read?
A. Yes.
Q. Did -- did you read the document?
A. Thoroughly, yes.
Q. Thoroughly. All right. And when you read the document, was there any discrepancies between what you

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Co-counsel for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: October 30, 2013<br>Time of Hearing: 10:00 a.m. |

**PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF**
**AND**
**PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTIONS TO RESOLVE PARENT/CHILD ISSUES, TO CONTINUE HEARING ON CUSTODY ISSUES, FOR AN INTERVIEW OF THE MINOR CHILDREN, AND FOR ATTORNEY'S FEES AND SANCTIONS**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URGA, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby submits his Reply

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to Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues and Other Equitable Relief and his Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and for Attorney's fees and Sanctions.

DATED this 23rd day of October, 2013.

KAINEN LAW GROUP, PLC

By: _____
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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The opposing arguments and positions regarding the subject "teenage discretion" provision can best be summarized as follows:

| Kirk's Position | Vivian's Position |
|---|---|
| Wants status quo of stability and continuity to be maintained | Wants to disrupt status quo and thus create instability and discontinuity |
| Wants Brooke and Rylee to stay together for the next 4 years | Wants to separate Brooke and Rylee for the next 4 years and/or wants to cause so much emotional pain to Rylee in the hope of an outcome that will order Rylee living full time with Vivian regardless of the damage to Rylee in doing so |
| Does not want Brooke pressured into making a choice between her parents | Has been manipulating Brooke for many months in order to get Brooke to make a choice |
| Does not want Rylee to feel left behind, insecure, and distraught | Has displayed no hesitation whatsoever in creating a scenario where Rylee will feel left behind, insecure, and distraught |
| Kirk is a good, loving, and caring father | Kirk heaps pressure and ridicule upon Brooke and their home has "open conflict" |
| There is a well documented detailed history of Vivian manipulating these children | Tahnee, Whitney and Kirk are all lying; Vivian has always been an attentive involved mother; Vivian misspoke to Dr. Duffy when he noted "there is considerable ambivalence about her relationship with . . .her older children" |
| There is no evidence of Kirk ever coldly manipulating these children | There are some quotes from one of Kirk's affidavits indicating he has manipulated somebody |
| The subject provision, as applied, is contrary to the best interests of Brooke and Rylee | GOTCHA! Kirk agreed to the subject provision so it doesn't matter that, as applied, it is contrary to the best interests of Brooke and Rylee, or that Vivian doesn't abide by key provisions |
| The subject provision violates state policy set forth in NRS 125.460 "To encourage such parents to share the rights and responsibilities of child rearing" | Subject provision cannot be contrary to state policy because it merely "recognizes" that Court should consider input from certain minors under NRS 125.480(4)(a) |

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A.App. 1176

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| Vivian's knowing violation of the explicit safeguards of this provision has undermined any chance of it being reasonably implemented, and; the continued existence of this provision will, undoubtedly, result in Vivian unduly subjecting Brooke and Rylee to needless emotional manipulation and distress | Brooke must have coincidentally conjured "her rights" and "teenage discretion" on her own at the same time as her 14th birthday. |
| Brooke was with Vivian for 21 straight days and the very next day announced to Kirk and Whitney that she now had the right to decide where she lives | Brooke must have coincidentally conjured "her rights" and "teenage discretion" on her own at the same time as her 14th birthday. |
| Brooke was then with Vivian for 14 straight days and within one day of her return to Kirk, crying and distraught, announced she wanted to live full time with Vivian | Brooke coming up with all of this by herself is just a coincidence |
| In spite of everything Vivian has done, Kirk, naively, did not anticipate that Vivian would try to separate Brooke and Rylee | Vivian believes "girls are supposed to be with their mommies" |

Vivian denies that she manipulated or prompted Brooke to leave Kirk and Rylee or caused Brooke to announce her desire to live with Vivian full time, thus leaving her little sister for one-half the time. In response to an email from Kirk where he accused Vivian of manipulating Brooke to live with her full time, Vivian wrote,

> "Brooke is telling you she wants to live with me . . .???? Hmmm, Interesting. . . . Will speak to her and discuss options with Radford. Thanks for letting me know!" (Vivian's email, dated 8.14.13)

The facts are otherwise. Brooke's two announcements were immediately following her 14th birthday and right upon her return from two extended time periods with Vivian. Those are not coincidences.

To find additional circumstantial evidence that this did occur, one needs to look no further than the affidavit of Vivian's own attorney. Exhibit S to Vivian's opposition to Kirk's countermotions regarding attorneys' fees is the affidavit of Gary R. Silverman, Esq. This "affidavit" provides insight as to what Vivian was being advised relative to the "teenage discretion" provision. Mr. Silverman wrote,

> "Mr. Harrison must know that the "teen" exception in the custody agreement **will be exploited by the girls and it is Vivian who will have de facto primary custody**."
> (Exh. S to Vivian's opposition to Kirk's countermotions re attorneys' fees, p. 9, l. 16-17) (emphasis added).

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Kirk respectfully submits that the best interests of Brooke and Rylee should trump selfish gamesmanship, the only goal of which is to "win."

After years of Vivian emotionally and physically abandoning Brooke and Rylee, Vivian now wants this Court to reward her based upon baseless allegations that Kirk is pressuring and ridiculing Brooke and has an environment in his home that is full of conflict. Kirk has never pressured or ridiculed Brooke. The only issues Kirk has had with Brooke are refusing to go to Lagoon after driving to Layton, Utah and making Kirk wait outside Vivian's house in the car for 20 to 34 minutes (when it should have taken less than 5 minutes) when she picks up her things. Interestingly, both events directly involved Vivian either physically being with Brooke, or in direct electronic communication with Brooke. Vivian has orchestrated both problems. The home that Kirk, Brooke and Rylee share is loving, caring, peaceful, calm, happy, and civil. The documented events which have historically occurred with Vivian, such as drug abuse, volatility, instability, deceitfulness, lying, screaming, swearing, threatening, hitting, throwing, criticizing, and blaming, do not occur in Kirk's home.

It should be noted that the bulk of Vivian's opposition entirely misses the mark of Kirk's motion. Kirk's chief concern is that Vivian has failed to abide by the express terms of the "Teenage Discretion" provision to such an extent that, as applied, Vivian has rendered it completely unworkable. Her defying specific terms has resulted in the exact opposite effect of the one intended by the parties in negotiations. It is also most interesting, that while Vivian tells tales criticizing Brooke's relationship with Kirk, she does not ever deny violating the terms of the existing provision. Rather, for 25 pages, she simply argues all the reasons such a "decision" is justified. Vivian also seems to have the same misinterpretation of the provision that Brooke does - the provision does not entitle any child to make a choice as to residence, but suggests the parents should consider the wishes of the child when not influenced by the other parent as to short periods of time. The confusion by both Brooke and Vivian, must also be a coincidence, according to Vivian.

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## II. ARGUMENT

### A. The Goal of the Court's Orders Must Be To Further the Best Interests of The Minor Children By Providing Stability and Continuity in Their Lives

The uncertainty about the future for minor children is one of the primary issues associated with divorce litigation, particularly protracted litigation. Practitioners know that such ongoing litigation takes a toll on children, as does the instability of not knowing where they are going to be living or with whom from day to day. There is a reason that children are never asked to choose between their parents. At most, the Court considers the wishes of a mature child who is making reasonable preferences under appropriate circumstance, as one a multitude of factors. That is our statutory scheme; not the wholesale delegation of choice to children as advocated by Vivian. It is not in Brooke's best interest to foist the responsibility upon her to "choose" which parent she wants to live with more than the other parent at a particular point in time. Such a decision would force Brooke to choose between living with Rylee all of the time or leaving Rylee to spend more time with one parent than the other. Such a scenario cannot be good for either child. Most importantly though, Vivian sharing her gross misunderstanding of "teenage discretion" with Brooke, and then sending Brooke out to follow marching orders, immediately following her 14th birthday, was not fair or reasonable to Brooke. As well, arguing for 25 pages that the ends justify the means, is not legally defensible to the issue before the Court.

It is contrary to Brooke's and Rylee's best interest to have a provision which motivates either parent to lobby the children to live with one more than the other. This is especially true where there is a well documented history of Vivian engaging in conduct toward alienating Kirk from Brooke and Rylee. That is why there was an express provision prohibiting the same. Any arrangement that encourages a parent to do what is most popular with the children, as opposed to what is best for the children, is not in their best interests. An arrangement which encourages both parents to consistently do what is in the best interests of the children, regardless of whether it is the most popular decision, is much preferred to an arrangement which motivates the parents to curry favor with them.

From the outset, the functionality of this provision was speculative at best, especially given the dysfunctional relationship between the parents. Accordingly, specific provisions and safeguards were put in place, by which both parties agreed to be bound. Without those safeguards in place there would

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have been no agreement for "teenage discretion", and without the parties abiding by those safeguards there can be no "teenage discretion." The fact is, that Vivian has entirely ignored the written order, but likes that it is called "teenage discretion", so she attaches her own meaning and interpretation to that term (a misinterpretation Brooke coincidentally shares); to her the written words mean nothing. To her the mere existence of "teenage discretion" means that "Brooke has the discretion to choose, and Brooke chooses me."

The status quo is joint custody between Kirk and Vivian. Since the entry of this Court's Order on July 11, 2012, custody has been shared essentially on an equal basis.[1] Vivian now wants to disrupt the stability and continuity in Brooke's and Rylee's lives. Without the "teenage discretion" provision, Vivian would be relegated to litigation and be, rightfully, confronted with the Court's "desire to provide children with stability and continuity in their lives, and to discourage endless litigation and re-litigation of custody issues. . ." Nevada Family Law Practice Manual, 2013 Edition. Ch. 2B.E(a). With the "teenage discretion" provision, Vivian is attempting to obtain the same result. However, Vivian should still be confronted with the same desire of the Court "to provide children with stability and continuity in their lives" and therefore the Court should be unwilling to modify the joint custody status quo unless it is clearly in the children's best interests. NRS 125.510(2).

Kirk wants to maintain the stability and continuity in Brooke's and Rylee's lives and therefore maintain the status quo of equal shared custody under the existing plan. Prior to Vivian's vacations with Brooke and Rylee this summer there really had been no problems. It is in the best interests of Brooke and Rylee to modify the order to eliminate the "teenage discretion" provision. *Truax v. Truax*, 110 Nev. 437, 874 P.2d 10 (1994).

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[1] In actuality, Kirk was given more time by the Court's Temporary Order, but agreed to equalize the time as part of the final negotiations.

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### B. The Well Established Pattern of Conduct of Making False Factual Assertions and Then Making Arguments Based Upon Those Misrepresentations, Continues

#### 1. Vivian Has Been "Working" Brooke Since The Filing Of The Motion and Countermotion For Temporary Custody in This Case

Vivian represents to the Court, "In March 2012, when the Court directed the parties share joint physical custody, the children spent the majority of their time in Vivian's care. (Vivian's opposition, p. 2, l. 11-13) The temporary custody order of this Court was followed. Therefore, the fact is that the children spent the majority of their time in Kirk's care, as specified in the Temporary Orders. The reference indicated in Vivian's papers referred to the time period *prior* to this Court's order; it refers to the time period when Vivian was **taking** Brooke and Rylee away from Kirk and parking them at the Atkinsons, many times when Vivian was not even there. This issue and Vivian's overt acts of trying to alienate Kirk from Brooke and Rylee were addressed in detail in a letter, dated February 3, 2012, from Ed Kainen, Esq. to Radford Smith, Esq., attached hereto as **Exhibit "2"**, which provides in relevant part:

> For several weeks, Vivian has had Brooke and Rylee spending more time at the Atkinson home than they do in their own home. Sometimes Vivian is also there and many times she is not. Kirk strongly believes Vivian is intentionally trying to minimize the time Kirk has with Brooke and Rylee. Kirk got an email from Vivian last night that she and the girls are going to be spending Valentine's Day dinner with someone else. This type of pre-emptive behavior by Vivian has become all too common.
>
> Kirk has also informed me that it is apparent Vivian has been working Brooke and Rylee a lot. Kirk has noticed significant changes in Brooke's attitude towards him during the last several months. On Thursday afternoon, January 27, Kirk was sitting on the couch in the living room and asked Rylee to sit with him and snuggle. Rylee responded, "I'm not supposed to snuggle you anymore dad."

(Exh. 2, p. 3 & 4)

Consistently, in Kirk's reply re custody, filed 1.4.12, it was noted, "Currently, Vivian takes Brooke and Rylee to the Atkinsons to play and to sleep over night at every opportunity." (p. 40, l. 12) This was the period immediately prior to the Court's Temporary Orders, and Vivian was trying to gain a custodial advantage by unilaterally separating Kirk from the children and securing them in a place to which Kirk had no access. The Court rightfully rejected those efforts. Kirk respectfully urges the Court to read pages 2 through 4 of this letter, as this letter provides tremendous insight as to Vivian's intentional manipulations of Brooke and Rylee in connection with their relationship with Kirk.

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**2. The Absence of This Teenage Discretion Provision Is The Best Way To Avoid Litigation and Obviate the Need To Seek A Resolution**

Vivian's assertions are patently and intellectually offensive;

> "The parties' counsel drafted the provision to place *less* pressure on the children to make any choice between parents by allowing the children a voice, after age 14, to spend more time with one parent without undermining the joint custodial plan. The fundamental goal of the provision was to avoid litigation, and seek resolution through therapy and a Parenting Coordinator."

First, and most importantly, if Vivian understands that the children will spend one-half their time with Vivian and one-half their time with Kirk, **and** that is not going to change, then Vivian will not be as motivated to continue her manipulation of the children (at least to the extent she has been), Vivian will have less reason to try to alienate these children from Kirk, and Vivian might realize it is not in the childrens' best interests, it is not a popularity contest and the priority is to do what is best for the children, rather than buying their loyalty. Second, without the "teenage discretion" provision there will be substantially reduced need for a parenting coordinator. If Brooke and Rylee are not put through the ringer by Vivian, and they have consistent equal parenting time with each parent, they will have what each party claims was intended. Third, the assertion that the "teenage discretion" provision was to avoid litigation" is nonsensical. It is insulting to assert that the fundamental goal of a provision like this was to avoid litigation. Clearly, the absence of the "teenage discretion" provision and the strong message from the Court that the time share is not going to change, absent a legitimate basis to do so, is the best way to avoid litigation and obviate the need to "seek resolution." Fourth, to assert this provision does not undermine the joint custodial plan is absurd.

**3. The Absence of the Teenage Discretion Provision Will Significantly Minimize the Need for a Parenting Coordinator**

Kirk did not make a "tactical delay" in identifying a therapist or parenting coordinator. The delay was caused by Radford Smith when he proposed a Parenting Coordinator Order which, among other things, unconstitutionally delegated complete judicial authority to a Parenting Coordinator, contrary to the understanding of the parties. Counsel for Kirk enumerated the objections in a letter to Mr. Smith on May 9, 2003.

Kirk agrees with the assertion that "the pressure to spend more time with Vivian is building." (Vivian's opposition, p. 3, l. 9-10) That pressure is being applied by Vivian upon Brooke!

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There is no debate that the most effective and influential, and therefore most powerful, person in the resolution of disputes is a mediator. A mediator has the power to recommend – nothing more. Discovery Commissioners in the Eighth Judicial District have the power to recommend. Federal Magistrates have the power to recommend. However, Kirk's assertion that the Parenting Coordinator should, similarly, have the power to recommend and not the judicial authority to decide, is described by Vivian as "his attempt to reduce the power of the Parenting Coordinator to nothing." (Vivian's opposition, p. 3, l. 15)

Vivian accuses Kirk of entering into the Parenting Plan in "bad faith." Kirk respectfully submits in light of the statement from Mr. Silverman, if anyone entered into the Parenting Plan in "bad faith" it was Vivian and Vivian's counsel, who have apparently knowingly devised a plan to separate Brooke and Rylee from one another for one-half the time for the next 4 years. What is their retort to that fact acknowledged by Mr. Silverman? Perhaps, the second part of the plan is that Rylee will be so sad that she is separated from Brooke, that they hope the therapist will recommend, and the parenting coordinator will **order**, that Vivian has Rylee full time before she is 14 years old. In any case, whatever the goal, it appears that the manipulation of the children will continue and nothing being done removes them from the ongoing conflict or makes their best interests a priority.

From the inception of this case, Kirk has accepted that Vivian's attorneys have frivolously attempted to impugn his character in their ever vigilant attempt to make him the "bad guy." As horrendous as all of that has been, it seems to pale next to what they have planned with regard to Brooke and Rylee.

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### 4. Despite the Contrary Allegations, This "Teenage Discretion" Provision is a Far Cry From NRS 125.480(4)(a)

NRS 125.480(4)(a) provides that the Court shall consider "the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody." This statute merely provides that the Court should **consider** the wishes of certain minor children.

This statute does not provide the Court must do what the child wants. This statute does not provide the Court must ignore the known history of abuse and neglect of one parent in making its determination. This statute does not provide the Court is required to separate minor children from one

another. The mere existence of this statute does not provide attorneys the license to devise and construct agreements apparently meant for one parent to create or perpetuate an environment of manipulation of minor children which is clearly not in their best interests. The statute is not intended to be used to replace stability and continuity, with instability and discontinuity.

In one of her most bold misrepresentations of Kirk's argument, Vivian asserts, "He argues that a provision recognizing teenage discretion violates public policy even though Nevada law ***requires*** the court to weigh such discretion when determining the best interest of a child." (Vivian's opposition, p. 3, l. 13-14) First, and most obvious, Kirk does not argue that a provision which merely ***recognizes*** the preferences of certain children violates public policy. It is safe to say that the "teenage discretion" advocated by Vivian does a whole lot more than merely recognize preferences of certain children. That "teenage discretion" provision clearly is contrary to the Nevada policy of encouraging parents "to share the rights and responsibilities of child rearing." NRS 125.460 Further, the "teenage discretion" in this case, *as applied*, is what is problematic.

This Court had occasion in this proceeding to articulate its sentiments concerning provisions granting a right of first refusal. The Court may recall that Kirk requested a right of first refusal during the hearing before this Court on February 24, 2012. The Court denied Kirk's request stating, "I don't typically like rights of first refusal." (2.24.12 Hearing Transcript, p. 71, l. 19-24) The Court later stated the reason it does not like rights of first refusal:

> I don't generally believe in – well, not that it's a belief, but I think it creates more problems than it's worth, so I don't typically award rights of first refusal except if it's an overnight due to unavailability of a parent.

(2.24.12 Hearing Transcript, p. 71, l. 19-24)

This Court made it clear that it believes that right of first refusal provisions create more problems than they are worth. Presumably, it is because when you have parents who do not get along and do not communicate civilly or effectively, the right of first refusal provision creates more problems and conflict. Additionally, the door is opened to claims of abuse, that are often fraught with conflict and "he said / she said". All of the same is true with respect to a "teenage discretion" provision when the parents do not get along, do not communicate civilly or effectively, and most importantly do not abide by specific safeguards to prevent the enmeshing of the children in the conflict of the parents. Such a

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provision is not in the best interests of the children and creates more conflict between the parents and thus more of a hostile unsettled environment for the children.

**5. Kirk's Relationship With Brooke Is Not Strained and Conflicted and Kirk Does Not Heap Pressure and Ridicule Upon Brooke**

For many years, Kirk was the only parent that cared for Brooke and Rylee on a regular basis. For all the years that Vivian did not care for them and chose not to spend time with them, Kirk was there every day on a consistent basis. The history of absenteeism and abandonment is documented, and even Vivian acknowledged the same issues to her own doctors about her issues with the older children. Despite Vivian's revisionist claims, this issue isn't even fairly in dispute. Other than the rather costly perjurious statements from Heather Atkinson and Michell Walker, no one has ever said that Kirk was anything other than a dedicated, attentive and caring father. Tahnee and Whitney know better than anyone else how good a father Kirk has been to Brooke and Rylee. Kirk urges the Court to reread their affidavits – affidavits they each spent over two hours revising to make them their own. (Exh. 2 & 3 to Kirk's motion re custody, filed 9.14.11) The Court will recall that the neighbors, other parents, and the crossing guard all testified that Kirk, not Vivian, drove Brooke and Rylee to and from school, dance classes, sports practices and activities. It was only Kirk, not Vivian, that consistently attended their sporting events for several years. (Kirk's reply re custody, filed 1.4.12, Exh. 22, 23 & 24)[2] It still remains interesting that prior to Vivian's self-created competition with Kirk to "win" Brooke and Rylee and prior to Vivian's now-continuing efforts to alienate Kirk from Brooke and Rylee, Vivian had a different view of Kirk as a parent:

> Would never DREAM of doing that to the father of my children. My children luv him and he is a descent human being and loves his children. **He is a good father**. Although we may not see things eye to eye I would never never never do anything to hurt one of the most important persons in my childrens lives for anything!!!

---

[2] Kirk respectfully requests the Court take another look at the photographs attached as Exh. 4 to Kirk's motion re custody, filed 9.14.11 and Exh. 18 to Kirk's reply re custody, filed 1.4.12, as a reminder of what Vivian was doing much of the time that Kirk was a dedicated and attentive parent to Brooke and Rylee. For a significant period of time during 2010, Vivian spent more waking hours with the stuffed animal "Hugo" than she did with Brooke and Rylee.

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(Email from Vivian to Robert W. Lueck and copied to Bob Dickerson, Marvin Gawryn, Melissa Attanasio, Tom Standish and Kirk, dated 7.15.11, attached hereto as **Exhibit "3"**)

Kirk's dedication, love and care of Brooke and Rylee has never changed. It certainly hasn't changed while under the microscope of this litigation. He is still a good father. What has changed is that Vivian went from being a parent who largely abandoned Brooke and Rylee, to a parent determined to win her self-created competition with Kirk, and who has been attempting to alienate Kirk from Brooke and Rylee for the last two years since the filing of Kirk's motion re custody on September 14, 2011.

In spite of Vivian's persistent efforts to alienate Brooke and Rylee from Kirk, and despite the fact that Vivian's efforts have made some days more difficult that they otherwise would have been, the relationship between Kirk and Brooke and Rylee remains one of love and care. Brooke, Rylee and Kirk all enjoy each other's company. As they always have done, they enjoy eating their meals together. They still do fun things together.

As stated, there is no question, that as a consequence of Vivian's efforts to alienate Kirk from Brooke and Rylee, there are days, especially the first day Kirk gets Brooke and Rylee after being with Vivian, that Brooke and Rylee are more distant from Kirk than they were in the past. That is heart wrenching for Kirk. However, the scenario described by Vivian (on page 4, l. 1-10 of Vivian's opposition) does not exist. Kirk does not and never has heaped "pressure and ridicule" upon Brooke. It is impossible to respond to such obscure allegations such as "Kirk's actions and words show he lacks insight into the emotional and physical needs of the children."

Vivian asserts that Kirk "acknowledges there is open conflict with her in his home." (Vivian's opposition, p. 4, l. 13-14) That is false. There is no open conflict in Kirk's, Brooke's and Rylee's home. As compared to the volatile, unstable, screaming, swearing, hitting, throwing, accusatory, arguing, finger pointing environment that Vivian created with the children when Kirk was still with her, his home with Brooke and Rylee is like a peaceful, but happy monastery. Although Vivian has perhaps forgotten, the Court undoubtedly has not forgotten, it was Vivian who punched each of the older children in the head, it was Vivian who got Tahnee on the ground and kicked her repeatedly in the abdomen, and it was Vivian who hit Kirk in the face, which fact was memorialized by the Boulder City

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Police Department. It was Vivian who one-by-one threw each of the older children out of their home when they were each 14 and 15 years old..

Vivian requests an evidentiary hearing on custody. While Kirk assumes that the Court is not inclined to conduct such a hearing, if an evidentiary hearing is the Court's inclination, Kirk's believes the most enlightening witnesses as to what actually went on in the Harrison home, behind doors closed to the public, will be Tahnee and Whitney.

Vivian also requests child interviews of the minor children. While Kirk continues to believe that involving the children in their parents' dispute is not in their best interest, and that the words spoken by any child may not always reflect the entirety of what is going on in any case, he will defer to the Court. However, to the extent that the Court chooses to interview the minor children, Kirk requests that the Court also interview Tahnee and Whitney, who grew up in the same home with the same parents, lived in the home with the minor children and the parents throughout the disputed critical times, and have the benefit of adulthood and added maturity. Their insight into the full picture of each of the parents and the best interests of their sisters would be invaluable.

### C. Kirk Respectfully Submits that Vivian Should Not Be Rewarded For Her Misconduct, Especially When It Is Not In Brooke's And Rylee's Best Interest To Change the Status Quo

#### 1. Vivian Has Manipulated Brooke and Rylee To Such An Extent That They Believe That The Shared Experiences They Had With Kirk In Purchasing Dance Clothes and Dance Shoes Never Occurred

From the beginning of this case Vivian has attempted to rewrite history, and when that history is incapable of rewriting, she has employed "hired guns" to explain it away. Regardless of the fact that half of her rewritten claims are at odds with the other half, her claims and theories are only limited by imagination. While the Court has the benefit of the written record and the evidence, the children do not. In addition, when they are only being lobbied by one parent, they are fat more susceptible to buying into Vivian's revisionist reality.

In this regard, as a result of the continuous campaign involving Brooke and Rylee, in a most insidious way, Vivian has begun to change the childrens' reality and has now convinced Brooke and Rylee that Kirk has never bought them dance clothes and dance shoes. This is despite the fact Brooke and Rylee were with Kirk every time he made those purchases. The fact that Vivian has been able to

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successfully convince them that these shared experiences with Kirk *never occurred* gives insight, by just this one example, as to the extent of Vivian's extreme manipulation of these girls.

Kirk has taken Brooke and Rylee to buy them dance shoes, leotards, tights, and dance clothes for dance classes. *See* Exh. 1 to motion. In spite of these facts, Vivian asserts:

> Vivian did not, as Kirk suggests at page 6 of his Motion, "convince" Brooke that she should go with Vivian to buy dance shoes – **this had been their practice for the entire time Brooke and Rylee have been in dance**. Brooke told Vivian that she wanted Vivian to take her shopping. This did not come as a surprise; Vivian cannot remember **a single instance where Kirk bought dance clothes and shoes for he children while Vivian and Kirk were together**.
>
> Kirk admits that he argued with the girls when they told him that they could not remember him buying dance shoes or clothes for them in the past. Motion, page 7. Because Kirk's involvement in dance has been limited to driving the children, he does not understand that the children do not equate the purchasing of leotards at Target with **the purchase of dance clothes and shoes, which they purchase from a specialty store**. Kirk has attempted to create a new reality whereby he was involved in the purchase of dance clothes for the children – he was not, and he was not justified in chiding Brooke for spending time shopping with Vivian.
>
> (Vivian's opposition, p. 14, l. 26-27; p. 15, l. 1-12)

Based on the forgoing assertions by each party, only one of the two assertions can be true. The Court will not lose site of the fact that, despite her repeated claims *to the children* that Kirk had no involvement in dance purchases (to the point that the children now repeat that statement to him *as fact*), in her most recent pleading Vivian seems to impliedly acknowledge regular dance purchases by Kirk, but has narrowed her claims to this Court to purchases "at specialty stores". Either Kirk is right, and he has purchased dance clothes and shoes "at specialty stores", or Vivian is right that Kirk has not purchased dance clothes and shoes "at specialty stores".

Vivian cites the absence of "a single instance where Kirk bought dance clothes and shoes for the children while Vivian and Kirk were together." According to Vivian, Kirk has only bought leotards at Target and Kirk just doesn't understand that you purchase dance clothes and shoes "from a specialty store." Vivian also asserts,

> "**Kirk has attempted to create a new reality** whereby he was involved in the purchase of dance clothes for the children – **he was not**, and he was not justified in chiding Brooke for spending time shopping with Vivian." (Vivian's opp., p. 15, l. 9-12) (emphasis added)

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None of these outrageous assertions of fact has any truth to them whatsoever.[3]

Kirk did not buy leotards from Target. Kirk has bought athletic clothes, tops and bottoms, and sports bras for Brooke and Rylee at Target, Nordstrom Rack and Scheels for use in dance classes. Kirk has bought leotards, tights, ballet shoes, tap shoes and other dance shoes at dance specialty stores. Kirk bought Brooke a pair of dance shoes at the store in Boulder City before it closed. The dance store next to Trader Joe's in Henderson is called, "Judy's Dance Shoppe." The ownership of this store changed within the last year or so. The prior name of the store was, "LV Dance Shoppe." Kirk has taken Brooke and Rylee to buy both Brooke and Rylee dance shoes and clothes at that "specialty" store. Rylee had a growth spurt and sometime later Kirk went back to the same store with Rylee and bought Rylee two new leotards and Brooke another pair of dance shoes.

Each year, Kirk takes his children, including Brooke and Rylee, to see one or two plays at Tuachan, near St. George, Utah. On one such trip Kirk learned there was a dance store ("specialty store") in St. George, that sold the same dance clothes and dance shoes as LV Dance Shoppe, but at considerably lower prices. The big name in dance clothes, particularly leotards, dance shoes and ballet shoes is called "Bloch." The reason Kirk knows he has never bought leotards at Target is because Target does not sell "Bloch" leotards. This store carried a full line of "Bloch" products. The name of the "specialty store" in St. George is "Dance Magic". Kirk was able to locate evidence that on July 31, 2009, Kirk, **with Brooke and Rylee**, bought Brooke and Rylee, $323.96 worth of dance clothes and dance shoes from the specialty store, Dance Magic in St. George, Utah. Attached hereto as **Exhibit "4"**

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[3] It should also be emphasized that Kirk never "chided" Brooke or scolded her in any way. Kirk simply asked why he couldn't take her to get the dance shoes. When Brooke responded that Vivian had always taken her, Kirk said that was simply not true. Kirk also said that if your mom wanted to take you to get dance shoes, he could not understand why she couldn't have taken Brooke during her custodial time.

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is a true and correct copy of Kirk's – not Vivian's – CitiCard, for the period of July 9 through August 7, 2009, evidencing this purchase at Dance Magic.[4] Vivian has not gone on the family trips to Tuachan for several years, so it is doubtful she was there.

Once again, as it has done throughout this case, *the evidence demonstrates the truth, despite Vivian's contrary allegations*. The truth is clear, even despite Vivian convincing the children that these events never occurred, and despite Vivian asserting to this Court that they did not. More to the point though, the foregoing illustrates the insidiousness of the type of manipulation being employed by Vivian upon Brooke and Rylee. Vivian has convinced them that experiences they have shared with Kirk, such as Kirk taking them to buy the dance clothes and dance shoes they needed, *never even occurred*. With this type of manipulation Vivian not only falsely minimizes Kirk's involvement with the girls, but falsely overstates Vivian's involvement with the girls. It is yet another instance, where Vivian has intentionally and knowingly misrepresented material facts to this Court in an effort to falsely accuse Kirk of "attempting to create a new reality" and, thus once again, make Kirk the "bad guy." Kirk simply uses this as another occasion to remind the Court that the claims he has made have been consistent and supported by evidence, while the claims Vivian has made have wildly varied and are not supportable by actual evidence.

Finally, Kirk would note that he did not argue with Brooke and Rylee when they said he had never taken them to get dance clothes and shoes. Kirk expressed surprise and indicated that there was no question that he had taken them on multiple occasions.

### 2. Despite Vivian Not Helping Brooke and Rylee With Their Homework For Years, Vivian Has Convinced Brooke and Rylee That She Always Has

Vivian's ability to consistently manipulate Brooke and Rylee to the point that she re-writes history has been applied in several contexts. Vivian also has them believing that she has always helped them with their homework.

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[4] Most of the bankers boxes containing cancelled checks and credit card statements are in storage at the ranch. Therefore, in the limited time available, Kirk has been unable to find the cancelled check or credit card statement to Danceworks and the credit card statements evidencing his purchases of dance clothes and dance shoes, primarily Bloch brand, at LV Dance Shoppe. If Kirk is able to go to the ranch and find those documents between now and the hearing, he will supplement this Reply.

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Vivian accuses Kirk of "bad faith" in his assertions that Vivian stopped helping Brooke and Rylee with their homework. In order to make this claim Vivian deliberately misrepresents the record. The Court is urged to read Vivian's opposition, page 10, lines 20-28 and page 11, lines 1-4. Vivian points to a single sentence in Kirk's letter of January 4, 2010, to Dr. Roitman which she claims is inconsistent with Kirk's claim. She cites the sentence, "And **as written previously**, she **has** always done a good job spending time with the children with their homework and reading before bedtime." (Kirk's reply, 1.4.12, Exh. 9, p. 15) (emphasis added by Kirk) The reference to "as written previously" refers to page 7 of the same letter, wherein Kirk wrote, "Vivian worked with two of our three **oldest children** each night **helping them with homework** and reading with them." (emphasis added)

In context, this is very clear. However, despite this undeniable fact, Vivian goes on to represent to the Court, "Kirk did not qualify this to limit it only to the older children, nor did he allege anywhere that Vivian was not helping the younger children." This is inaccurate and nothing more than utter nonsense! There seem to be no bounds to the liberties Vivian and Vivian's attorneys will take to mislead this Court.

These are the true facts:

With regard to the statements of **Tahnee**:

> "My mother. . .**consistently exhibits a lack of any thought whatsoever about whether Brooke and Rylee have had dinner or have done their homework**, rarely does anything with Brooke and Rylee, rarely does anything for Brooke and Rylee, and has repeatedly left Brooke and Rylee for extended periods of time without any regard whatsoever for their best interests. I have witnessed the ill-effects my mother's conduct has had upon Brooke in particular."

(Kirk's motion re custody, Exh. 2, ¶39) (emphasis added)

> My dad takes good care of Brooke and Rylee on a daily basis. He makes them a complete hot breakfast every school day morning and makes sure they always have a good dinner meal. **He helps them with their homework whenever they need help.** He takes them to and from school, to and from dance classes, and to and from any sports activities. My dad, Brooke and Rylee do their laundry together, when my mother is away on her many trips. He makes sure Brooke and Rylee take regular showers during the week and brush their teeth every night. He takes them shopping and to children's movies on a regular basis. He takes Brooke and Rylee to the ranch with their friends for fun weekends. When my dad has to be out of town, he calls every day he is gone and talks to Brooke and Rylee so they know he cares about them and to make sure Brooke and Rylee have done their homework, have eaten dinner, and are going to bed on time. He is attentive, and Brooke and Rylee know he cares deeply about them and that they are loved by him.

(Kirk's motion re custody, Exh. 2, ¶41) (emphasis added)

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With regard to statements of **Whitney**:

"I told my Dad that my Mother will only do things where she thinks she will be given credit. For example, she will spend more time after class helping students other (sic) [rather] than Brooke and Rylee with their homework."

(Kirk's motion re custody, filed 9.14.11, Exh. 3, ¶17)

My Mother spends most of her waking hours by herself in the home office with the door closed. When you go in there she is usually on the internet shopping, reading, or watching a dvd with Jonathan Rhys Meyers. My Mother rarely cooks a meal for Brooke and Rylee. My Mother rarely cleans the kitchen. My Mother seldom does anything with Brooke and Rylee other than sleep in the same bed. My Mother seldom takes Brooke and Rylee anywhere or wants to do anything with them. **My Mother normally doesn't help Brooke and Rylee with their homework**. In conversations with my Mother the topics are usually about her – something she is buying, some cosmetic procedure, something about fashion, or something about Jonathan Rhys Meyers or the Hope Foundation. Almost every conversation with my Mother is about her. My Mother seldom talks about Brooke or Rylee or asks about my life or what I'm doing. When my Mother is home she doesn't do the laundry more than about once a month. On those days when my Dad goes to the ranch to work, there have been a number of times when my Mother doesn't get or make Brooke and Rylee dinner. My Mother is oblivious to Brooke and Rylee's needs most of the time. I don't think she is a good influence morally or shows them good character. She is obsessed with appearance and it is her practice of telling her children that they have physical defects.

(Kirk's motion re custody, filed 9.14.11, Exh. 3, ¶26)

As noted previously, Vivian's calculated manipulation started early in the litigation. At the outset of this litigation when Rylee was only nine years old and Kirk asked her to sit next to him on the couch, Rylee responded, "I'm not supposed to snuggle you anymore dad." Vivian has also convinced Brooke, and perhaps Rylee as well, that "girls are supposed to live with their mommies" - a theme that permeates her most recent pleading Suffice it to say, this type of calculated manipulation is clearly not in their best interests. As well, any provision that encourages, and perhaps rewards, that manipulation, is not in the childrens' best interests.

Since Kirk is not a party to the conversations which occur in Vivian's home when the girls stop by to pickup an item, he is unable to enlighten the Court or himself as to exactly what Vivian is doing to keep the girls from returning to Kirk's car in a reasonable period of time, but Rylee's comments have clearly indicated that they have been ready to come back to the car while Vivian keeps them talking.[5]

[5] Similarly, Brooke is a really good kid and normally very thoughtful and considerate, especially of Rylee. However, Kirk has no idea what Vivian says to Brooke to convince Brooke to keep Kirk waiting in the car for 20 to 34 minutes when picking up stuff from Vivian's house, but consistently takes less than 5 minutes when picking up the same stuff from Kirk's house.

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However, the Court can certainly get a real sense for what has been happening by reading **Exhibit "2"** attached hereto.

Vivian actually argues that the two neutral witnesses in the home are Brooke and Rylee. Kirk respectfully submits that because they are the recipients of the manipulation and they are the minor children who are the subject matter of this litigation, they are not *neutral* witnesses. Vivian has successfully taught them to believe things that are not true. However, there were indeed two *actual neutral* witnesses living in the home, during the critical portions of this family's history, who are both adults, and without question have the best interests of Brooke and Rylee at heart. Those witnesses are Tahnee and Whitney.

### 3. Kirk Understands That Brooke and Rylee Believe Things Which Are Simply Not True Because Vivian Has Manipulated Them, So Kirk Has Never Accused Brooke or Rylee of Lying When This Occurs

Kirk is well aware that Vivian is manipulating Brooke and Rylee into believing things that are simply not true. Therefore, when he has discussions with Brooke about such things, such as simply as Kirk taking Brooke and Rylee to buy dance clothes and dance shoes, Kirk has not and never will accuse Brooke or Rylee of lying. What Kirk has done, albeit with limited success thus far, is attempt to refresh Brooke's and Rylee's memories by reminding each of specific occasions, for example, that he took them to buy dance cloths and dance shoes.

It is quite ironic that Vivian is the singular force of causing problems by wrongly manipulating Brooke and Rylee into believing things that are verifiably false, and then accusing Kirk, as follows:

> "The emotional conflict caused by Kirk demanding they re-write their history together is debilitating. It is this kind of behavior by Kirk that Vivian sought to address through a therapist and PC, but Kirk has undermined that process. Brooke is now suffering under Kirk's constant barrage of criticism and disapproval."
>
> (Vivian opp. p. 20, l. 24-25)

To actually be litigating with these facts, is truly outrageous. Vivian and Vivian's attorneys, not constrained by the truth or the facts, but limited only by their own imaginations, continue to make assertions premised upon patently false "facts". Then, using those false "facts", carry out an all out assault upon Kirk's character. This scheme has repeatedly been employed in this case by Vivian and Vivian's attorneys.

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Kirk does not criticize Brooke. There is no "constant barrage of criticism and disapproval." For example, Brooke and Kirk have had several discussions pertaining to Brooke's desire to be a make-up artist. In those discussions, Brooke indicated that she wants to work at Disney as a make-up artist. Kirk has emphasized to Brooke that most people will tell you that one of the best times of their life was their college experience and Kirk does not want her to miss out on that experience. Brooke agreed and shared her plan to graduate from college before becoming a make up artist. When they discussed the possibility of Brooke getting bored doing make-up day after day, Brooke indicated that she hoped she would not and that she would like to make-up for movies at Disney. Kirk actually encouraged her by suggesting it would be fun for her if she were working there and Tahnee became a successful actress at the same time there. Brooke agreed. That was the extent of the discussion. Unbelievably, despite the fact that Vivian was not a party to the conversations, discussions like this are falsely characterized by Vivian as a "constant barrage of criticism and disapproval" and asserting "Brooke is now suffering under Kirk's constant barrage of criticism and disapproval." Kirk knows he has never told Brooke to consider a career in medicine and he is fairly sure he has never suggested a career in law.

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### D. The Sympathetic Statements of Other People in The Community Are Substantially Consistent with the Sworn Affidavits of Tahnee, Whitney and Kirk

In order to obtain sympathetic supporting affidavits, Vivian went to people in the community and basically said that Kirk "was trying to take my children from me, will you help me?" Upon that premise, Vivian obtained a number of statements. It is important to note that despite Vivian's false cry for help,, the statements obtained are *substantially consistent with the facts set forth in Tahnee's, Whitney's, and Kirk's affidavits.*[6] As will be briefly explained in the following short chronology of three critical time periods, with limited exceptions (affidavits that are demonstrably false or which were paid for), there is really very little factual dispute.

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[6] Obviously, the three notable exceptions are the perjurious statements from Heather Atkinson and Michele Walker, and the statement of Lisbeth Castelan, who likely didn't understand the affidavit in English that she was signing. The Court is urged to re-read the analysis of all three statements contained in Kirk's reply re custody, filed 1.4.12, p. 65-75.

### 1. Vivian Was Not Involved with Brooke and Rylee on a Day to Day Basis from February of 2006 until September 6, 2011, Except For Sleeping With Them At Night When She Was In Town

It is clear from the affidavits of Tahnee and Whitney, both of whom were living in the home, (and Kirk's affidavit also), that from February of 2006 until September 6, 2011, Vivian was really not involved with Brooke and Rylee on a day to day basis. It is also clear from the affidavits of Tahnee, Whitney, Kirk, Laurie Larson, Dave Krumm, and Karen Balke[7] that Vivian was not involved, on a day to day basis, with driving Brooke and Rylee to and from school, to and from dance classes, and to and from sports activities.[8]

What has always been acknowledged is that Vivian would make sporadic public appearances with Brooke and Rylee. For example, parent/teacher conferences, book fairs at school, sewing trips, and similarly, highly infrequent activities. The Court will likely recall Kirk's affidavit which addressed Vivian being on a sewing trip with Kim Bailey and Kim Bailey, upon her return, saying Vivian was reading her Kindle the entire trip. The Court may also recall Kirk's affidavit referencing a parent/teacher conference where Vivian gave the false impression she was actively involved in home work. However, Vivian's condition was deteriorating and from 2006 until September 6, 2011, Vivian's sporadic public involvement with Brooke and Rylee became less and less, until there was a marked drop off in her sporadic public appearances with Brooke and Rylee in the fall of 2008.[9]

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[7] The affidavits of Laurie Larson, Dave Krumm, and Karen Balke are exhibits 22, 23 & 24 to Kirk's reply re custody, filed 1.4.12.

[8] There is evidentiary support that Vivian withdrew from the family, including Brooke and Rylee; sometime later, Vivian started spending her days isolated in Brooke's room behind a closed door and then, after a period of time, started spending her days in the home office isolated behind a closed door; she would go months and not have a meal with Brooke and Rylee; she would leave the house with no one knowing where she was or when she would return; she rarely cooked a meal for Brooke and Rylee; during the last several years –from the beginning of 2009 through the Spring of 2011, she almost never helped them with their homework; she had severe insomnia for which she sought treatment; she would spend her days sleeping, reading vampire novels, watching the Tudors, watching Jonathan Rhys-Myers movies, buying stuff on the internet; following Jonathan Rhys-Meyers on the internet, etc. None of this testimony has ever been refuted. The submission of the Lizbeth Castellan statement is an indication that Vivian's attorneys were aware of this fact as such submission was clearly a desperate act, as Kirk had already made Brooke and Rylee breakfast and taken them to school by the time Lisbeth arrived at the house on Wednesday mornings.

[9] This is consistent with Kirk's letter to Dr. Roitman on January 4, 2010, which contains a section entitled, "VIVIAN'S CONDITION HAS DETERIORATED MARKEDLY DURING THE LAST

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**2. The Statements from People in the Community Are Substantially Consistent With The Affidavits Submitted By Kirk**

**a. Prior to the Fall of 2008**

Vivian attended, as did Kirk, gymnastic classes in 2006-7 and 2007-8 and swimming classes prior to the fall of 2008. *See* statements of Melissa Mojica, Brandi Carstensen, Lois Klouse, and Kelley Gray. The same is true with the following statements: Laurie Larson (mostly during this period); Gretchen Poindexter (mostly during this time period); Sue Broadbent (mostly during this time period), and; Tina Coleman (with some minor exceptions, these statements are relative to Vivian's conduct prior to the fall of 2008)

**b. Between the Fall of 2008 and September 6, 2011**

As noted above, Vivian continued to not be involved with Brooke and Rylee on a day to day basis. Vivian rarely did anything outside the home with Brooke and Rylee during this time period. The family did have the Harrison Family vacation to Ireland during this time period, where Vivian successfully schemed for Brooke, Rylee and Vivian to spend time with David Walsh at his home before Kirk arrived and for the three of them to spend time with David Walsh in Dublin after Kirk had left. The later filed statements which are contrary to these facts are simply wrong. One was submitted by Kellie Wendt, who is a relative of Heather Atkinson, and the other is Tina Coleman.

**c. From September 6, 2011 Forward**

Things changed on September 6, 2011. That is the date that Vivian sent Kirk and email providing she was going to start sharing in driving the girls to school and dance. Since that time, Vivian radically changed her behavior and since the middle of September 2011, until the parties separated, began sharing in making meals, helping the kids with their homework and working in Rylee's classroom. Therefore the following statements are substantially accurate: Azure Fecteau, Noel Kanaley, and Kelly Gray.

Tahnee and Whitney, through their affidavits, testified in detail as to what has been going on in the Harrison home for years. For years, Vivian was not doing what she has now convinced Brooke she was "always" doing.

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EIGHTEEN MONTHS." (Kirk's reply re custody, filed 1.4.12, Exh. 9, p. 17)

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Vivian alleges that Kirk knew in the summer of 2012 that the "children's statements would mirror the multiple witness statements Vivian had provided to the Court, and would confirm her close bond with the children, so he later resisted having the results of their interview published by Dr. Paglini." (Vivian's opposition, p. 6, l. 18-20) First, Kirk does not deny that Vivian has a close bond with Brooke and Rylee. Vivian has not earned that close bond in the way that most parents earn that bond, but rather has acquired it through sleeping with them at night, instilling fear and insecurities in them, inhibiting their personal growth, and manipulating them for her own purposes or needs. As of the summer of 2012, Kirk was not as sensitized to the extent that Vivian has successfully recreated history with Brooke and Rylee. Kirk was not present when Dr. Paglini interviewed Brooke and Rylee, Dr. Paglini never gave Kirk any indication whatsoever of what Brooke or Rylee said, and therefore he had and has no knowledge as to what was said. However, the assertion that Vivian's close bond with Brooke and Rylee is "through the care Vivian has provided to them their entire lives" is absurd. (Vivian's opposition, p. 7, l. 2)

**3. Vivian Attempts To Rehash The Same False Assertions Vivian Made To The Court Prior to This Court's Order Regarding Temporary Custody on February 24, 2012**

Vivian rehashes the same affidavits which were previously submitted and considered by the Court. These affidavits have the same limited value as when they were initially proffered, as noted herein above. The affidavits of Nyla Roberts, Kim Bailey and Annette Mayer have also been previously addressed in detail. *See* (Kirk's reply re custody, filed 1.4.12, p. 75-78)

What Vivian is unethically attempting to do is to primarily take her involvement with Brooke and Rylee *after* September 6, 2011 and, to a significantly lesser extent, her sporadic public involvement with Brooke and Rylee prior to the fall of 2008, and present that involvement to the Court in such a way as to, have the Court erroneously conclude that it is an accurate portrayal of her involvement with the children from February of 2006 until September 6, 2011. In other words, Vivian is knowingly trying to mislead the Court, again. The Court was not fooled by this tactic the first time around. Except for perhaps relying on th passage of time or the volume of all the other cases the Court handles, it is inexplicable why Vivian would try to mislead the Court in the same manner a second time.

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There are three statements which have not been addressed. Lisa Morris is currently teaching Brooke and Rylee voice. The summary of her statement makes the point. She addresses Vivian being involved with fund raising tasks at the school in 2008. She then talks about Vivian's involvement with Brooke and Rylee in 2011 and 2012. Sandy Wachtel is a very nice lady. She has a daughter Brooke's age. Though the summary of her statement is substantially accurate, it is misleading. Mrs. Wachtel did not see Vivian picking up and dropping off the girls for dance until after September 6, 2011, unless she saw Vivian do that on one of the very few of times that Vivian did drive the girls to or from dance from February of 2006 until September 6, 2011. Vivian's position was that if Kirk could not take Brooke and Rylee to and from dance, it was his responsibility to find some one else. That someone else would be Tahnee,Whitney, or Joseph. If none of them were home, then Kirk had to check with the other people in the dance car pool. Only if no one else could drive, would Vivian drive the girls. Under those parameters, that rarely occurred.

The purported statement from Rosaleen Thomas is a sham. As Kirk noted in his affidavit, Vivian would go many days and sometime weeks without calling Brooke and Rylee. There were times Brooke and Rylee would call every number they knew to call in Ireland to no avail. A cursory review of the photographs submitted by Kirk presents a clear picture of what was going on.

Noticeably absent from this restatement of the same points made prior to this Court's February 24, 2012, temporary custody ruling is anything that addresses the following:

* Vivian's seven years of drug abuse beginning in June of 2004 and continuing until September of 2011 (Exh. 11 to Kirk's Reply re custody, filed 1.4.12)
* The six years she took an SRRI.
* The photographs with Vivian and David Walsh.
* The photographs of Vivian and "Hugo."
* The photograph of Vivian and Sergio Becerra.
* Vivian's love letter to Mr. Becerra wherein Vivian declares he keeps her awake at night because she is so obsessed with him.
* All of plastic surgeries in Arizona and California.
* The myriad of cosmetic procedures and treatments over several years.
* All of the cosmetically related doctors' appointments for several years, including at one point a medical appointment for Vivian an average of every other day for the entire month of February of 2011!
* The five months she chose to be away from Brooke and Rylee, and that was just during 2010!

Next to all of these undeniable facts, all of which were supported by documentary evidence, Vivian's repeated claims of "daily involvement in the children's lives" and "Vivian's total involvement with the

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children's daily lives" looks pretty foolish and is revealed for what it is – a lie. (Vivian's opposition, p. 7, l. 9-10; 15)

**4. Vivian's Argument To Support Her Theme To Brooke That "Girls Are Supposed To Be With Their Mommies" Is Ridiculous**

Vivian asserts that girls "do not want to discuss with their father (periods, bras, dating, make-up, etc.) Kirk has taken Brooke to the store to buy feminine products on numerous occasions. Kirk has taken Brooke to buy bras at Nordstrom Rack and other stores. Kirk has taken Brooke to buy make-up at Nordstrom Rack, Target, Walmart, and CVS Pharmacy many many times. Brooke's number one interest is make-up. Brooke watches videos concerning make-up more than anything else. Brooke and Kirk have had many conversations about the different types of make-up and why a particular application is better than another. Brooke has explained to Kirk why she prefers the solid cosmetics to the powders, etc. Kirk has learned more about cosmetics and related issues, than he ever imagined he would.

Vivian's claims are convenient, and designed to be left unchallenged. The Court surely noticed that most of Brooke's alleged complaints, as cited by Vivian, are related to "cramps" which Vivian claims only she is equipped to discuss. Perhaps Vivian hopes that this Court will also find that those feminine discomforts are only within the purview of mommies to handle? Kirk still has an open and positive relationship with Brooke. That relationship is not one that is handicapped by the inability or unwillingness to understand or handle any particular topic.

Vivian uses the same disingenuous tactics with respect to the plans related to makeup for the homecoming dance and pictures related thereto. She suggests, that Kirk should know that "Brooke is a feminine girl" and that Kirk should "understand Brooke's desire to be with someone who is skilled and experienced in applying make-up, and who taught her how to apply make-up." Vivian misses the point deliberately. Kirk would likely have had absolutely no objection if Vivian were to have actually called or written him and *asked* about trading time or even just having the extra time to do this with Brooke. Instead, Vivian willfully planned an event for Brooke and her friends during Kirk's custodial time, without ever even discussing it with him, and leaving Brooke to be in the middle of the inevitably resulting conflict. Vivian starts the ball rolling, feigns surprise at the result, and then criticizes Kirk for the issue she created.

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**E. The Incident With Brooke During the Lagoon Trip Is Far And Away The Most Troubling Exchange Kirk Has Ever Had With Brooke And Brooke, Rylee and Kirk Had A Great Time The Rest Of The Trip**

Without question, one day of the Lagoon trip was very difficult for Brooke, and was also very difficult for Kirk. However, that was *one day* and that day is not emblematic of their entire relationship. More importantly, there is an important backdrop to what occurred that day in the hotel room in Layton, Utah on August 5, 2013.

There was a tradition of Kirk taking Brooke and Rylee to children's movies, probably once or twice a month depending upon what was playing, since they were old enough to go. They always had a good time. There came a point sometime after the Court's ruling on February 24, 2012, that Brooke refused to go to the movies with Kirk and Rylee. Not knowing what else to do, and without meaning to do so, Kirk effectively gave Brooke the power to "veto" the three of them going to the movies. When Kirk would ask Brooke why she didn't want to go, she would simply reply she just did not want to go. Kirk was aware that Vivian started to take Brooke and Rylee to the movies. Sometime later, Tahnee or Whitney shared the following with Kirk, which had been discovered from a conversation with Brooke: *Brooke apparently learned or saw that Kirk had "written down" that they had all gone to the movies. Brooke then told Heather Atkinson what she had learned, and Heather Atkinson reportedly told Brooke that the only reason your dad takes you to the movies is so he can write it down.* It was at that point Brooke started to refuse to go to the movies. Rylee complained to Kirk on several occasions that she was frustrated because she wanted to go to the movies and Brooke should not get to decide that Rylee does not get to go to the movies.

Kirk picked Brooke and Rylee up from Vivian's house on Friday, August 2, 2013, after being with Vivian for 14 days (preceded by 2 days with Kirk and another 21 day period with Vivian). That evening, crying and distraught, Brooke told Kirk that because she is 14 years old and she can decide to live full time with Vivian.[10] Parroting Vivian's words, Brooke said, "Girls are supposed to be with their mommies." Kirk indicated his surprise that she would be willing to leave Rylee. Brooke said that she had not told Rylee yet and asked Kirk not to say anything to Rylee.

[10] Kirk had previously thought this conversation was the next day on August 3, but it was on August 2.

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Brooke, Rylee and Kirk started their trip to Utah the next day. They stayed at the Little America Hotel in Salt Lake City that night like they do each year and had dinner in the hotel coffee shop that night. They went swimming. When Rylee was in the shower after they returned from swimming, Kirk told Brooke it was not within her power to "decide" where she lived, only that Brooke could express her wishes, but it was for the Judge to decide. Kirk further explained that under the circumstances, he did not think it would be best for Brooke and Rylee, if Brooke lived with her mother full time. Brooke acknowledged it would hurt Rylee's feelings. Brooke seemed very relieved that it was not her decision to leave Rylee.

After having the Sunday brunch at the hotel, Brooke, Rylee and Kirk drove to the Hilton Garden Inn in Layton, Utah. That night Brooke, Rylee, and Kirk had dinner with Kirk's cousin. Their plan was to spend the next two days at Lagoon and then travel to Park City just like they do every year. Both Brooke and Rylee seemed excited about going to Lagoon the next day. Brooke had ridden the Catapult Ride at Lagoon the year before by herself, when Rylee changed her mind at the last minute. Kirk asked them if they were going to ride it together this year. They both said they had not make up their minds.

However, when they got up the next day, Monday, August 5, 2013, Brooke refused to go to Lagoon and indicated she did not want to go to Lagoon the next day either. When Kirk asked why, Brooke simply said she just didn't feel like it. Rylee, understandably, was upset saying that what Brooke was doing was not fair to her, as she really wanted to go to Lagoon.

Kirk waited a couple of hours, hoping Brooke would change her mind. Brooke was content to continue texting and watching videos. Kirk believes she was texting with Vivian, which can easily be confirmed or rebutted. He told Brooke he could not understand why she didn't want to go, when they have had so much fun there each year. Brooke responded that she did not like going to Lagoon anymore because it was "boring". Rylee again chimed in that she wanted to go. Kirk said how can you say it is boring when you rode the Catapult Ride last year? Brooke didn't answer.

A couple of more hours passed and Kirk told Brooke that he didn't understand why Brooke was not caring about Rylee who really wanted to go to Lagoon. It was not until about that point that Brooke said she wasn't feeling well and had cramps. Kirk then said, so we can all go tomorrow? Brooke responded that she still did not want to go to Lagoon at all. At that point, Kirk decided that so long as

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Brooke was getting everything she wanted, texting and watching videos on her telephone, there was going to continue to be a stalemate, and Brooke had the power to "veto" the entire vacation, so he took her telephone from her. In light of the texting Brooke was doing on her telephone, wrong or right, Kirk assumed Vivian was influencing Brooke's refusal to go to Lagoon, as he knew that Brooke's announcement three days before was parroting Vivian's words. He also knew that Brooke had been excited about going to Lagoon when they talked about it the night before. Kirk told her that if she was really having cramps and did not feel good, he thought she would have said that hours before, when she first refused to go.

Kirk did express to Brooke that he was hurt by her behavior (in all candor, Kirk was obviously reeling from Brooke telling him that she wanted to live full time with Vivian) and could not understand why she was doing this to Rylee and him. This is the only time that Kirk has said things to Brooke that he regrets, as noted in her email to Vivian. He did not say those things in an accusatory tone, but rather from his perspective of being very hurt and unappreciated. Kirk fully realizes that he is the parent and this type of exchange had never happened before, nor since.

Kirk knew he had a problem, he knew there had to have been a better way to handle it than he had thus far, and didn't know what to do to resolve this situation. Kirk stepped out into the hallway from the hotel room and telephoned Ed Kainen to get advice. He then telephoned Dr. Roitman to get advice. He then telephoned Whitney to get advice. Whitney advised that Brooke is 14 years old now and that Kirk should tell her that if she did not want to go to Lagoon the next day she could stay in the hotel room, but Rylee and Kirk were going.

They had not eaten since the hotel breakfast that morning. Kirk told Brooke that he was taking Rylee to dinner and Brooke could go with them or, if she preferred, she could stay in the hotel room. Brooke said she didn't want to go. Kirk and Rylee went to Buffalo Wild Wings and brought back food to the room for Brooke. Before they went to bed that night, Kirk told Brooke that he was taking Rylee to Lagoon the next day, and he hoped she would go with them, but if she preferred, she could stay in the room all day. He apologized for anything he had said that contributed to the difficult day, and opened the door for Brooke to step away from the position in which she had immersed herself. He told . . .

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her he loved her and gave her a kiss goodnight. As challenging as the day had been, it ended in a positive way, and with a optimistic outlook for the next day.

Brooke, Rylee and Kirk all went to Lagoon the next day and they all had a great time. They all went to Buffalo Wild Wings that night. They all had a really good time the rest of the vacation: they rode the chairlift at Sundance; spent day at the Olympic Park in Park City riding the extreme zip line multiple times, riding the alpine slide, doing the adult rope course together (Brooke and Rylee then did the upper level) until it started to rain; spent that afternoon and evening buying school clothes at the outlet mall in Park City, that night they went swimming together in the hotel pool; the next day they drove to St. George and saw the play "Mulan" and later that evening saw "Mary Poppins" with friends; spent the next day at the hotel swimming and going to a movie that evening, and drove home the next day.

While August 5th, was a challenging day for both Kirk and Brooke, it was one day and nothing more. It is in no way representative of the relationship with Kirk and Brooke, despite the efforts to characterize it as such.

**F. Vivian Falsely Accuses Kirk Of Being Manipulative When "Kirk Acted As If He Had Just Won The Lottery" When Told Rylee Would Not Need The Multiple Surgeries With The Device Implanted In Her Arm Secreting A Man-Made Hormone Into Her Body For The Next Three Years**

On Monday, September 16, 2013, Rylee had an appointment with Dr. Dewan. At that time Dr. Dewan advised that it was now time to determine if Rylee should have the device surgically implanted in her arm that will secrete the man-made hormone into her body. Dr. Dewan advised to have an x-ray of Rylee's hand and then to schedule another appointment. Based upon prior antics of Vivian in failing to advise Kirk of medical appointments, Kirk asked the front desk to send an email to him or telephone him as soon as the next appointment was made. At 7:06 a.m. on Sunday morning, October 6, 2013, Kirk received a text from Vivian, "Rylee-dr dewan–mon 1030." Kirk sent a text back, "Tomorrow." Vivian responded, "Yes."

On Monday, October 7, 2013, after examining the most recent hand x-ray of Rylee hand, Dr. Dewan advised Kirk and Vivian that Rylee is likely going to reach her normal expected height of 5' 10" and the annual surgical implantation of the device in her arm to secrete the man-made hormone will not

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be necessary. Kirk was indeed elated. This was the best news he had heard in years. Kirk wept in the car after he left the office. Vivian now uses this very welcome and wonderful news, to initiate yet another baseless assault upon Kirk. Vivian asserts that Kirk's reaction "to this news was manipulative as "Kirk acted as if he had just won the lottery." (Vivian's opposition, p. 20, l. 7 & 9)

Dr. Dewan initially advised Kirk and Vivian that Rylee would likely be required to have a device surgically implanted into her arm. Rylee's testosterone level was 32. Normal for a girl her age is below 10 – around 7 or 8. Dr. Dewan, at the time, indicated the implantation of the device would be necessary if Rylee's testosterone level did not drop significantly. Dr. Dewan handed a brochure to Vivian and Kirk, which detailed what would be done. Dr. Dewan advised that a surgeon, not Dr. Dewan, would surgically implant the device. The device would slowly secrete a man-made hormone into Rylee's body for a year. After one year, a surgeon would remove that device and insert another. This surgery would likely be done a third time, so Rylee would have a device in her arm secreting a man-made hormone into her body for about three years. Dr. Dewan advised the cost of the device would be $14,000.00 per year. Dr. Dewan advised Kirk and Vivian that without the device, Rylee would prematurely start puberty, likely start having a period when she was just 10 years old, and her maximum height would be 5' 5" tall. Dr. Dewan further advised the implantation of the device would "put a pause on puberty" and Rylee would likely reach a maximum height of 5' 6" to 5' 7" tall. (Kirk's motion re custody, filed 9.14.11, p. 16, l. 15-28, p. 17, 1-24); (Kirk's Aff. ¶221 & 224, attached to Kirk's motion re custody as Exh. 1) (Kirk's Reply re Custody, filed 1.4.12, p. 16, l. 17-28; p. 17, l. 1-10)

The prospect of devices being implanted into Rylee's arm and secreting a man-made hormone into Rylee's body concerned Kirk. Kirk consulted with Dr. Iain Buxton. Dr. Buxton is the Regents Professor, Foundation Professor, and the Chairman of the Pharmacology Department at the University of Nevada School of Medicine. Dr. Buxton advised Kirk that the risks inherent with the implantation of the device and the secretion of the man-made hormone into Rylee's body over several years was not worth the risk to Rylee's health. Thankfully, Rylee's body overcame the testosterone exposure caused by Vivian's negligent conduct. Kirk was indeed genuinely elated for Rylee and relieved he did not have to make that decision.

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Vivian falsely asserts, "Kirk continued to raise alarms with Rylee and all the other children (and anyone who would hear his complaint) that because of Vivian her growth would be stunted, she would suffer ill effects of an implant, etc.' (p. 19, l. 23-26) This is again outrageous. Kirk has never told Rylee any of this information. Never. It is inconceivable, that a parent would say these types of things to their child. Again, Vivian and Vivian's attorneys get so caught up in their effort to assault Kirk's character, they forget common sense. No parent would tell their child that their growth is going to be stunted or that they were going to suffer from a device being implanted in their body.

As for Kirk's "elation", he was indeed happy, as this was something about which he has had significant and continuous worry since the issue became a concern. To find out that the elevated testosterone levels reduced without the need for Rylee to have surgery, was an event properly warranting elation.[11]

**G. Vivian Makes Misrepresentations Throughout the Opposition**

Vivian makes additional misrepresentations throughout the opposition. Time does not permit addressing each and every one, but Kirk will attempt to address just a few.

On one occasion Kirk told Brooke that he was surprised she would leave Rylee. Brooke later told Kirk she thought it was "mean" that he said that, he apologized to her and he has not said it since. However, according to Vivian, "Kirk repeatedly tells" tells Brooke that she is being selfish by wanting to do activities away from Rylee. (Vivian's opposition, p. 21, l. 12)

Vivian makes allegations A through F on page 26 of Vivian's opposing brief. Absolutely none of those accusations are true. None. The allegation that Kirk would even broach the subject of the possibility of Brooke leaving with Rylee is ludicrous. Kirk loves Brooke and Rylee with all his heart. He would never do something so callous. These baseless allegations confirm yet again that Vivian and her attorneys are not constrained by the truth or actual facts, nor do they feel compelled to offer any evidence whatsoever to support their baseless allegations.

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[11] Dr. Dewan's physician notes, dated August 2, 2011 clearly provide, "the elevated tesosterone was from moms craem. . ." (Kirk's motion re custody, filed 9.14. 11, Exh. 13)

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If the Court believes for one second the representation that Vivian has a close bond with Brooke and Rylee "formed through the care Vivian has provided to them their entire lives" then the affidavits of Tahnee, Whitney and Kirk utterly failed to depict for the Court what was truly happening in the Harrison home since 2006. (Vivian's opposition, p. 7, l. 21)

Vivian represents to the Court that Brooke and Rylee really never spend any time with one another, so it would be no big deal if Brooke left. (Vivian's opposition, p. 21, l. 13-22) When Brooke and Ryee are with Kirk, they spend almost all of their time together. They talk to each other every morning. Brooke helps wake Rylee up in the morning and talks to her before she leaves for school. They watch videos together. They often will do their homework together in the same room. Brooke sometimes helps Rylee with her homework. Except for breakfast on school days, they eat all of their meals together with Kirk. They ride to and from dance together. Most of the weekends, they do everything together. There is a lot of laughing, smiling and talking that goes on between Brooke and Rylee everyday they are with Kirk. Brooke and Rylee still sleep in the same bed together. Neither one is comfortable going to bed without the other. The suggestion that separating the two children would not impact the other is baseless under the facts of this case.

Vivian asserts, "Kirk also outlines in his motion how he uses name-calling to prevent Brooke from spending time with Vivian." (Vivian's opposition, p. 21, l. 31) This is so bizarre. Vivian – not Brooke and not Rylee – is causing Kirk to sit in a car outside her house for 20 to 34 minutes waiting for Brooke to pick up the same items she picks up at his house when Vivian is waiting outside in the car in less than 5 minutes. The reason for the difference in time is nothing more than Vivian choosing to be inconsiderate of Kirk's time and Kirk refusing to respond in kind. Kirk has indeed told Brooke that it is disrespectful and inconsiderate to keep him waiting in the car for such long periods. For this, Vivian accuses Kirk of "name-calling." According to Vivian, "This situation is caused by the constant back and forth from the parties' homes caused by the current schedule, but more important, Kirk should not be attempting to manipulate Brooke in this manner." (Vivian's opposition, p. 21, l. 28; p. 22, l. 1-2) What is occurring has nothing to do with the present custody schedule. Brooke and Rylee consistently get the same items from Kirk's house in less than 5 minutes, when Vivian is waiting. What is occurring has everything to do with Vivian exercising control over Brooke, in a manipulative way such as to cause

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Kirk to wait for long periods of time. There is no question that Brooke is otherwise usually a very considerate and thoughtful young lady. The common denominator in these issues seems to be Vivian.

### H. This Court Is Not Prohibited from Modifying or Eliminating the Teenage Discretion Provision as Alleged by Vivian's Attorneys

Vivian suggests that this Court must give deference to the Agreements of the parties even going so far as to cite *Troxel* and suggest a violation of fundamental rights. Insofar as the actual agreement, it is clear by Vivian's admissions and the glaring absence of any denial of violating the express provisions of the agreement, that the parties are not really talking about enforcing the existing agreement. Instead, Vivian wants to have what-she-imagines "teenage discretion" should be, as opposed to the presently existing provision, and Kirk simply wanted the safeguards from immersing the children in the litigation respected. Neither party stands any chance of walking away with what they really want.

Paramount in every decision the Court makes, including this one, must be the best interest of the minor children. In fact, NRS 125.480(1) provides in part that the "sole consideration of the court is the best interest of the child". When the conduct of one of the parties, renders *any* custodial provision ineffective and the result is preventable conduct that is not in the best interest of the children, this Court not only retains the power to change it, it has the power to do so *sua sponte*. NRS 125.510 (1) through (3).

### I. Vivian's Claims Regarding the Miscellaneous Items, Including Childhood Memorabilia, Are Factually Inaccurate

A multitude of additional items were cited by Kirk to demonstrate Vivian's utter failure to operate in good faith. Paragraph 6.2 of the parenting agreement, simply requires good faith conduct on the part of each parent not to encourage or manipulate the child to seek to be with one parent more than the other. Kirk not only established that Vivian's behavior gives every indication that such a presumption, with respect to Vivian, is erroneous as regards the parenting agreement, but he was also able to demonstrate a myriad of other failures to operate with any good faith in the period leading up to the filing of his requests for relief.

Vivian generally denies even those items which are supported by incontrovertible evidence and for which there can be no reasonable dispute. She likely relies on the fact that these are "side issues"

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and that to brief each of them would take far too long. Given the fact that those items were illustrative, and Kirk has not requested specific relief on those items, Vivian's assumption is correct. Kirk will not offer any further on those matters at this time.

## III. CONCLUSION

Kirk, to this day, despite Vivian's efforts to alienate Kirk from Brooke, enjoys a loving and caring relationship with Brooke. However, Kirk is very concerned about Brooke. Kirk saw what Vivian's manipulation of Tahnee did to Tahnee. At 28 years old, Tahnee is finally working through issues which never would have occurred, but for Vivian's manipulation of her. Tahnee was Vivian's "very best friend" before Brooke became Vivian's "very best friend." It is not healthy for children to be exclusively in an environment, where their whole world is to please a parent. If Brooke is with Vivian full time before she can establish her own identity, develop a sense of self, and gain some independence, then Brooke will likely suffer, as Tahnee has unnecessarily suffered. Kirk implores the Court that if the Court is inclined to give any consideration to continuing down the path of teenage discretion as a vehicle to allow Vivian to further manipulate Brooke and Rylee, that the Court first interview or take testimony from Tahnee and Whitney.

The fact remains that the concept of teenage discretion is only workable in circumstances where the parents have a reasonable and functional relationship, which still does not exist in this case. That facts cannot reasonably be in dispute. The protections that are theoretically built into the provision to prevent abuse, are being wholly ignored and are objectively unenforceable. Within days of her 14th birthday, after spending 21 uninterrupted days with Vivian, Brooke, who would have no way of knowing about any provisions in the parenting plan, was suddenly insisting on the *free exercise of her "teenage discretion rights."* After spending only 2 days with Kirk and then another 14 uninterrupted days with Vivian (based on the vacation schedule), Brooke announced she wanted to live with Vivian full time.

The Court should note that Vivian makes a myriad of detailed allegations concerning matters about which Vivian could have no personal knowledge. By merely making the allegations, Vivian is indicating to this Court that she is improperly communicating with Brooke. If she is doing it on all of those issues, how can it ever be suggested she abides by the provisions in paragraph 6.2 – the specific

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provision which is the subject of Kirk's Motion, and which Vivian never denies violating. This provision has done nothing more than guarantee the children's continued enmeshment in the parties ongoing dispute.

As indicated in his moving papers, Kirk has tried to be reasonable and accommodating, but it has resulted in continued immersion of the children into their parents' custody dispute and further encroachment into his custodial periods. Vivian does not care about the impact on Brooke, being placed in emotional turmoil or being forced to choose between her parents in order to placate one of them. As a result of Vivian immersing Brooke in this conflict (both by providing her with information she never should have had, and by butchering the explanation of the provision), the Kirk and Vivian are in near daily conflicts, that was otherwise much more limited. Kirk implores the Court, in the best interests of Brooke and Rylee, to set aside this provision in its entirety.

DATED this 23rd day of October, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
Las Vegas, NV 89145
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK R. HARRISON**
**filed in Support of Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and Sanctions**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

KIRK R. HARRISON, declares and says:

1. The matters stated in this Affidavit are based upon my personal knowledge (or upon information and belief if so stated). If called upon to testify, I could and would competently testify to the facts set forth herein.

2. Each of the factual averments contained in Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and Sanctions are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Kirk R. Harrison

Subscribed and sworn before me
this 23rd day of October, 2013.

Notary Public

CAROL NAVARRO-BARCLAY
Notary Public State of Nevada
No. 92-4000-1
My Appt. Exp. December 27, 2016

# EXHIBIT 2

# KAINEN
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A Professional Limited Liability Company

February 3, 2012

**Via Facsimile - (702) 990-6456**
Radford Smith, Esq.
Radford J. Smith, Chartered
64 North Pecos Road, Suite 700
Henderson, Nevada 89074

**Via Facsimile - (775) 322-3649**
Gary Silverman, Esq.
Silverman, Decaria & Kattelman, Chtd.
6140 Plumas Street, Suite 200
Reno, Nevada 89519

Re: **Kirk Harrison v. Vivian Harrison**

Dear Rad and Gary:

The Harrison family has one Verizon account, which includes the cell phone for every member of their family. Kirk has always reviewed this bill and paid it every month. There were only two authorized individuals on the account – Kirk and Vivian. Vivian is fully aware of instances in the past where Kirk has contacted Verizon when there have been issues with the account. For example, Whitney obtained a new cell phone in November of 2011, when Kirk's cell phone was due for a replacement. Moreover, within the last 30 to 60 days, Kirk had previously ordered call detail from Verizon. Just like yesterday, Vivian opened the package and asked Kirk what it was and Kirk told her. In fact, yesterday, when Vivian was screaming at Kirk, **she** referenced the fact that he had done it before. Kirk acted properly on both occasions. Merely because Vivian is listed as "primary" does not give her exclusive access and control over this account.

Your false accusation that Kirk obtaining call detail on his own family's account was "hacking into her account" when he is one of two authorized individuals on the account is what is truly outrageous.

When Vivian was leaving, Vivian told Kirk she was going to cancel his phone. Kirk responded that he was authorized on the account and did not believe she could. Vivian said, "I am primary and I can." As soon as Vivian left, Kirk called Verizon and they confirmed Vivian could in fact cancel his cell phone, despite the fact that he was also authorized on the account. Kirk asked if there was anything he could do. He was told since he was authorized on the account he could transfer all of the phones in his name to a new account. There were three cell phones in Kirk's name: his, **Vivian's** and Joseph's. Despite knowing Vivian was in the process of cancelling his phone for doing something he was authorized to do and something she knew he had done before, Kirk took the high road and did not transfer Vivian's phone number to his new plan.

Kirk ordered the documents for him. Since Vivian is "primary" she can also get whatever documents she wants from Verizon on this account. With respect to the billings, you only furnished Kirk the total amount of your bill, which he paid. There was never a discussion about furnishing redacted billings. When you only furnished a total figure to Kirk and expected payment, which you received, how can you now expect redacted billings from us? By the way, we have not yet received even the equivalent information from you.

**Vivian's behavior in front of Brooke and Rylee has been deplorable and she is clearly trying to alienate Kirk from Brooke and Rylee.**

The much bigger issue is Vivian's pattern of misbehavior in front of Brooke and Rylee where she has continually displayed no sensitivity whatsoever for these little girls. After Kirk told Vivian what he requested from Verizon, Vivian began screaming that Kirk had told Rad he did not have access to the account. Kirk responded that he had never spoken with Rad Smith about the account. Vivian then repeatedly screamed that Kirk was a "liar" in front of Rylee and Joseph. Vivian was screaming so loudly that Rylee was placing her hands over her ears. This insensitive misbehavior in front of Brooke and Rylee has been going on for quite some time.

As we have already discussed, on March 13, 2011, Vivian was talking to Brooke and Rylee in the living room. She hollered to Kirk to come in the room as he needed to hear what she was telling Brooke and Rylee. As soon as Kirk came into the room Vivian told Brooke and Rylee that she was filing for divorce the day after Whitney's wedding, and that Brooke and Rylee are going to be asked with whom they want to live. Vivian then told them she was going to get the house. Vivian told Brooke and Rylee that she would get the house and Kirk would get the ranch, and that her lawyer told her that she would probably get part of the ranch as well. Vivian then told Brooke and Rylee that if she did not get the house, the Court will order it to be sold.

The incident Vivian incited on October 14, 2011, has been adequately briefed. However, you should know that Vivian had someone several years prior to the incident install a new central unit and new cameras. Only Vivian operated the video system. Only Vivian knew whether it was working or not.

On Sunday evening, November 20, 2011, in front of Brooke, Rylee and Joseph, Vivian started verbally attacking Kirk because he took Rylee to Subway at about 6:00 p.m. to get a sandwich for dinner. Vivian said Kirk knew that Brooke was cooking dinner at Theresa Giroux's. Kirk responded that he did not know she was cooking dinner. Again, Vivian started calling Kirk a "liar" in front of Brooke and Rylee. Vivian then said that all the people in the neighborhood filed

affidavits saying Kirk was a "liar." Again, *all in front of Brooke and Rylee.* Joseph tried to get Vivian to stop, but to no avail.

On Saturday morning, November 26, 2011, Kirk got the Christmas tree out of the storage shed and started to set it up just like he does every year. Vivian had just returned from meeting with Marvin Gawryn and had picked up Brooke and Rylee from the Atkinsons. When Vivian, Brooke and Rylee walked in, Kirk had set up the tree and was setting up other Christmas displays. In front of Rylee, Vivian said, "I don't want you to do this because you will just write it down and lie." Vivian then said, again in front of Rylee, "these are my decorations and you are not going to be here next year."

On January 9, 2012 at 3:06 p.m.,Vivian sent the following text to Kirk: "Rylees bday party fri feb3 at 440-645 laser tag." This morning, Vivian and Rylee were sitting in a large chair in the living room. Kirk asked Vivian, "What time are we leaving for Rylee's birthday party today?" Vivian responded, "Are you going?" Kirk said, "Of course." To which Vivian said in front of Rylee, "Oh yuck!" Kirk then again asked what time they were leaving. Vivian said 4:00 o'clock. Rylee then said, "I thought it was at 3:30." Vivian continued in front of Rylee, "You are Satan and you are not invited." Vivian continued again, "The other parents don't want you driving so I have to drive." Kirk then asked if the party was at the same location as Stephanie Yoxen's birthday party. Vivian responded that Kirk should send her a text. Kirk sent the following text: "what is the location of rylee birthday party to which you now say I am not invited?" Vivian texted back: "Doesn't make since. . if u were once invited you should know. ." Vivian then sends another text: "Pls go through ur attorney it appears as though ur beginning to play games AGAIN." This is going on TODAY!

This kind of behavior needs to stop.

Compare the foregoing behavior with what you describe as attempts by Kirk to alienate Vivian and set forth on pages 45 through 47 of your Opposition re Custody, keeping in mind, as you well know, most of those quotes are taken out of context.

For several weeks, Vivian has had Brooke and Rylee spending more time at the Atkinson home than they do in their own home. Sometimes Vivian is also there and many times she is not. Kirk strongly believes Vivian is intentionally trying to minimize the time Kirk has with Brooke and Rylee. Kirk got an email from Vivian last night that she and the girls are going to be spending Valentine's Day dinner with someone else. This type of pre-emptive behavior by Vivian has become all too common.

Kirk has also informed me that it is apparent Vivian has been working Brooke and Rylee a lot. Kirk has noticed significant changes in Brooke's attitude towards him during the last several months. On Thursday afternoon, January 27, Kirk was sitting on the couch in the living room and asked Rylee to sit with him and snuggle. Rylee responded, "I'm not supposed to snuggle you anymore dad."

**Kirk has not attempted to alienate Vivian.**

You and Gary have an obvious strategy of telling the Court at every hearing that Kirk has tried to alienate both the adult and minor children. Although I am confident it will not change this course of action, you should probably know the truth.

Since you have read the affidavits of Kirk, Tahnee and Whitney, you are well aware that Tahnee and Whitney approached Kirk about Vivian's behavior, the damage it was doing to Brooke and Rylee, and the need for Kirk to do something about it. Also, when the older children were younger, it was they who complained to Kirk about their mother trying to take credit for their efforts -- not the other way around.

In connection with Brooke and Rylee, Kirk indicates he has not spoken to Brooke or Rylee about Vivian in a negative way nor has he broached the subject of the divorce. On one occasion, Brooke was upset about something Vivian had told her about the divorce and Kirk told her if she needed to talk to him she could. She didn't. You may recall Whitney's affidavit were she said Vivian was having conversations with Nyla Roberts and Michelle Walker about divorcing Kirk in front of Rylee.

The next time you and Gary go into this false diatribe about Kirk alienating these children, I am handing this letter to the judge.

**Marvin Gawryn**

Another issue much more important than Kirk accessing his own family's cell phone account, is Marvin Gawryn. This is a real problem.

On September 21, 2011, Mr. Gawryn agreed to his suspension as a licensed and family therapist in the State of Washington. As part of that process, Mr. Gawryn stipulated to the following facts:

2.2 Respondent [Mr. Gawryn] provided therapy services to partners Client A and Client B. approximately once per week from November 17, 2006 through March 8, 2007. Clients A and B were involved in a committed and intimate relationship. Clients A and B sought treatment from Respondent for relationship issues. Sessions with Respondent included treatment of the clients individually and together.

2.3 From March 14, 2007 through Janaury 18, 2011, Respondent provided weekly therapy treatment to Client A.

2.4 In or about September 2010 through January 2011, Respondent **engaged in sexual intercourse** with Client A approximately **two (2) times weekly**.

(State of Washington, Department of Health – Agreed Order)

There is overwhelming circumstantial evidence that Mr. Gawryn has infected the process wherein you had Vivian tested and interviewed regarding NPD by coaching Vivian on the eve of her taking the MMPI and on the eve of each of her interviews with Drs. Thienhaus, Applebaum and Ronningstam. Tell me if you don't see a pattern with the following:

1. On August 6, 2011, Mr. Gawryn has a coaching consultation with Vivian for one and one-half hours.

   On August 11, 2011, Vivian meets with Dr. Ole J. Thienhaus for the first time and he writes his report.

2. On August 13, 2011, Mr. Gawryn has a coaching consultation with Vivian for one and one-half hours.

   On August 15, 2011, Vivian takes the MMPI wherein it was noted that Vivian "attempted to place herself in an overly positive light" and "approached the test items with a view toward presenting herself as being very serene in her approach to life."

3. On September 16, 2011, Mr. Gawryn has a coaching consultation with Vivian for two hours. Then on September 19, 2011, Mr. Gawryn has another coaching consultation with Vivian for another one hour.

On September 22, 2011, Vivian meets with Dr. Ole J. Thienhaus a second time and he writes a report.

4. On December 26, 2011, Mr. Gawryn has a coaching consultation with Vivian for one hour.

Vivian then flies to New York on December 27, 2012 and meets with Dr. Applebaum on December 28, 2012.

5. On Janaury 4, 2012, Mr. Gawryn has a coaching consultation with Vivian for two hours.

Vivian then flies to Boston on January 5, 2012 and meets with Dr. Ronningstam on January 6, 2012.

After Mr. Gawryn started consulting with Vivian, Mr. Gawryn requested that Kirk meet with him, which Kirk did. Mr. Gawryn has repeatedly held himself out to Kirk as the counselor for the family, but has seemingly been an advocate for Vivian at every opportunity. When Kirk learned of Mr. Gawryn's suspension in the State of Washington and the reason for his suspension, Kirk telephoned Mr. Gawryn and made it very clear to him that he was to never meet with Brooke and Rylee again.

**You still need to make it right with the Court regarding your baseless allegations that Kirk "manufactured allegations" etc.**

It was very disappointing to see you continue your baseless assault upon Kirk to the Court when you both know the truth. Since the filing of the opposition, you have been provided a copy of Kirk's January 4, 2010 letter to Dr. Roitman. Therefore, there is no question that the NPD opinion originated with Dr. Roitman. A statement that Kirk had a conversation about narcissism or read a book about narcissism, at any time, is not a sufficient basis to make the allegations you made. You must have some evidentiary support for the allegation you made. You have none. You didn't allege Kirk read a book on narcissism or that Kirk had a conversation with Tahnee and Joseph wherein

Tahnee explained the behavior of a narcissist. You alleged he "manufactured allegation" "chose a diagnosis" "developed a theory" etc.

What is so frustrating is that you now know Kirk did not do any of those things and yet you continue to try to justify these horrendous allegations to the Court. During the hearing you pointed to paragraph 33 of Tahnee's affidavit. Look at paragraph 106 of Kirk's affidavit where he references the discussion with Tahnee and Joseph on March 8, 2010. This is the same discussion with Joseph and Kirk that Tahnee references in paragraph 33 of her affidavit. You will note the paragraphs in Tahnee's affidavit are in chronological sequence. Paragraph 32 is regarding events on March 1, 2010 and Paragraph 34 is regarding events on April 5, 2010.

During the hearing, in your effort to continue this unsupportable position, you represented to the Court that Tom Standish must have told Kirk in 2005 to keep a record so as to build a case against Vivian, and that is why Kirk prepared the January 4, 2010, letter to Dr. Roitman. First, that never happened. Tom will attest to the same. Kirk talked to Tom only after Vivian abruptly left taking Brooke and Rylee without any discussion or explanation. Vivian and the girls were gone week after week, with Kirk not knowing where they were or when they would return. Brooke was just 6 years old and Rylee was just 2 years old. Kirk was, understandably, upset and frustrated and talked to Tom because he didn't know what to do and was looking for help to find the girls. Tom told him there wasn't a lot he could do. This was not a divorce planning consultation.

Second, during this time period, Kirk believed Vivian's behavior was temporary. Although he did not know about Paula Squiteri at the time, he believed, just like Paula Squiteri believed, that Vivian's behavior was a consequence of post partum depression. Kirk describes in detail why he thought Vivian's behavior was temporary in paragraph 261 of this affidavit.

Third, unfortunately, for Vivian, the children, and Kirk, Vivian's behavior did not improve and, in fact, worsened over time. After years of hoping and believing Vivian's condition was temporary, only to see it get worse and worse, Kirk determined he had to get some professional help and started to put together a summary of everything he knew about Vivian. It is important to note the first contemporaneous entry in the January 4, 2010 letter documenting Vivian's behavior was on **July 21, 2008**. If Tom gave the advice to Kirk in the summer of 2005 to build a case, which you now speculate, Kirk was very slow to respond.

We renew our demand that you unequivocally withdraw the baseless allegations you have made against Kirk. As officers of the Court, it is something you need to do.

**Lets jointly go forward and do what is in the best interest of this family.**

Finally, there really is no denying Vivian's misconduct wherein she has demonstrated a callous disregard for Rylee's health again and again. Similarly, there really is no denying Vivian's aberrant behavior in front of Tahnee and Whitney. The single issue is what is the cause of this unquestionably unacceptable behavior? Dr. Roitman has opined the cause of the problem is NPD. Based upon what Vivian has told them, with undisclosed assistance from Marvin Gawryn which was undoubtedly not shared with them, your experts have opined the problem is not NPD.

However, it is in everyone's best interest to determine the cause of the problem. As I said in Court, no one would be happier than Kirk if the cause of the problem is not NPD. Rather than continue to run this family into the emotional and financial ground, lets jointly do what is clearly in the best interest of this family, particularly Brooke and Rylee, and have an independent psychological evaluation performed. We can have this done by someone we both trust, give them all the information they need to make a fully informed decision, including interviewing Vivian, Kirk, Tahnee and Whitney as well as Dr. Roitman and one of your three experts, whom you can designate in your sole discretion. Whatever the diagnosis, lets commit to work together to do what is in the best interest of these children. Please.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.

ELK/cn

cc: Kirk Harrison
Tom Standish, Esq.

# EXHIBIT 3

**Kirk Harrison**

**From:** Vivian Harrison [vivianlharrison@aol.com]
**Sent:** Friday, July 15, 2011 7:13 PM
**To:** Robert W. Lueck
**Cc:** Bob Dickerson; Marvin Gawryn; Melissa Attanasio, CFP; Tom Standish; Harrison, Kirk
**Subject:** Re: Harrison divorce

Sounds like YOU need to talk to me! Not mad at all relieved! I have my family back and doing what's best for my children and I get to share in there lives 24/7!
I'm blessed Mr and after witnessing first hand how family law mediators and lawyers operate opened my eyes to how truly jaded and unjust this system is! Ive been ask to keep logs on how bad my husband is and all his failings, mistakes and misgivings in an effort to make him look like an uncaring insensitive father and to discredit him and appear as a horrible person!
Would never DREAM of doing that to the father of my children. My children luv him and he is a descent human being and loves his children. He is a good father. Although we may not see things eye to eye I would never never never do anything to hurt one of the most important persons in my childrens lives for anything!!!!
Sent from my iPhone

On Jul 15, 2011, at 4:06 PM, "Bob Dickerson" <bob@dickersonlawgroup.com> wrote:

Bob,

In your e-mail below, you refer to Vivian Harrison as "Your [i.e., my] client"? Her last e-mail is pretty clear. I have been fired. Thus, I obviously do not have a client to whom I can talk. Not much I can do. I will be following her instructions set out in her last e-mail to everyone who has had any involvement in her case, including Kirk Harrison and Tom Standish.

Bob

Robert P. Dickerson, Esq.

THE DICKERSON LAW GROUP

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Las Vegas, Nevada 89134

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Facsimile: (702) 388-0210

E-Mail: bob@dickersonlawgroup.com

# EXHIBIT 4

A.App. 1223

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20901219000606O0001

# Citi® Diamond Preferred® Rewards Card

**Account Activity**
Jul 09-Aug 07, 2009

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Account Member
KIRK R HARRISON

Account Number
5410 6543 0866 5915

How to Reach Us
1-800-633-7367

Customer Service
BOX 6000
THE LAKES, NV
89163-6000

citi

**Payment Due Date:**

**09/01/2009** Payment must be received by 5:00 PM local time on the payment due date.

**Minimum Amount Due:**

**$20.00**

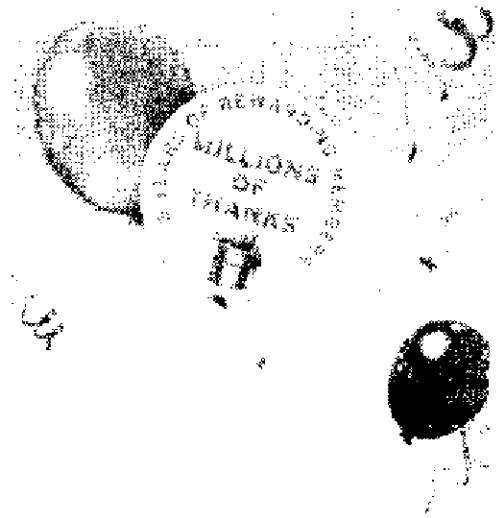
**Total New Balance:**

**$405.75**

**Quick Reference**

| | |
|---|---|
| Total Credit Line | $22,000 |
| Available Credit Line | $21,594 |
| Cash Advance Limit | $7,100 |
| Available Cash Limit | $7,100 |

**Important Account Information**

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**At a Glance**

| Previous Balance | Amount Over Credit Line | Past Due | Finance Charges | Total New Balance |
|---|---|---|---|---|
| $1,574.60 | $0.00 | $0.00 | $0.00 | $405.75 |

**Payments, Credits and Adjustments**

| Sale | Post | Description | Amount |
|---|---|---|---|
| | 07/21 | PAYMENT THANK YOU | -1,574.60 |

**Standard Purchases**

| Sale | Post | Description | Amount |
|---|---|---|---|
| 07/11 | 07/11 | CAPRIOTTIS SANDWICHOPS BOULDER CITY NV | 28.31 |
| 07/20 | 07/20 | CITY OF BOULDER CITY P BOULDER CITY NV | 34.00 |
| 07/31 | 07/31 | DANCE MAGIC LLC SAINT GEORGE UT | 323.96 |
| 08/04 | 08/04 | DAYTON VALLEY COUNTR DAYTON NV | 19.48 |

**Categorized Purchase Activity**

| Air Travel | Auto Rental | Entertainment | Health Care | Lodging | Merchandise |
|---|---|---|---|---|---|
| 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 323.96 |
| **Miscellaneous** | **Organizations** | **Other Travel** | **Restaurants** | **Services** | **Vehicle Services** |
| 0.00 | 0.00 | 0.00 | 47.79 | 34.00 | 0.00 |

Detach and follow payment instructions on reverse

date paid | amount paid | check #



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ORDR

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10/29/2013 11:54:30 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

ORDER FOR APPOINTMENT OF PARENTING COORDINATOR

On July 11, 2012, this Court entered the parties' Stipulation and Order Resolving Parent/Child Issues (hereinafter referred to as "Parenting Plan"). Said Parenting Plan expressly mandated that the parties "hire a Parenting Coordinator to resolve disputes between the parties regarding the minor children." Parenting Plan 5:17-18 (Jul. 11, 2012). Thus, pursuant to the express terms of their Parenting Plan, the parties consented to the appointment of a Parenting Coordinator to resolve disputes, and not merely to provide mediation services. As this Court's Order, the resolution of disputes contemplates decision-making authority pursuant to the terms and limitations set forth herein. The Court having considered all of the pleadings on file herein, and good cause appearing, does hereby Order the appointment of a Parenting Coordinator under the following terms and conditions:

1.0 APPOINTMENT AND DESIGNATION OF TERMS

Margaret Pickard is hereby appointed as Parenting Coordinator in this matter (said appointee hereinafter referred to as the "Parenting Coordinator"). The Parenting Coordinator's full name, title, mailing addresses and phone numbers are as follows:

Name: Margaret Pickard

Street Address: 10120 S. Eastern Ave #200

City: Henderson State: Nevada Zip Code: 89052

Telephone #: (701) 595-6771 Fax # (702) 605-7321

E-mail: margaretpickard@aol.com

2.0 PARENTING COORDINATOR FEES/EXPENSE SHARING

Hourly fees for the services of the Parenting Coordinator shall be set by the Parenting Coordinator pursuant to a written agreement with the parties. All fees shall be advanced equally by the parties. The Parenting Coordinator may recommend a re-allocation of fees and costs on any single issue if it appears that the conduct of one party warrants same.

3.0 GENERAL AUTHORITY

The Parenting Coordinator shall have the general authority to recommend a resolution to parent/child and custody/visitation issues, as set forth below and within the following guidelines:

3.1 Facilitate the resolution of disputes regarding the implementation of the parenting plan, the schedule, or parenting issues, provided such resolution does not involve a substantive change to the shared parenting plan. A substantive change is

defined as a modification to the parenting plan that (a) significantly changes the timeshare of the children with either parent; or (b) modifies the timeshare such that it amounts to a change in the physical custody designation.

3.2 Recommend the implementation of non-substantive changes to, and/or clarify, the parenting plan, including but not limited to issues such as:

(a) transitions/exchanges of the children including date, time, place, means of transportation and transporter;

(b) holiday sharing;

(c) summer or track break vacation sharing and scheduling;

(d) communication between the parents;

(e) health care management issues, including choice of medical providers and payment of unreimbursed medical expenses (including dental, orthodontic, psychological, psychiatric or vision care), pursuant to the Court's order for payment of said expenses;

(f) education or day care including but not limited to, school choice, tutoring, summer school, and participation in special education testing and programs; as well as allocation of the cost for the foregoing items;

(g) children's participation in religious observances and religious education;

(h) children's participation in extracurricular activities, including camps and jobs;

(i) children's travel and passport issues;

(j) purchase and sharing of children's clothing, equipment and personal possessions, including possession and transporting of same between households;

(k) children's appearance and/or alteration of children's appearance, including haircuts, tattoos, ear, face or body piercing;

(l) communication between the parents including telephone, fax, e-mail, etc. as well as communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when the children are not in that parent's care; and

(m) contact with significant other(s) and/or extended families.

4.0 PROCEDURES AND RELATED REQUIREMENTS

4.1 Each party may provide the Parenting Coordinator with copies of pertinent pleadings and orders which relate to the issues to be brought to the Parenting Coordinator. The Parenting Coordinator shall also have direct access to all pertinent orders and pleadings on file in the case, including files under a Sealing Order of the Court.

4.2 All written communications by a party to the Parenting Coordinator shall be copied or provided to the other party, concurrently.

4.3 Each parent is responsible for contacting the Parenting Coordinator within ten (10) days of entry of this order to schedule an initial meeting. The parties shall make themselves and the minor children available for meetings and/or appointments as deemed necessary by the Parenting Coordinator. The Parenting Coordinator shall determine in each instance whether an issue warrants a meeting with the parties.

. . .

4.4. The parties shall participate in good faith in an initial mediation/conflict resolution process with the Parenting Coordinator in an effort to resolve a dispute.

(a) Should mediation result in an agreement, the Parenting Coordinator shall prepare a simple "Agreement" on the subject for signature by each party and the Parenting Coordinator. The Parenting Coordinator shall send a copy of the Agreement to each party; the parties shall each sign the Agreement, and return their copy to the Parenting Coordinator within fourteen (14) days from the date of receipt.

(b) Should the mediation not result in an Agreement, the Parenting Coordinator shall prepare and send to the parties a written decision in the form of a "Recommendation," as well as a courtesy copy to the Court, resolving the dispute. Said Recommendation shall set forth the reasons for the Parenting Coordinator's decision.

(i) Within ten (10) days after the issuance of a Recommendation, any party may file with the Court and serve upon the other party and Parenting Coordinator a notice of Objection to the recommendation. The Parenting Coordinator shall be given a copy of the Objection and notice of the hearing at least ten (10) days prior to the hearing, unless otherwise ordered by the Court. The notice must include:

(1) A copy of the Recommendation;

(2) A concise statement setting forth the reasons that the party disagrees with the Recommendation; and

(3) A statement of the relief requested.

. . .

. . .

(ii) If, within ten (10) days after issuance of the Recommendation, a Notice of Objection is not filed, the Recommendation shall be deemed approved by the Court and shall become an Order of the Court.

4.5 The parties understand that the Parenting Coordinator's Recommendation is not a final decision and is not immediately effective, but rather can be reviewed by the Court through the objection procedure. However, the parties are on notice and understand that the purpose and intent of the Court in appointing a Parenting Coordinator pursuant to the terms of their Parenting Plan is to resolve disputes between the parties without the expense of litigation. Therefore, the Court will overturn a Recommendation of the Parenting Coordinator only upon the showing of evidence to the satisfaction of the Court to warrant such a result.

4.6 The parties shall provide in a timely manner any documents requested by the Parenting Coordinator and/or execute any releases required for the Parenting Coordinator to directly obtain documents or records which the Parenting Coordinator deems relevant to the submitted issues. Failure to do so may result in imposition of sanctions by the Court.

4.7 The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others.

. . .

5.0 PARENTING COORDINATOR APPEARANCES IN COURT

5.1 In the event that the testimony of the Parenting Coordinator is required for any hearing, including depositions, or other Court action by one or both parties, the Parenting Coordinator's fees for such services shall be paid by both parties, in advance, according to the estimate by the Parenting Coordinator. The Court shall determine the ultimate allocation of such fees between the parties.

5.2 A Parenting Coordinator directed by the Court to testify in a Court proceeding shall not be disqualified from participating in further parenting coordination efforts with the family, but the Court in its discretion may order the substitution of a new Parenting Coordinator or may relieve the Parenting Coordinator of his/her duties or the Parenting Coordinator may voluntarily determine that such substitution would be appropriate.

6.0 GRIEVANCES

6.1 The Parenting Coordinator may be disqualified on any of the grounds applicable to the removal of a Judge, Referee, Arbitrator, or Mediator, except that no peremptory challenge shall be permitted.

6.2 Complaints or grievances from any party regarding the performance, actions or billing of the Parenting Coordinator shall only be determined according to the following procedure:

(a) A person having a complaint or grievance regarding the Parenting Coordinator must discuss the matter with the Parenting Coordinator in person before pursuing it in any other manner;

(b) If after discussion the party decides to pursue a complaint, that party must first submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the parties;

(c) The Parenting Coordinator shall then provide a written response to the grievance to the party or parties within thirty (30) days of the written complaint or grievance; and

(d) If the grievance or complaint is not resolved after this exchange, the complaining party may proceed by noticed motion to the Court addressing the issues raised in the complaint or grievance.

6.3 Neither party may initiate a Court proceeding for a complaint or grievance regarding the Parenting Coordinator without following the preceding procedure. Failure to comply with said procedure may result in sanctions by the Court.

6.4 Neither party shall file any complaint or make any written submission regarding the Parenting Coordinator to the Parenting Coordinator's licensing board without first complying with these grievance procedures.

7.0 TERMS OF APPOINTMENT

7.1 The Parenting Coordinator is appointed until discharged by the Court. The Parenting Coordinator may apply directly to the Court for a discharge, and shall provide the parties with notice of the application for discharge. The Court may discharge the Parenting Coordinator without a hearing unless either party requests a hearing in writing within ten (10) days from the application for discharge.

. . .

7.2 Either party may seek to suspend or terminate the Parenting Coordinator process by filing a motion with the Court. The Parenting Coordinator's services may not be terminated without order of the Court.

7.3 In the event that the Parenting Coordinator is discharged, the Court will furnish a copy of the Order of termination of the Parenting Coordinator.

DATED this 29th day of October, 2013.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

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CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

NOTICE OF ENTRY OF DECREE OF DIVORCE

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order From Hearing has been entered in the above-entitled matter. I hereby certify that on the above file stamped date, I caused a copy of the **Decree of Divorce** and this **Notice of Entry of Decree of Divorce** to be:

☒ Placed in the folder(s) located in the Clerk's Office of the following attorneys:

Edward Kainen, Esq.
Thomas Standish, Esq.

Radford J. Smith, Esq.

YCE C. DUCKWORTH
DISTRICT JUDGE
MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

☒ Mailed postage prepaid, addressed to the following attorney:

Gary Silverman, Esq.
6140 Plumas St., #200
Reno, NV 89519

*Kimberly Weiss*

Kimberly Weiss
Judicial Executive Assistant
Department Q

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

DECREE OF DIVORCE

The above-entitled cause having come on regularly for hearing on the 3rd day of December, 2012, before the above-entitled Court, Plaintiff, KIRK ROSS HARRISON ("Kirk") appearing in person and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm of JOLLEY, URGA, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and Defendant, VIVIAN MARIE LEE HARRISON ("Vivian") appearing in person and through her attorney, RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED; Vivian's Answer having been entered, and the parties having waived the making, filing and service of Findings of Fact and Conclusions of Law, and the giving of any and all notices required by law or rules of the District Court; the Court having heard the testimony of witnesses sworn and examined in open Court, the cause having been submitted for decision and judgment, and the Court being fully advised, finds:

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred

Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR

Trial Dispositions:
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

YCE C. DUCKWORTH
DISTRICT JUDGE

MILY DIVISION, DEPT. Q
VEGAS, NEVADA 89101

That the Court has jurisdiction in the premises, both as to the subject matter thereof as well as the parties thereto; that Kirk has been domiciled in this State for more than six weeks preceding the commencement of this action, and that Kirk is now domiciled in and is an actual, bona fide resident of the State of Nevada; that the Kirk is entitled to an absolute Decree of Divorce on the grounds set forth in Kirk's Complaint.

The Court further finds that there are two minor children the issue of this marriage, to-wit: EMMA BROOKE HARRISON ("Brooke"), born June 26, 1999, and RYLEE MARIE HARRISON ("Rylee"), born January 24, 2003. There are no adopted children of the parties and to the best of her knowledge, Vivian is not currently pregnant.

The Court further finds that the child custody, support and related issues regarding the parties' two minor children previously were resolved by way of the Stipulation and Order Resolving Parent/Child Issues entered into between the parties, and filed on July 11, 2012.

The Court further finds that each party has warranted that the property adjudicated in this Decree of Divorce constitutes all property belonging to the parties, and there is no other property (inclusive of any ventures and/or enterprises that might come to fruition at a later time), income, claims, or intangible rights owed or belonging to either party not set forth herein. The Court further finds that the adjudication of property herein is based on the agreement of the parties as reflected in the record made by the parties at the hearing on December 3, 2012, as well as the common terms set forth in their proposed Decrees submitted to the Court. The Court further finds that,

based on representations made to the Court (and excluding the equalizing division of retirement accounts to be effectuated by entry of a QDRO), the parties have effectuated the equal division of the financial accounts adjudicated in this Decree. Further, an equalizing payment previously was made to equalize the division of assets pursuant to NRS 125.150, including the division of real and personal property. This Court further finds that, except for those child-related accounts specifically referenced herein, no other account for which a child of the parties is an intended beneficiary is adjudicated herein.

This Court further finds that each party hereto has represented and warranted to the other party that he or she has made full and fair disclosure of the property and interests in property owned or believed to be owned by him and/or her, either directly or indirectly. The parties have acknowledged that they are aware that each has methods of discovery available to him or her in the prosecution of their divorce action to investigate the community and separate assets of the other. Both have acknowledged that they are entering this settlement without performing any additional discovery, and that they have instructed their counsel to forego such additional discovery.

This Court further finds that each party has admitted and agreed that they each have had the opportunity to discuss and consult with independent tax counselors, other than the attorneys of record in the divorce action between the parties, concerning the income tax and estate tax implications and consequences with respect to the agreed upon division of the properties and indebtedness herein, and that Jolley, Urga, Wirth, Woodbury & Standish, Kainen Law Group, PLLC, Radford J. Smith, Chartered, and

. . .

Silverman, Decaria & Kattelman were not expected to provide and, in fact, did not provide tax advice concerning this Decree of Divorce.

Based on the foregoing findings, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore and now existing between Kirk and Vivian be, and the same are hereby wholly dissolved, and an absolute Decree of Divorce is hereby granted to the parties, and each of the parties hereto is hereby restored to the status of a single, unmarried person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the terms and provisions of the Stipulation and Order Resolving Parent/Child Issues entered into between the parties, and filed on July 11, 2012, are hereby incorporated by reference as if fully stated herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties complete the seminar for separating parents as required by EDCR 5.07 within 30 days from the date of entry of this Decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, should either party intend to move his or her residence to a place outside the State of Nevada, and take the minor children with him or her, said party must, as soon as possible, and before the planned move, attempt to obtain the written consent of the other party to move the minor children from the State. If the other party refuses to give that consent, the party planning the move shall, before he or she leaves the State with the minor children, petition the Eighth Judicial District Court of the State of Nevada, in and for the County

of Clark, for permission to move the children. The failure of the party planning the move to comply with this provision may be considered as a factor if a change of custody is requested by the other party. This provision does not apply to vacations planned by either party outside the State of Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are subject to the provision of NRS 125.510(6) for violation of the Court's Order:

> PENALTY FOR VIOLATION OF ORDER:
> The abduction, concealment or detention of a child in violation of this Order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

> "Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:
>
> (a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.
>
> (b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of

locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada is the habitual residence of the minor children herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon the current financial condition of the parties, and the fact that neither party currently engages in full-time employment, neither party shall be required to pay child support to the other.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a parent responsible for paying child support is subject to wage assignment with their employer pursuant to NRS 31A.025 to 31A.190, inclusive, should they become thirty (30) days delinquent in their child support payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of child support in this matter shall be reviewed every three (3) years pursuant to NRS 125B.145.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions regarding child support in this matter conform to the statutory guidelines as set forth in NRS 125B, as applied in *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998) and *Wesley v. Foster*, 119 Nev. 110, 65 P.3d 251 (2003).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human

Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. Each party shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to the agreement placed on the record before this Court, each party hereby irrevocably waives, releases and relinquishes any rights which either party may have acquired by virtue of their marriage, to any alimony or spousal support of any kind, including lump sum alimony or periodic payments, or to any other Court-ordered compensation or support intended to act as or supplant alimony or spousal support. Each party herein irrevocably waives and releases to the other party all claims, rights and demands of every character or description with respect to alimony or spousal support of any type, now or hereafter, based on any and all circumstances in the present or future, whether foreseeable or unforeseeable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall have confirmed to her as her sole and separate property, free of any claims by Kirk, the sole ownership in and to the following:

1. A one-half interest in the income and distributions of Kirk's business interest in the Tobacco Contract, which Kirk has warranted and represented is the only asset of the business known as Harrison, Kemp & Jones Chartered. Kirk shall pay to Vivian one-half of all net income and

distributions therefrom, net of the maximum tax rate. To the extent the actual taxes attributable to the income and distributions are less than the maximum tax rate, Kirk shall refund to Vivian the corresponding amount associated with her one-half interest. There shall be an annual accounting of said income and distributions to determine the extent of any refund.

2. The prior balance in the business account associated with Harrison Dispute Resolution at Bank of America ending in 4668 was previously equally divided between the parties whereby each party received $115,836.47 on or about December 24, 2012.

3. A twelve and one-half percent (12.5%) interest in The Measo Associates, a Nevada General Partnership, currently held in Kirk's sole name. The parties currently have a 25% interest in The Measo Associates. Following the entry of the Decree of Divorce, the interest shall be equally divided, allocating 12.5% to each party as his or her respective sole and separate property.

4. The approximate nine percent (9% ) interest in Geothermic Solution, LLC, currently held in Kirk's sole name, shall be placed in a trust whereby Kirk and Vivian shall each receive any and all rights or benefits to one-half of said interest. If, for any reason, it is illegal, will jeopardize the legal status of the LLC, or is otherwise impermissible under the organizational documents of Geothermic Solution, LLC, to transfer the interest into a trust, then the parties agree to work with one another so that Vivian is

equitably entitled to one-half of the approximate 9% interest in Geothermic Solution, LLC, either directly or by control of any and all rights or benefits arising from that interest.

5. One-half of the balance in the Boulder Dam Credit Union savings account ending in 9005, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

6. One-half of the balance in the Boulder Dam Credit Union DDA account ending in 9005, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

7. One-half of the balance in the Bank of America DDA account ending in 1400, as of September 11, 2012. Said account is currently in Vivian's name. Following the equal division of the balance contained in the account, Vivian shall retain this account.

8. The prior balance in the Bank of America money market account ending in 5111 was previously equally divided between the parties, whereby each party received $124,809.55 on or about December 24, 2012.

9. One-half of the balance in the Bank of America checking account ending in 4040, with a balance of $36,346.02 as of February 5, 2013.

10. One-half of the balance in the Bank of America account ending in 8682, with a balance of $6,638.54 as of January 7, 2013.

11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of $740.42 as of February 4, 2013.

12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of $16,360.45 as of February 5, 2013.

13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of $28,809.58 as of February 5, 2013.

14. One-half of the balance of the Bank of America account ending in 8278, with a balance of $46,622.74 as of February 14, 2013.

15. The prior balance in the UBS RMA account ending in 7066 was previously equally divided between the parties, whereby each party received $455,727.35 on or about September 14, 2012.

16. The prior balance in the UBS RMA account ending in 3201 was previously equally divided between the parties, whereby each party received $51,458.17 on or about September 11, 2012.

17. The prior balance in the Vanguard account ending in 4530/3952 was previously equally divided between the parties, whereby each party received, on or about September 27, 2012, the following: $365,071.73, one thousand shares of GLD, $37,500.00 par value Missouri State Water Pollution Control municipal bonds, and $37,500.00 par value Elgin, Texas School District municipal bonds.

18. The prior balance in the Charles Schwab account ending in 4245 was previously equally divided between the parties, whereby each party received $386,293.42 on or about September 11, 2012.

19. With respect to the Legacy Treasury Direct account ending in 6330, this account previously had a balance of $4,200,000.00. Of this amount, $3,200,00.00 was equally divided by the parties whereby each party received $1,600,000.00 on or about September 17, 2012. Following the settlement between the parties and after the division of assets was memorialized on the record during the hearing before the Court on December 3, 2012, the then remaining balance of the Legacy Treasury Direct account ending in 6330, which was "reserved to equalize the division of assets," was utilized to equalize the division of assets between the parties with Vivian receiving $470,800.00 and Kirk receiving $529,200.00 on or about December 20, 2012. Said distributions fully liquidated the Legacy Treasury Direct account ending in 6330 and it no longer exists.

20. The entire balance in Vivian's Charles Schwab IRA account ending in 2759. Said account is in Vivian's name and Vivian shall retain the account.

21. A portion of Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of $797,335.53 as of December 31, 2012, which shall be utilized to equalize the difference between the combined total of Kirk's UBS IRA

account ending 3211 and UBS KJ&C Pooled account ending 722-140 with Vivian's Charles Schwab IRA account ending 2759. Following entry of the Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall be utilized for the division of this account. A QDRO has been prepared, circulated, and is in the process of being finalized. This Court shall retain jurisdiction to enter said qualified order.

22. One-half of the gold and silver coins acquired by the parties during marriage. Vivian has received the following gold coins: 55 American Eagle gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African Krugerrand gold coins. Vivian has received 2,500 Silver Eagle silver coins.

23. The 2011 Toyota Avalon.

24. The Colt Government Model 380 semi-automatic pistol and the Smith & Wesson Model 37 – 38 caliber Chief's Special Airweight revolver.

25. All personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume I of II" with an effective date of November 20, 2012, except for the following enumerated items: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on

paper; 116 Chest Table; 117 Side Table; 121 Side Table; 126 Rug; 127 Rug; 129 Side Table; 130 Bedroom Suite; 131 Iron bed; 132 Armchair.

26. Except as provided otherwise herein, any and all Vivian's clothing, jewelry, articles of personal adornment, miscellaneous personal possessions, and personal affects, including family heirlooms and personal property received by gift or inheritence.

27. The residence located at 1514 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-501-004), with a stipulated value of $760,000.00, together with all improvements thereon and all appurtenances thereto. Kirk shall execute a quitclaim deed waiving and releasing any interest whatsoever in the residence located at 1514 Sunrise Circle, Boulder City, Nevada.

28. The residence located at 213 Jasmine Way, Boulder City, Nevada (Parcel #186-04-516-097), together with all improvements thereon and all appurtenances thereto.

29. The residence located at 1521 Sunrise Circle, Boulder City, Nevada (Parcel #186-17-510-011), together with all improvements thereon and all appurtenances thereto.

30. The money and/or property each party receives pursuant to this Decree shall be included for all purposes in the amount each party receives as part of the ultimate resolution in the divorce between the parties, including any and all entities or properties formed or purchased with their respective portions of the distribution identified herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall have confirmed to him as his sole and separate property, free of any claims by Vivian, the sole ownership in and to the following:

1. A one-half interest in the income and distributions of Kirk's business interest in the Tobacco Contract, which Kirk has warranted and represented is the only asset of the business known as Harrison, Kemp & Jones Chartered. Kirk shall pay to Vivian one-half of all net income and distributions therefrom, net of the maximum tax rate. To the extent the actual taxes attributable to the income and distributions are less than the maximum tax rate, Kirk shall refund to Vivian the corresponding amount associated with her one-half interest. There shall be an annual accounting of said income and distributions to determine the extent of any refund.

2. The entire interest in Harrison Dispute Resolution, LLC. The prior balance in the business account associated with Harrison Dispute Resolution at Bank of America ending in 4668 was previously equally divided between the parties whereby each party received $115,836.47 on or about December 24, 2012. Kirk shall retain this account.

3. A twelve and one-half percent (12.5%) interest in The Measo Associates, a Nevada General Partnership, currently held in Kirk's sole name. The parties currently have a 25% interest in The Measo Associates. Following the entry of the Decree of Divorce, the interest shall be equally divided,

. . .

allocating 12.5% to each party as his or her respective sole and separate property.

4. The approximate nine percent (9% ) interest in Geothermic Solution, LLC, currently held in Kirk's sole name, shall be placed in a trust whereby Kirk and Vivian shall each receive any and all rights or benefits to one-half of said interest. If, for any reason, it is illegal, will jeopardize the legal status of the LLC, or is otherwise impermissible under the organizational documents of Geothermic Solution, LLC, to transfer the interest into a trust, then the parties agree to work with one another so that Vivian is equitably entitled to one-half of the approximate 9% interest in Geothermic Solution, LLC, either directly or by control of any and all rights or benefits arising from that interest.

5. One-half of the balance in the Boulder Dam Credit Union savings account ending in 9005, as of September 11, 2012.

6. One-half of the balance in the Boulder Dam Credit Union DDA account ending in 9005, as of September 11, 2012.

7. One-half of the balance in the Bank of America DDA account ending in 1400, as of September 11, 2012.

8. The entire balance in the Bank of America money market account ending in 5111. The prior balance in the Bank of America money market account ending in 5111 was previously equally divided between the parties,

whereby each party received $124,809.55 on or about December 24, 2012. Said account is in Kirk's name and Kirk shall retain this account.

9. One-half of the balance in the Bank of America checking account ending in 4040, with a balance of $36,346.02 as of February 5, 2013. Following the equal division of the balance contained in the account, Kirk shall retain this account.

10. One-half of the balance in the Bank of America account ending in 8682, with a balance of $6,638.54 as of January 7, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

11. One-half of the balance in the Nevada Bank & Trust account ending in 2713, with a balance of $740.42 as of February 4, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

12. One-half of the balance in the Nevada Bank & Trust account ending in 1275 (Certificate of Deposit), with a balance of $16,360.45 as of February 5, 2013. Said account is currently in Kirk's name. Following the equal division of the balance contained in the account, Kirk shall retain this account.

13. One-half of the balance in the Wells Fargo account ending in 8032 (Certificate of Deposit), with a balance of $28,809.58 as of February 5,

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2013. Said account is currently in Kirk's name. Follwoing the division of the balance contained in the account, Kirk shall retain this account.

14. The prior balance in the UBS RMA account ending in 7066 was previously equally divided between the parties, whereby each party received $455,727.35 on or about September 14, 2012. Said account is in Kirk's name and Kirk shall retain this account.

15. The entire balance in Kirk's separate property Bank of America account ending in 2521, with a balance of $112,024.01 as of February 14, 2013. Said account is currently in Kirk's name and Kirk shall retain this account.

16. One-half of the balance of the Bank of America account ending in 8278, with a balance of $46,622.74 as of February 14, 2013. Said account is currently in Kirk's name. Following the division of the balance contained in the account, Kirk shall retain this account.

17. The entire balance in Kirk's separate property UBS RMA account ending in 8538, with a balance of $382,166.83 as of January 31, 2013. Said account is in Kirk's name and Kirk shall retain this account.

18. The prior balance in the UBS RMA account ending in 3201 was previously equally divided between the parties, whereby each party received $51,458.17 on or about September 11, 2012. Said account is in Kirk's name and Kirk shall retain this account.

19. The entire balance in the Vanguard account ending in 4530/3952. The prior balance in the Vanguard account ending in 4530/3952 was previously

equally divided between the parties, whereby each party received, on or about September 27, 2012, the following: $365,071.73, one thousand shares of GLD, $37,500.00 par value Missouri State Water Pollution Control municipal bonds, and $37,500.00 par value Elgin, Texas School District municipal bonds. Said account is in Kirk's name and Kirk shall retain the account.

20. The entire balance in the Charles Schwab account ending in 4245. The prior balance in the Charles Schwab account ending in 4245 was previously equally divided between the parties, whereby each party received $386,293.42 on or about September 11, 2012. Said account is in Kirk's name and Kirk shall retain the account.

21. With respect to the Legacy Treasury Direct account ending in 6330, this account previously had a balance of $4,200,000.00. Of this amount, $3,200,00.00 of that amount was equally divided by the parties whereby each party received $1,600,000.00 on or about September 17, 2012. Following the settlement between the parties and after the division of assets was memorialized on the record during the hearing before the Court on December 3, 2012, the then remaining balance of the Legacy Treasury Direct account ending in 6330, which was "reserved to equalize the division of assets," was utilized to equalize the division of assets between the parties with Vivian receiving $470,800.00 and Kirk receiving $529,200.00 on or about December 20, 2012. Said distributions fully

liquidated the Legacy Treasury Direct account ending in 6330 and it no longer exists.

22. The entire balance in Kirk's UBS IRA account ending in 3211, with a balance of $142,404.91 as of January 31, 2013. Said account is in Kirk's name and Kirk shall retain the account.

23. The entire balance in Kirk's UBS KJ&C Pooled account ending in 722-140, with a balance of $14,011.95 as of September 30, 2012. Said account is in Kirk's name and Kirk shall retain the account.

24. Kirk's UBS Profit Sharing Plan account ending in 3354, with a balance of $797,335.53 as of December 31, 2012, subject to Vivian's right to that portion of said account necessary to equalize the difference between the combined total of Kirk's UBS IRA account ending 3211 and UBS KJ&C Pooled account ending 722-140 with Vivian's Charles Schwab IRA account ending 2759. Following entry of the Decree of Divorce a Qualified Domestic Relations Order ("QDRO") shall be utilized for the division of this account. A QDRO has been prepared, circulated, and is in the process of being finalized. This Court shall retain jurisdiction to enter said qualified order.

25. One-half of the gold and silver coins acquired by the parties during marriage. Kirk has received the following gold coins: 55 American Eagle gold coins, 55 Canadian Maple Leaf gold coins, and 55 S. African Krugerrand gold coins. Kirk has received 2,500 Silver Eagle silver coins.

26. The 2009 Chevrolet Z71 Crew Cab pickup truck.

27. The 2008 Acura MDX.

28. The 2000 Chevrolet Z71 Extended Cab pickup truck.

29. All personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume II of II" with an effective date of November 20, 2012.

30. All of the guns (except for the Colt Government Model 380 and the Smith & Wesson Model 37 – 38 caliber Airweight which have been previously provided to Vivian), together with all accessories, including, but not limited to all ammunition, gun cleaning supplies, scopes, cases, etc.

31. All of the furniture Kirk received from his parents including: his parent's bedroom set (which was in the guest bedroom); his mother's alder china cabinet and buffet; his mother's needlepoint bench that was made by her brother Ray; his mother's small wooden rocking chair; and his father's high back wooden chair with red needlepoint.

32. The following personal property items identified and appraised by Joyce Newman as set forth in the "Summary Appraisal Report Volume I of II" with an effective date of November 20, 2012: 21 Stairmaster; 24 Elliptical; 25 Vectra; 26 Rotator Cuff; 28 Bike; 29 Shop Stool; 30 Block bells; 31 Bench; 35 Foosball; 38 Grey lockers; 40 2000 truck; 41 Acura; 42 Silverado; 43 Safe; 74 Pool Table; 75 Upright Piano; 76 Credenza/file; 77 Display Cabinet; 78 Four leather stools; 80 work on paper; 81 work on

paper; 82 work on paper; 83 pool Cues; 84 Desk; 85 work on paper; 86 work on paper; 87 work on paper; 88 work on paper; 116 Chest Table; 117 Side Table; 121 Side Table; 126 Rug; 127 Rug; 129 Side Table; 130 Bedroom Suite; 131 Iron bed; 132 Armchair.

33. Except as provided otherwise herein, any and all of Kirk's clothing, jewelry, articles of personal adornment, miscellaneous personal possessions, and personal affects, including family heirlooms and personal property received by or inheritance.

34. Parcel #6050-A-1, consisting of approximately 107.26 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including Water Right #208 (Harrison Spring) and Water Right #71-4172 (5 acre feet), subject to Vivian's community property interest therein, as well as any and all reimbursement claims to the ranch property, the total amount of which the parties stipulated to being $285,000.00.

35. Parcel #6052, consisting of approximately 39.91 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including Water Right #413 (Unnamed Spring) and Water Rights #71-4450 and #71-4173 (total of 4 acre feet for #71-4450 & #71-4173).

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36. Parcel #6050-C, consisting of approximately 3.23 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto including Water Right #71-3613.

37. Parcel #6050-B, consisting of approximately .87 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto.

38. Parcel #6049, consisting of approximately 50.62 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights, including, but not limited to, the following water rights: Water Right #138 (Tullis Spring Area), Water Right #295 (Silent Spring), Water Right #296 (Tullis Spring), Water Right #297 (Tullis Gulch), and Water Right #299 (Hideout Spring).

39. Parcel #6050-D, consisting of approximately 4.36 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

40. Parcel #6050-E, consisting of approximately 20.65 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

41. Parcel #6050-F, consisting of approximately 41.20 acres, in Washington County, Utah, together with all improvements thereon and all appurtenances thereto, including any and all water rights.

42. Vivian shall execute a quitclaim deed waiving and releasing any interest whatsoever in the Utah ranch, including any and all water rights (to include all parcels necessary).

43. The money and/or property each party receives pursuant to this Decree shall be included for all purposes in the amount each party receives as part of the ultimate resolution in the divorce between the parties, including any and all entities or properties formed or purchased with their respective portions of the distribution identified herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any personal property not identified and appraised by Joyce Newman in her Summary Apprisal Report and not divided or otherwise confirmed to either party pursuant to the terms set forth above shall be divided by way of an A/B List.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following accounts were established by Kirk for Brooke and Rylee under the Nevada Uniform Act on Transfers to Minors (NUATM), and Kirk and Vivian have previously funded these accounts, through annual gifts:

1. Charles Schwab Custodial Account of Kirk R. Harrison as Custodian for Emma Brooke Harrison UNVUTMA until age 18, ending in 6622, with a balance of $33,251.70 as of December 31, 2012.

2. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma B. Harrison NV Unif Trans Min Act until age 18, ending in 0709, with a balance of $75,115.06 as of December 31, 2012.

3. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Emma B. Harrison NV Unif Trans Min Act until age 25, ending in 4276, with a balance of $210,664.16 as of December 31, 2012.

4. Vanguard Custodial Account of Kirk R. Harrison as Custodian for Rylee M. Harrison NV Unif Tras Min Act until age 25, ending in 4250, with a balance of $210,094.80 as of December 31, 2012.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as Rylee has $108,936.12 [(33,251.70 + 75,115.06 + 210,664.16) - 210,094.80] less in her accounts than Brooke has in her accounts (as a consequence of the difference in their ages), Kirk and Vivian shall each make the following annual gifts (deposits) into Rylee's account ending in 4250: (1) for tax year 2012, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2013; (2) for tax year 2013, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2014; (3) for tax year 2014, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2015; (4) for tax year 2015, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2016; (5) for tax year 2016, a deposit of $10,000.00, which deposit shall be made prior to April 15, 2017, and (6) for tax year 2017, a deposit of $5,000.00, which deposit shall be made prior to April 15, 2018.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a third party custodian shall be appointed for each of the accounts identified above. If possible, the parties shall designate a custodian who does not charge a custodial fee.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that the following 4-year tuition plans were established by Vivian for Brooke and Rylee with the Nevada Prepaid Tuition Program, and and Kirk and Vivian have fully funded said plans:

1. Contract Number 10002618, Purchaser: Vivian L. Harrison, Beneficiary: Emma B. Harrison; Tuition Plan: 4 Year University Plan; the Contract has been paid in full with total contract payments of $7,365.00.

2. Contract Number 10400042, Purchaser: Vivian L. Harrison; Beneficiary: Rylee M. Harrison; Tuition Plan: 4 Year University Plan; the Contract has been paid in full with total contract payments of $12,750.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these accounts shall continue to be overseen by Vivian with copies of the Annual Statements of Account being provided to Kirk within 10 days of receipt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall sell Parcel #4025-A, consisting of approximately 60 acres, in Washington County, Utah, together with Water rights #81-4115 (2 acre feet) and #81-433 (5 acre feet). IT IS FURTHER ORDERED that Parcel #4025-A and Water rights #81-4115 and #81-433 shall be listed for sale for Two Hundred Forty-Nine Thousand Dollars ($249,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall sell Parcel #181-28-810-002, the residential lot located at 610 Lido Drive, Boulder City, Nevada. Said Parcel #181-28-810-002 shall be listed for sale for Three Hundred Eighty-Nine Thousand Dollars ($389,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Parcel #4025-A and Parcel #181-28-810-002 shall be listed with a mutually selected real estate broker for a period of six months. In the event either or both subject properties has not been sold or is not in escrow to be sold during any six month listing period, then beginning 10 days after the expiration of the prior listing, said property or properties shall be listed with the same real estate broker or, at the parties' mutual election, another real estate broker, and the listed price of the subject property or properties shall be 5% less than the list price during the prior six month period. IT IS FURTHER ORDERED that each party shall equally share the net proceeds from the sale of each subject property. IT IS FURTHER ORDERED that, upon the expiration of each six month listing period, in the event the subject property has not been sold or is not in escrow to be sold, either party hereto shall have the right to purchase the subject property for the listed price, without the payment of or obligation to pay any real estate commission, upon written notice to the other party within 5 days of the expiration of the listing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the furniture and furnishings in each of the children's bedrooms are the personal property of that respective child.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to the family photographs and videos of the older children when they were younger, which are in Kirk's possession, and the family photographs, all of the negatives of the family photographs, and all of the videos of Brooke and Rylee, which are in Vivian's possession, each party hereto shall pay one-half of the cost to transfer all of the

photographs (utilizing the negative whenever it is in existence) and all videos containing one or more of the children to electronic storage and/or data base and to produce a total of seven copies of that entire data base so that each party hereto and each of the children have a copy. Each party shall fully cooperate with the other to facilitate the transfer and copying of all photographs (negatives whenever possible) and videos which are the subject of this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party hereto is solely personally responsible for any debt (including any and all credit card debt) he or she has at the time this Decree of Divorce is entered. The parties agree and acknowledge that the joint credit card account with Nordstrom Bank has been previously closed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vivian shall remove her name from Kirk's Costco membership on or before November 1, 2013.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kirk shall be responsible for maintaining his own medical insurance following the entry of this Decree of Divorce, and Vivian shall be responsible for maintaining her own medical insurance following the entry of this Decree of Divorce.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall file separate tax returns for the tax year 2012 and each year thereafter. Until such time as Brooke is no longer eligible as a tax dependent, Vivian shall be entitled to claim Rylee as a dependent each year on her tax return, and Kirk shall be entitled to claim Brooke each year as a dependent on his tax return. In the year following the last year that

Trooke is eligible to be claimed as a tax dependent, the parties shall begin alternating Rylee as a dependent with Vivian claiming Rylee in the first year.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Joint Preliminary Injunction that was previously issued in this matter on September 9, 2011, is dissolved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction to adjudicate any reimbursement owed to Vivian for community expenses paid from separate property monies prior to November 30, 2012. The parties have designated Cliff Beadle, CPA (for Kirk), and Melissa Attanasio, CFP, (for Vivian), to meet and confer to prepare an accounting of said community expenses paid from separate property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction to divide any property (or debt) later discvoered that has not been specifically addressed in this Decree. If the Court finds that either party has willfully withheld disclosure of any property or property interests, the Court may, in its discretion, award all of that property to the other party. Further, in the event of such willful non-disclosure, the Court may require the non-disclosing party to pay all reasonable fees and costs incurred by the other party in pursuing his or her right to a division or distribution of such property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties have reserved the issue of attorney's fees incurred in the divorce action. IT IS FURTHER ORDERED that, pursuant to the terms of the agreement placed on the

record, either party (or both parties) may file a motion with the Court seeking an award of fees. This Court shall enter a separate order addressing the issue of attorney's fees and costs. Independent of either party's pursuit of said fees and costs, IT IS FURTHER ORDERED that, should either party be required to commence an action to enforce or interpret the terms of this Decree, the Court shall order the non-prevailing party in that action to pay the reasonable attorney's fees and costs incurred by the prevailing party, including those fees and costs expended during notification or negotiation of the issue presented to the Court in the aciton.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties hereto shall each execute quitclaim deeds, stock transfers, and any and all other instruments that may be required in order to effectuate transfer of any and all interest either may have in and to the said property hereby conveyed to the other as hereinabove specified. Should either party fail to execute any of said documents to transfer interest to the other, this Decree of Divorce shall constitute a full and complete transfer of the interest of one to the other as hereinabove provided. Upon failure of either party to execute and deliver any such deed, conveyance, title, certificate or other document or instrument to the other party, this Decree of Divorce shall constitute and operate as such properly executed document and the County Assessor and County Recorder and any and all other public and private officials are hereby authorized and directed to accept this Decree of Divorce, or a properly certified copy thereof, in lieu of the document regularly required for such conveyance or transfer.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except as otherwise specified herein, any and all property acquired, income received or liabilities incurred by either of the parties hereto from and after the date of the entry of this Decree of Divorce, will be the sole and separate property of the one so acquiring the same, and each of the parties hereto respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same and holds harmless and agrees to indemnify the other party from any and all liabilities incurred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any claim, action or proceeding is brought seeking to hold one of the parties hereto liable on account of any debt, obligation, liability, act or omission assumed by the other party, the responsible party will, at his or her sole expense, defend the innocent party against any such claim or demand and he or she will indemnify, defend and hold harmless the innocent party.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall retain her married name of Vivian Marie Lee Harrison.

DATED this 31st day of October, 2013.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

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CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: 12/18/2013
Time of Hearing: 11:00AM

**ORAL ARGUMENT REQUESTED:**
**YES XX NO ___**

**NOTICE: PURSUANT TO EDCR 5.25(b) YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

## PLAINTIFF'S MOTION TO ALTER, AMEND, CORRECT AND CLARIFY JUDGMENT

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URGA, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby moves this Court, pursuant to NRCP 52(b) and NRCP 59(e), to alter, amend, correct and clarify the Decree of Divorce entered by this Court on October 31, 2013.

This Motion is made and based upon the Points and Authorities submitted herewith, the Affidavits attached hereto, the Exhibits attached hereto, and upon the oral argument of counsel at the time of hearing.

DATED this 14 day of November, 2013.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
Las Vegas, NV 89145
*Attorneys for Plaintiff*

**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

TO: RADFORD SMITH, ESQ. and GARY SILVERMAN, ESQ., counsel for Defendant:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 12/18/2013 day of _____, 2013, at the hour of 11:00AM .m., or as soon thereafter as counsel may be heard.

DATED this 14 day of November, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
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*Attorney for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

After the terms of the settlement between the parties were memorialized on the record before the Court during the hearing on December 3, 2012, this Court granted an absolute Decree of Divorce. Kirk's counsel thereafter prepared and provided a Marital Settlement Agreement to Vivian's attorneys on February 19, 2013. Vivian's attorneys made written assurances they would provide a response. (*See* Kirk's Motion for Scheduling Order, filed 9.14.13, p. 11, l. 13-20.) However, four and one-half months elapsed without a response. Left with no alternative, Kirk's counsel filed a Motion to Enter Decree on May 13, 2013, attaching a proposed Decree of Divorce at that time.

As of September 4, 2013, Vivian's attorneys had still failed to respond to the Marital Settlement Agreement, which had been provided to them on February 19, 2013 – ***over six and one-half months earlier.*** Pursuant to EDCR 5.25(b), Vivian's attorneys were required to file an opposition to Kirk's Motion to Enter Decree, filed May 13, 2013, within ten (10) days. As of September 4, 2013, Vivian's attorneys had failed to file an opposition to Kirk's Motion to Enter Decree for ***one hundred fourteen (114) days.*** Again, left with no alternative, Kirk's counsel filed a Motion for Scheduling Order on September 4, 2013.

On September 19, 2013, this Court entered its Order Incident to the Order Resolving Parent/Child Custody Issues and December 3, 2013 Hearing, wherein this Court ordered the submission of a proposed Decree of Divorce from both parties. Since Vivian's attorneys had Kirk's proposed Decree of Divorce since May 13, 2013, they had ample opportunity and did, in fact, respond Kirk's proposed Decree of Divorce by way of Vivian's submission of a proposed Decree of Divorce. In contrast however, although Kirk's counsel responded to Vivian's attorneys' "Notes" and "Explanation," Kirk was not afforded an opportunity to respond to the provisions contained in Vivian's proposed Decree of Divorce and, more particularly, the provisions thereof which are wholly inconsistent with the agreement between the parties and the record memorialized before the Court on December 3, 2012.

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## II. ARGUMENT

### A. A Motion To Alter or Amend Is Proper As There Has Been Judicial Error Caused By the Submission Of Vivian's Proposed Decree of Divorce

A motion to amend is proper when there has been judicial error in the judgement. NRCP 52(b) provides:

> Upon a party's motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may later be questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

A motion to amend must be filed within ten days after service of the notice of entry of the judgment. NRCP 59(e) provides:

> (e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment.

A motion to alter or amend the judgment is proper where there has been judicial error, as opposed to clerical error, in a judgment of the Court. *See, e.g., Koester v. Administrator of Estate of Koester*, 101 Nev. 68, 73, 693 P.2d 569, 573 (describing the court's general power to correct clerical errors); 4 LITIGATING TORT CASES § 46:14 (2011) ("The motion must seek to "alter or amend" the judgment, i.e., requesting to correct judicial error as opposed to clerical error."). A "judicial error" is one in which the Court made an error in the consideration of the matters before it, as opposed to an error in the judgment itself that did not reflect the true intention of the Court. *See, e.g., Presidential Estates Apartment Associates v. Barrett*, 917 P.2d 100, 103-04 (Wash. 1996).

As a consequence of the errors contained in Vivian's proposed decree of divorce, there are errors contained in the Decree of Divorce, entered by the Court on October 31, 2013.

### B. Both Parties Have Consistently Acknowledged That Kirk's Separate Property Accounts Are Kirk's Separate Property and Were, Therefore, Never To Be Divided

#### 1. The Difference in the Proposed Decrees of Divorce

The proposed Decree of Divorce provided by Kirk, provided that Kirk would keep the entire balance in each of his separate property accounts ending in 8682, 2713, 1275, 8032, and 2521. *See,*

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Kirk's proposed Decree, p. 11, ¶10 & 11; p. 12, ¶12, 13 & 15. Accounts 8682, 2713, 1275, and 8032 are separate property accounts which existed prior to marriage and Kirk has maintained separately or are an account Kirk established when his father passed away to deposit money he received from his parents' estates and which also have been maintained separately. The account ending in 2521 is the separate property account Kirk established during the pendency of the divorce to deposit separate property funds, which have been utilized to pay Kirk's normal ongoing bills.

In the proposed Decree of Divorce provided by Vivian, Vivian proposed that the money in each of Kirk's separate property accounts ending in 8032, 8682, 2713 and 1275 be equally divided. *See*, Vivian's submission, filed 9.27.13, Exh. D, p. 8, ¶6.16; p. 6, ¶6.18, 6.19; p. 9, ¶6.21. Vivian's proposed Decree also proposed that the money in the account ending in 8278 be equally divided. *See*, p. 8, ¶6.17 The account ending in 8278 is the separate property account Kirk established when the Court ordered that $700,000.00 in community funds be equally divided to provide each party with $350,000.00 for the payment of attorneys' fees and costs. This account was opened on March 2, 2012 and is entitled, "Fee Account" and has been used solely by Kirk to pay attorneys' fees and costs. After the initial $350,000.00 was exhausted, Kirk deposited additional separate property funds into this account to pay for attorneys' fees and costs.

Unfortunately, the Court adopted Vivian's erroneous provisions as set forth in the Decree of Divorce, entered October 31, 2013, p. 9, ¶10; p. 10, ¶11, 12, 13 & 14. As a consequence, the following provisions are also in error, p. 16, ¶10, 11, 12, 13; p. 17, ¶16.

**2. The Record Before the Court Is Clear That Kirk's Separate Property Accounts Were Never To Be Divided**

During the hearing on December 3, 2012, a record was made regarding the accounts which were remaining to be divided. The record before the Court is clear that at the time of the hearing on December 3, 2012, there were only five remaining accounts to be divided. First, there was a million dollar account which was set aside to equalize the division of assets between the parties. (Hearing Transcript, 12/3/12, p. 9, l. 15-18). Second, there was a retirement account remaining to be divided based upon the terms of a qualified domestic relations order. (Hearing Transcript, 12.3.12, p. 9, l. 12-15) Third, there were three remaining identified accounts to also be divided:

> There are three accounts that have not been divided, not counting the retirement account that is in the process. We have a draft of a qualified order that's been circulated. Those three accounts are Kirk's checking account that ends in 4040, the number, and a money market account also in Kirk's name ending in 5111, and then the Harrison Dispute Resolution, LLC account, which actually ends in, the number 4668.

(Hearing Transcript, 12.3.12, p. 9, l. 20-25; p. 10, l. 1)

The record is absolutely clear that only those five accounts were remaining to be divided. There was no reference whatsoever to Kirk's separate property accounts, as these are Kirk's separate property and, for that reason, were never going to be divided. Consistently, when Kirk's attorneys identified the accounts to be equally divided, Vivian's attorneys **did not** apprise the Court that additional accounts – these separate property accounts of Kirk – were also to be divided. It was not until the submission of Vivian's proposed Decree *almost ten months later*, on September 27, 2013, did Vivian's attorneys advocate that Kirk's separate property accounts should also be divided.[1]

There was never an agreement between the parties "regarding the equal division of all cash accounts" as erroneously alleged in the "Explanation" submitted by Vivian. *See*, Vivian's submission, 9/27/13, p. 4, l. 16-21. Such an agreement is totally nonsensical as it would require Kirk to divide accounts which were already the result of the parties equally dividing community funds and transforming them into separate property funds. Vivian, in effect, would then get one-half of Kirk's one-half.

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[1] It should be noted when Kirk submitted his proposed Decree as an attachment to his Motion To Enter Decree of Divorce, filed May 13, 2013, Kirk added three accounts which are in Vivian's name, the community nature of which has never been in dispute. (Kirk's proposed Decree, p. 6, l. ¶5, 6 & 7.) These three accounts were only added for **purposes of completeness** so that **all community accounts were identified**, as Kirk believed the amount of money in these accounts was de minimis. To the extent the addition of these accounts is inconsistent with the record before the Court on December 3, 2012, Kirk will waive any interest in these accounts, despite the fact both parties have always agreed these accounts are community property. One of these accounts is the checking account Vivian utilized during the marriage. According to Exhibit E, filed by Vivian on September 27, 2013, the total money in all three of these accounts is $477.00 [278 + 7 + 192].

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**3. After Vivian's Attorneys Received Extensive Responses in Discovery Confirming the Subject Accounts Only Contained Kirk's Separate Property Funds, the Financial Experts On Behalf of Both Parties, Jointly Determined The Relative Community and Separate Property Interests in the Ranch Parcels that Kirk Had Acquired From His Sisters On the Basis that the Funds in Those Separate Property Accounts Were And Are Kirk's Separate Property**

Kirk filed his Financial Disclosure Form on February 12, 2012. A true and correct copy is attached hereto as **Exhibit "1."** Exhibit 2 to the FDF identifies the same four separate property accounts ending in 8682, 2713, 1275 and 8032 as being Kirk's separate property.[2] The following is a brief history of these four accounts:

1. Bank of America account ending in 8682 – Kirk has had this account since he was in high school. The account was originally with the Pioche Office of Nevada National Bank. Nevada National Bank was later acquired by Security Pacific Bank. Security Pacific Bank was subsequently acquired by Bank of America.

2. Nevada Bank & Trust account ending in 2713 – this was a joint account Kirk had with his father, with full right of survivorship, prior to his marriage to Vivian. When Kirk's father passed away on October 30, 1990, he became the sole owner of the account.

3. Nevada Bank & Trust account ending in 1275 – the account ending in 2713 is a non-interest bearing checking account. Therefore, Kirk purchased a certificate of deposit at Nevada Bank & Trust with most of the funds in that account and thus created this account.

4. Wells Fargo account ending in 8032 – Kirk opened an account at First Interstate Bank on November 29, 1990, to deposit all monies he received from his father's estate and all monies he received from the lease and sale of Kirk's parents' family home, which Kirk and his sisters inherited from their mother when she passed away in 1983. Kirk's father lived in the family home until the time of his death. The home was subsequently leased and sold. Sometime after all monies were received from his father's estate and the family home was sold, Kirk purchased a certificate of deposit at FIB with all of the funds in that account and thus created this account. Wells Fargo subsequently acquired First Interstate Bank.

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[2] Also identified as separate property is UBS account ending in 8538, which holds the funds Kirk acquired as separate property pursuant to a separate property agreement with Vivian, whereby she acquired the same amount of funds to purchase the house for the Atkinsons. As noted previously, the account ending in in 2521 is the separate property account Kirk established subsequently during the pendency of the divorce to deposit separate property funds, which has been utilized to pay Kirk's normal ongoing bills.



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Kirk's extensive discovery responses confirm that each of Kirk's separate property accounts only contain Kirk's separate property. On or about March 8, 2012, Kirk produced Plaintiff's First Supplemental Response to Defendant's First Request for Production of Documents. Included in these documents are the following:

**REQUEST FOR PRODUCTION NO. 11:**

> Please produce any and all documents evidencing any inheritance received by Plaintiff or Defendant during the time of the parties' marriage, and any and all property or assets acquired through or attributable to any rents, issues, and profits from such inheritance.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

*See* the following documents submitted herewith:

1. Probate Final Order dated 5/8/02 ..... **PLTF000798 - PLTF000800**
2. 1/25/88 letter from Associated Food Stores, Inc. regarding Patron's credit receipts ..... **PLTF000801**
3. 11/21/90 letter from Kirk Harrison to Associate Food Stores, Inc. regarding Patron's credit receipts ..... **PLTF000802 - PLTF000806**
4. Check 1041 payable to Kirk Harrison in the amount of $45,543.68 and supporting deposit documents **PLTF000807 - PLTF000809**
5. Letter from Kirk Harrison to Nevada Bank & Trust requesting cashier's check for $48,900 ..... **PLTF000810 - PLTF000811**
6. Check register and backup documents for First Interstate Bank account ending 5565 ..... **PLTF000812 - PLTF000828**

As part of this production, Kirk also produced, in response to request #15, *inter alia*, the following:

5. Bank of America, Ending 8682
   Kirk Harrison
   Period ending: 7/8/09 - 2/3/12 ..... **PLTF002656 - PLTF002782**
11. Nevada Bank & Trust, Ending 2713
    Kirk Harrison
    Period ending: 6/9/09 - 1/9/12 ..... **PLTF003679 - PLTF003759**

On or about October 1, 2012, Kirk provided Plaintiff's Response to Defendant's Second Set of Interrogatories. In response to Interrogatory #28, Kirk explained the source of funds utilized to purchase his sisters' interests in the family ranch as follows:

> I purchased my sister Janie's undivided one-fourth interest in Parcel #6050-A-1 and her undivided one-third interest in Parcel #6052 on or about December 29, 1994 for the total purchase price of $60,000.00. $11,100 of the $60,000 purchase price came from

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a separate property account at FIB (#0380145565). My Dad passed away on October 30, 1990. I opened this separate property account with FIB on November 29, 1990 to deposit all monies I received from my Dad and all monies I received from the lease and sale of our family home in Caliente, Nevada. $48,900 of the $60,000 purchase price came from what I then believed to be a totally separate property account at Nevada Bank & Trust (#1802792). I had purchased my home, located at 5100 Bromley Avenue in Las Vegas, on October 4, 1979 – over three (3) years before my marriage to Vivian. I had purchased the home for $72,400 with a $12,400 down payment and a note for $60,000.00. When I sold this house, I calculated what I believed at the time to be a very conservative estimate of the separate property portion of the proceeds from the sale of that home, and had the escrow company cut two checks based upon that calculation – one for $45,543.68 and one for $67,000.00. I opened the account at Nevada Bank & Trust in July of 1992 and deposited $45,543.68, which I believed to be 100% my separate property. I deposited the $67,000.00 into a community property account.

I purchased my sister Jo Lyn's undivided one-fourth interest in Parcel #6050-A-1 and her undivided one-third interest in Parcel #6052 in May of 1998 for a total of $70,000.00. $19,000.00 of the $70,000 purchase price was from the separate property account at FIB, however, by then it was Wells Fargo Bank.

I purchased my sister Kaye's undivided one-fourth interest in Parcel #6050-A-1 and her undivided one-third interest in Parcel #6052 in December of 1998 for a total of $110,000.00 utilizing community funds.

On or about October 1, 2012, Kirk provided Plaintiff's Response to Defendant's Third Request for Production of Documents. In response to Request #38, Kirk provided, *inter alia*, the following documents:

> Documents evidencing source of funds have been previously provided in response to a prior request for production. See, Bates-stamped nos. PLTF000798 - PLTF000809 and PLTF000812 - PLTF000828. The following additional documents are being produced herewith:
>
> 1. Letter dated June 29, 1992 from Minnesota Title Ins. to Kirk R. Harrison Re: Escrow No. 23-86407-KO ..... **PLTF010061 - PLTF010064**
> 2. Monthly statements for Nevada Bank & Trust account # 1802792 (July 31, 1992 through January 31, 1995) ..... **PLTF010065 - PLTF010101**
> 3. Copy of the cashier's check, in the amount of $11,100.00 made payable to Northern Nevada Title, from First Interstate Bank, dated December 29, 1994 ..... **PLTF010102**
> 4. Copy of personal check, in the amount of $51,000.00, made payable to Walther Key Trust Account, drawn on account number ending 4040, and copy of Cashier's Check, in the amount of $19,000.00, dated March 18, 1998, made payable to Walther Key Trust Account, drawn on Wells Fargo Bank ..... **PLTF010103**

After the production of all of the documentation relative to Kirk's separate property accounts and Kirk's answers to interrogatories referenced above, the parties participated in a settlement meeting

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on or about November 29, 2012. During that settlement meeting, the financial experts on behalf of both parties – Cliff Beadle, on behalf of Kirk and Melissa Attanasio and Brian Boone (via telephone), on behalf of Vivian – jointly determined the relative community and separate property interests in the ranch parcels that Kirk had acquired from his sisters **on the basis that the funds in the separate property accounts were and are Kirk's separate property.** At no time during the negotiations beginning on November 29, 2012, and culminating in the settlement which was memorialized on the record before this Court on December 3, 2012, did Vivian's attorneys or financial experts take the position that Kirk's separate property accounts were not Kirk's separate property. *See*, Affidavit of Clifford R. Beadle, dated November 8, 2013, which is attached hereto as **Exhibit "2."**

In summary, Kirk's separate property accounts were identified in Kirk's Financial Disclosure Form as being Kirk's separate property. After receiving multiple responses to discovery concerning these accounts, the financial experts, on behalf of both parties, jointly determined relative separate and community property interests in certain ranch parcels on the basis these were and are Kirk's separate property accounts. The record before the Court on December 3, 2013, is indisputably clear there were only five accounts yet to be divided – none of which were Kirk's separate property accounts. Neither party indicated to the Court that any of these separate property accounts were to be divided. Inconsistent with all of the foregoing, Vivian's attorneys submitted their much belated proposed Decree of Divorce some 10 months later proposing the division of Kirk's separate property accounts.

### C. Kirk Respectfully Submits The Further Division Of Personal Property By Way Of An A/B List Is Unnecessary

The Court's Decree of Divorce provides, "that any personal property not identified and appraised by Joyce Newman in her Summary Appraisal Report and not divided or otherwise confirmed to either party pursuant to the terms set forth above shall be divided by way of an A/B List." *See*, Decree of Divorce, p. 23, l. 11-15. It is clear from the record on December 3, 2012, and the proposed Decrees of Divorce submitted by the parties, that all of the personal property at the Utah Ranch belongs to Kirk. (December 3, 2012, Hearing Transcript, p. 7, l. 7 - 8.) Therefore the only items of personal property which would be subject to division by way of an A/B List are the items of personal property which were in the marital residence which were not on Joyce Newman's Summary Appraisal. As Kirk has

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previously represented to the Court, he believes that 95% of these personal items are in Vivian's possession. Despite this knowledge, Kirk is willing to forego the expense of an A/B List division of these items and the personal property that Kirk removed from the marital residence when he vacated the marital residence.

### 1. Both Parties Agree that All of the Personal Property Presently Located at the Ranch Belongs to Kirk

The record of the hearing on December 3, 2012, is unequivocal that all of the personal property at the Utah Ranch belongs to Kirk. Vivian's proposed Decree is unequivocal that all of the personal property at the Utah Ranch belongs to Kirk. (Vivian's proposed Decree, p. 15, ¶7.30 & 7.31.) It should be noted that this submission was made on September 27, 2013 – ten months after Vivian complained that Kirk improperly took personal property from the marital residence, which is addressed in detail infra. Kirk's proposed Decree is also unequivocal that all of the personal property at the Utah Ranch belongs to Kirk. (Kirk's proposed Decree, p. 14, ¶29, 30 & 31.)

### 2. The Personal Property Which Was Located at the Marital Residence But Not Identified by Joyce Newman

As the Court has readily seen from Kirk's response to the "Notes" and "Explanation" accompanying Vivian's proposed Decree of Divorce, Kirk responded in detail as to those items Vivian alleged were improperly taken, setting forth the basis upon which it was taken, and the de minimis value of what was taken. *See*, Kirk's submission of proposals, filed 9/30/13, p. 5-14.

It should be noted that Vivian had previously taken the same position as Kirk that the furniture and furnishings in the children's bedrooms belonged to the children. However, despite the fact that Tahnee and Whitney boxed their own belongings from their bedrooms and asked Kirk to remove their furniture and furnishings from the marital residence, Vivian complained this was somehow improper.

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As noted in Kirk's submission of proposals, filed 9/30/13, p. 9, these were the first two items on Vivian's fifteen item list. Confirming this was the primary objection to the personal items Kirk removed, Vivian again accused Kirk of improper behavior in removing Tahnee's and Whitney's furniture and furnishings, which was at their request and on their behalf, in Vivian's opposition to Kirk's Motion to Modify Order Resolving Parent-Child Issues, filed October 16, 2013, arguing as follows:

> d. Nothing in the agreement regarding property allowed Kirk to clean out the bedroom furniture in the children's rooms. The agreement was the (sic) Kirk would leave all property other than designated. It is questionable this property belongs to the daughters, and the Court lacks jurisdiction to address any dispute regarding the property of the adult children (like UGMA accounts);[3]

(Vivian's Opposition to Modifying Order Resolving Parent-Child Issues, filed 10/16/13, p. 28, l. 23-27.)

However, in Vivian's proposed Decree, she proposed, as Kirk has consistently proposed, the following: "The parties agree that the furniture and furnishings in each of the children's bedrooms is the personal property of that respective child." (Vivian's proposed Decree, p.. 19, ¶11.1.)

Vivian has refused and continues to refuse to allow Kirk to obtain the Stairmaster identified as item 21 on page 20, ¶32 of the Court's Decree of Divorce. This item needs to be provided in accordance with this Court's Order.

This Court's Decree of Divorce contains a number of provisions which address the personal property which belongs to Kirk, including ¶29, 30, 31, 32, and 33. Paragraph 33 specifically includes Kirk's "miscellaneous personal possessions." In addition, the Court made clear the furniture and furnishings in the children's bedrooms belongs to them. *See*, Court's Decree of Divorce, p. 26, l. 19-22. In light of these provisions, it is difficult to see from the fifteen identified items what remains to which Vivian has any viable complaint about:

1. *All furniture and furnishings from Tahnee's room.* Both Kirk **and Vivian** agreed that all of the furniture and furnishings in each of the children's bedrooms was their property.

2. *All of the furniture and furnishings from Whitney's room, except for the glass chandelier.* Again, both Kirk **and Vivian** agreed that all of the furniture and furnishings in each of the children's bedrooms was their property.

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[3] The Court should note that as of October 16, 2013, Vivian was still taking the absurd position that Kirk had agreed to vacate the marital residence without, literally, the clothes on his back, since his clothes were not designated by Joyce Newman.

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3. *Almost all of the DVDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." Kirk only took the dvds he purchased.

4. *Rug from the library.* Kirk's proposal provided, "Kirk will receive the furniture, rugs, and accessories in the following rooms: library loft, pool table room, and master bedroom."

5. *Linens (only linens Kirk left are a few towels which had Vivian's initials monogrammed on the left).* This assertion is not accurate, as many linens were left behind, including towels without Vivian's initials monogrammed on them.

6. *Almost all sheets, comforters, cashmere blankets.* This assertion is not accurate, as many of these items were left behind. Kirk, generally took those sheets, comforters, and cashmere (75% wool) blankets which he had purchased. He also took a comforter his mother made for him. There was only one California King bed in the home, which was in the master bedroom. There was a small blue comforter and a small grey comforter – Kirk bought these at Costco probably fifteen years ago to keep in the vehicles. There was bedding for five queen beds in the house. Kirk rightfully took three of those queen beds – his parents', Tahnee's (which was already in California with Tahnee) and Whitney's. He took about 3/5s or 60% of the queen bedding. The two queen beds remaining are Joseph's and Brooke's. Joseph still has all of his bedding and Brooke has all of her bedding. The single bed remaining is Rylee's. Rylee still has all of her bedding.

7. *Almost all CDs.* Kirk's proposal provided, "Kirk shall receive all of the artwork, collectibles, books, cds, and dvds that Kirk personally purchased." It also provided, "Vivian shall receive all of the artwork, collectibles, books, cds, and dvds that Vivian personally purchased." Kirk only took the cds which he had purchased.

8. *All Photo albums, loose photographs, photo screens.* [Already addressed by the Court in the Decree, p. 26, l. 23-28; p. 27, l. 1-8]

9. *Spode Christmas China and Glassware.* Kirk's proposal provided, "Kirk shall receive the brown wood handled steak knifes in the marital residence and all of the Spode Christmas dinnerware, glasses and related accessories." None of the Spode Christmas China and Glassware was itemized on any proposal from Vivian. Kirk and Vivian bought the initial Spode Christmas China and Glassware together. Kirk has bought most of the accessories during after Christmas sales. Kirk generally sets these items out each year. Every year, Kirk washes, drys, and puts these items away.

10. *Christmas ornaments.* It is noteworthy that on Vivian's A/B list, she proposed that she and Kirk equally share all of the 'Holiday Decorations." Kirk's proposal provided, "Vivian shall receive all of the Christmas ornaments gifted to her by her mother and grandfather and grandmother, all of the Christmas outside lighting, and the lighted Christmas tree. Vivian shall receive all of the Christmas ornaments she personally purchased." Most of the Christmas ornaments were left behind, including those Vivian received from her family. Kirk took only those ornaments he had received as gifts and those he had purchased. Tahnee and Whitney took their personal ornaments. Kirk left the Christmas tree, all of the Christmas decorations, and all of the Christmas lighting.

11. *Kitchen bake ware.* The vast majority of the kitchen bake ware was left behind. There are cupboards full of kitchen bake ware. Kirk only took a few items. There were four large green casserole pans, three large red casserole pans, and two small yellow casserole pans. Kirk took the three large red casserole pans and one small yellow casserole pan.

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Kirk took one of several cookie sheets.

12. *Dyson vacuum cleaner.* On Vivian's A/B list, she referenced the "cleaning supplies, vacuum, etc." as being non-applicable to the A/B list, without identifying it being either belonging to the husband or wife. There is a built-in vacuum cleaner in the marital residence. In addition, there was a Dyson vacuum cleaner and a Dirt Devil full size vacuum cleaner. Vivian hires people to do the vacuuming in the marital residence and rarely vacuums herself. Kirk does his own vacuuming.

13. *Dumb bells from the workout room.* Kirk's proposal provided Vivian receive "dumbbells (silver)" and Kirk receive "Dumbbells (rubber)." Vivian proposed in her A/B list that Kirk – who she intended to get the B list – would get the "Rubber Head Dumbbells." She proposed she would get the "Chrome Dumbbells" – which she had already removed from the marital residence. This is precisely what occurred. Kirk took the Rubber Head Dumbbells and Vivian took the Chrome Dumbbells.

14. *Almost all the sporting goods from the garage cabinets such as golf clubs, baseball gloves, etc.* Kirk's proposal provided, "Kirk shall receive all of his hunting gear, fishing gear, camping gear, boating gear, golf clubs and gear, bows & arrows, tennis rackets, and similar sporting type items." Kirk took all of his golf clubs, baseball glove, and tennis rackets. Kirk also took the golf clubs he purchased for Brooke and Rylee. Kirk also took all of the tennis rackets and balls he had purchased for his children. Vivian does not play any sports including, golf, tennis, baseball, or softball. Vivian does not play any sports with the children.

15. *Bikes for Brooke, Rylee and Vivian.* When the Harrisons moved to Boulder City in 1993, Kirk bought new bikes for Vivian, Tahnee and Whitney. Kirk taught Tahnee, Whitney, and Joseph how to ride a bike. Vivian rarely rode her bike and, probably, has not ridden a bike since 1994 – over 18 years ago! As the children grew older, the bikes were passed down. Vivian's bike became Tahnee's bike, Tahnee's bike became Whitney's bike, and Whitney's bike became Joseph's bike. When Tahnee, Whitney and Joseph out grew the bikes and stopped riding them all together, Kirk took all three bikes to the ranch and put them in storage. Kirk retrieved these three bikes from the ranch when he started teaching Brooke and Rylee to ride a bike. Vivian doesn't ride a bike and has not participated in Kirk's efforts to teach Brooke and Rylee to ride a bike. Kirk took all of these bikes to the ranch for the winter. Kirk was later told that Vivian wanted "her" bike returned. The first opportunity Kirk had to go to the ranch he retrieved "Vivian's bike" as well as the road bike Kirk had given Vivian many years ago and delivered them to the marital residence. Kirk also retrieved Vivian's mother's bed, which Vivian had identified she wanted in her A/B list proposal, and delivered it to the marital residence as well.

*See*, Kirk's submission of proposals, filed 9/30/13, p. 5-14.

It should be noted that Kirk was highly deferential to Vivian regarding the personal items he took from the marital residence. Kirk took nothing that Vivian previously identified she wanted. Most of what Kirk took were his personal items that he previously identified to Vivian in writing that he intended to take – items #3, 4, 7, 9, 10, 13, and 14. At least at this point, there is no dispute that Kirk was entitled to take his bed, his parent's bed, Tahnee's bed, and Whitney's bed. Kirk was reasonably entitled to take the linens and bedding for each of those beds – items #1, 2, and 6. Vivian has never

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expressed any particular personal affinity with any of the personal items Kirk took. The collective value of everything Kirk took pales in comparison to the value of personal property he did not take. For example, just the guitar autographed by members of the Rolling Stones, is worth many many multiples of the total value of everything Kirk took. The same is true with respect to each of several large hand made rugs that Vivian purchased during one of her trips to Asia. Just one of those rugs is worth many multiples of the total value of the personal items Kirk took. The same is also true with respect to each of the several hand made wall hangings Vivian purchased during one of her trips to Asia. Just one of those wall hangings is worth more than the total value of the personal items Kirk took.

Assuming Vivian is no longer objecting to the personal items Kirk rightfully took when he vacated the marital residence, then, **upon that condition**, and the provision of the Stairmaster to Kirk, for which Kirk has already paid, and which is specifically identified in this Court's Order (p. 20, ¶32), Kirk does not object to Vivian obtaining what he estimates to be over 95% of the personal property in the marital residence that was not appraised by Joyce Newman. Some of these items were identified in Kirk's proposed Decree. *See*, Kirk's proposed Decree, p. 7, ¶19; p. 8, ¶20-29 & 32; p. 9, ¶34-37.

### D. Any Provision Providing For Reimbursement For Separate Property Funds Being Utilized For Community Expenses During the Pendency of The Divorce Must Be Mutual and Be Within The Parameters Of This Court's Temporary Orders of February 24, 2012, and Formalized on June 13, 2012

This Court ordered that it "shall retain jurisdiction to adjudicate any reimbursement **owed to Vivian** for community expenses paid from separate property monies prior to November 20, 2012." (Court's Decree of Divorce, 10.31.13, p. 28, l. 7-10.) (Emphasis added.)

Kirk respectfully notes that Vivian's claim for "reimbursable expenses" was not provided until the middle of the hearing on December 3, 2012. However, none of the documentation for those expenses was provided until January 29, 2013. Most of the documentation does not provide what was acquired or specifically what services were rendered. Soon thereafter, on February 5, 2013, Kirk sent an email to Melissa Attanasio, setting forth questions he had about the claimed expenses. On February 5, 2013, Melissa Attanasio sent an email in response wherein she stated, *". . . I was not involved I (sic) this accounting, thus I have forwarded to the appropriate parties."* A copy of Kirk's email to Melissa Attanasio and her response, both on February 5, 2013, is attached hereto as **Exhibit "3."** *Neither Vivian*

*nor Vivian's attorneys have ever provided a response*. Again, this was ignored for nearly eight months and then was raised with false claims that Kirk has not complied. The submission filing on September 27, 2013, is the first mention of this issue since the time of Kirk's inquiry. In Kirk's response to Vivian's "Notes" and "Explanation," filed 9/30/13, Kirk set forth significant community expenses which he paid from separate property funds, for expenses similar to those alleged by Vivian and also include significant separate property funds expended for Vivian's sole benefit as a consequence of Vivian's attorneys' many month delays in responding to the Marital Settlement Agreement on February 19, 2013. Under such circumstances, Kirk respectfully requests the Court to amend and clarify the Decree to include Kirk's claim for "reimbursable expenses," which in all equity, should include monies paid for such items as Vivian's health insurance, Vivian's auto insurance, association fees associated with the Lido lot, real property taxes, etc. These are Vivian's individual expenses which Kirk paid and/or joint expenses which Kirk paid alone.

### E. The Measo Associates Interest is Presently and Has Always Been in the Name of Both Kirk and Vivian

The twenty-five percent (25%) ownership interest in The Measo Associates is currently and has always been in both Kirk's and Vivian's names. It is a general partnership and Vivian and Kirk, together, own 25%. (Hearing Transcript, 12/3/12, p. 8, l. 17-19.) Vivian's proposed Decree of Divorce is in error in this regard, as it provided, "A twelve and one-half percent (12.5%) interest in The Measo Associates, a Nevada General Partnership **currently held in Kirk's sole name.**" (Vivian's proposed Decree of Divorce, p. 6, ¶6.3.) (Emphasis added.) This error was adopted by the Court in the Decree of Divorce, entered October 31, 2013, and should be corrected accordingly. *See*, Decree of Divorce, p. 8, ¶3; p. 14, ¶3.

## III. CONCLUSION

This Court has ample authority to correct the errors in its Decree of Divorce, which were caused by the errors contained in Vivian's proposed Decree of Divorce, which was filed on September 27, 2013.

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Unfortunately, as a consequence of the errors contained in Vivian's submission, Vivian would otherwise inequitably receive one-half of five accounts which are indisputably, both legally and equitably, Kirk's separate property, including the "Fee Account" he established to deposit the $350,000.00 to pay attorneys' fees and costs, which has been exhausted and presently only contains additional separate property funds deposited into the account to pay ongoing attorneys' fees and costs.

In view of the status of the division of personal property, Kirk respectfully submits that an A/B List process, certainly at this point, would be problematic as Vivian has had exclusive possession of the marital residence for almost one year, and if Kirk simply is provided the Stairmaster for which he has already paid, he is willing to let Vivian retain what he estimates to be over 95% of the personal property that was in the marital residence, which was not appraised by Joyce Newman.

Under the parameters of the Court's Order which itemized the expenses which were to be paid from community funds, Kirk respectfully submits he is also legally and equitably entitled to seek reimbursement to the same extent as Vivian, and the Decree of Divorce, should therefore be amended in that regard. In addition, as a consequence of Vivian's inexcusable delay in not responding to Kirk's proposed Marital Settlement Agreement from February 19, 2013, until this Court compelled Vivian's response on September 27, 2013, Kirk individually incurred substantial separate property expenses for the benefit of Vivian or for them jointly, including such items as Vivian's health insurance, Vivian's auto insurance, real property taxes, etc.

Finally, the Decree should also be amended to correct another error caused by Vivian's submission, to accurately reflect that the 25% interest in The Measo Associates is and always has been in both Vivian's and Kirk's names.

DATED this 14 day of November, 2013.

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By: _____
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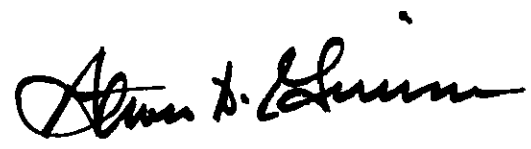

CLERK OF THE COURT

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Co-counsel for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: 12/18/2013<br>Time of Hearing: 11:00AM<br><br>**ORAL ARGUMENT REQUESTED:**<br>**YES XX NO ___** |

**NOTICE: PURSUANT TO EDCR 5.25(b) YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

## PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the law firm JOLLEY, URGA, WIRTH, WOODBURY & STANDISH, and EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby

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moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS 125C.101(1) to make a judicial determination regarding Section 6 of the Order Resolving Parent/Child Issues, entered July 11, 2012.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

DATED this 18 day of November, 2013.

KAINEN LAW GROUP, PLC

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**NOTICE OF MOTION**

TO: VIVIAN MARIE HARRISON, Defendant; and

TO: RADFORD SMITH, ESQ. and GARY SILVERMAN, ESQ., counsel for Defendant:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the ____ day of 12/18/13 2013, at the hour of 11:00AM .m., or as soon thereafter as counsel may be heard.

DATED this 18 day of November, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
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Attorney for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Kirk previously filed, "Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" on October 1, 2013. Vivian filed an opposition and countermotions thereto on October 16, 2013. Kirk filed his reply and opposition to Vivian's countermotions on October 23, 2013. Vivian filed her reply regarding her countermotions on October 28, 2013. Said motion and countermotions were set for hearing before this Court on October 30, 2013.

During that hearing the Court indicated its preference to wait until there was a Parenting Coordinator in place. The Court also was unequivocal that it did not want to conduct an evidentiary hearing or interview the minor children.

While Kirk is not going to re-state all of his concerns as to why the teenage discretion provision should be stricken, suffice it to say, that exactly what Kirk was concerned would happen, has happened. An incident occurred subsequent to that hearing. After that incident, the parties set forth their opposing interpretations of Section 6 in an exchange of letters. It is evident from these letters there was, and remains, no meeting of the minds regarding Section 6 and this provision should therefore be stricken. In the event this Court is unwilling to strike said provision, then the parties need this Court's immediate judicial determination of the meaning of this provision going forward. The Parenting Coordinator is not authorized to, and should not, make such a legal determination. If the provision is not stricken, the parties need, and are entitled to, such a determination from the Court.

Under Subsection 6.2, an aggrieved party under this provision can seek relief with either the Parenting Coordinator and/or **the Court**.

## II. STATEMENT OF FACTS

For purposes of understanding the most recent incident when this matter came to a head, the relevant time period is the two weeks between November 1st at 7:35 a.m., and November 13th at 2:06 p.m. Under the terms of the joint physical custody order, during that two week time period, the only time Kirk was to have with Brooke[1] was less than two days (actually it was only 41 hours) between

[1] Rylee was on a school field trip to California during this time period.

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November 6th (Wednesday) at 2:06 p.m. and November 8th (Friday) at 7:15 a.m. This time was all the more precious, as during the brief period Brooke was to be with Kirk, Brooke had a dance class on Wednesday evening for 1 ½ hours, was to attend school on Thursday between 7:35 a.m. and 2:06 p.m., and had another dance class Thursday afternoon and evening from 3:45 p.m. until 9:00 p.m.

At 7:36 a.m. on November 6th – the very day Kirk was to pick up Brooke from school – Brooke sent a text to Kirk providing, "*Decided I'm going to stay at moms today and tomorrow.*" If Kirk would have agreed with this request, he would not have been able to see Brooke at all for this entire almost two week period. Kirk responded, ten minutes later, "*This is not something you can decide. I will pick you up from school at 2:06 p.m. and we can talk then. Love you.*" There was no further response from Brooke – at least not to Kirk. Indeed it would become crystal clear that there was certainly communication with Vivian.

Despite there being no communication between Kirk and Vivian, just three and one-half hours after the text exchange between Brooke and Kirk, Vivian's attorneys faxed a two and one-half page letter to Kirk's counsel at 11:17 a.m., providing that Vivian intended to "honor" Brooke's wishes. A true and correct copy of this letter is attached hereto as **Exhibit "1."** Kirk's counsel faxed a response later that day and subsequently spoke to Vivian's attorney on the telephone. A true and correct copy of Kirk's counsel's response letter is attached hereto as **Exhibit "2."** *During* the telephone conversation between counsel, Vivian's attorneys then fired off yet another letter the same day concerning this incident. A true and correct copy of Vivian's attorney's letter concerning the same incident is attached hereto as **Exhibit "3."**

During the telephone call between counsel on November 6th, Vivian's attorney admitted that Vivian had indeed spoken to Brooke about "her rights" under the teenage discretion provision, but that doing so was "not in violation" because the communication "happened prior to entry of the parties' Parenting Agreement." The "Parenting Agreement" is the Stipulation and Order Resolving Parent/Child Issues, which was entered by this Court on July 11, 2012. The facts and common sense clearly indicate Vivian has also been speaking to Brooke about teenage discretion during her summer vacations with Vivian this past summer and continuing to the present time. More importantly, it is clear that Brooke's understanding of "her rights" under the provision is based wholly on Vivian's *beliefs* about teenage

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discretion, as opposed to what the provision actually provides. Ironically, in the same telephone conversation when Vivian's attorney admitted that Vivian spoke with Brooke about teenage discretion, Vivian's attorney indicated that it was legally inappropriate under the agreement *for Kirk* to even respond or have a discussion with Brooke about Brooke's demand to change the custody arrangement for the next two days.

Wanting to exercise his already-limited time with Brooke, and at least discuss the text with Brooke, Kirk arrived at Brooke's school on Wednesday afternoon, as scheduled, to pick her up. Vivian, however, still insistent that she was going to "respect" Brooke's wishes, was also at the school to pick up Brooke. Shortly after 2:06 p.m., Brooke walked past Kirk's car, got in Vivian's car, and they drove away. Having already made it clear to Vivian's attorney that Kirk did not consent to this, Kirk chose not to make a scene at school to enforce the custody agreement. As a consequence, Kirk **did not see** Brooke for almost two weeks.[2]

Vivian has clearly not acted in good faith, based on her decision to discuss teenage discretion with Brooke and insisting on arriving at Brooke's school to pick her up even after Kirk voiced his objection to same.

Although the Court has appointed Margaret Pickard as the Parenting Coordinator, a judicial determination is needed and, as noted, the parties have the right under Subsection 6.2 to request the Court to address such issues.

## III. ARGUMENT

### A. Vivian's Interpretation of Section 6 Is That A 14 Year Old Child Has The Unfettered Absolute Right To *Order* Changes To The Agreed Custody Schedule

As can be readily seen from the two letters from Vivian's attorneys, **Exhibits 1 and 3**, it is Vivian's position that the 14 year old child of the parties has the absolute *right*, at any time and for any reason, to overrule the custody arrangement between the parties. According to Vivian, the parent then

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[2] This is not the first time that Vivian's intentional misconduct has resulted in Kirk inequitably losing two precious days with his children. Attached hereto is **Exhibit "5,"** which is incorporated herein by reference. As a consequence of Vivian's conniving conduct, Kirk was deprived of another two days with Brooke and Rylee this summer.

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having custody must immediately *obey* the command without question. This must be done irrespective of the context in which the order of the 14 year old child is made, irrespective of other plans that have been made, irrespective of the adverse impact it may have upon the 10 year old younger sister, or any other member of the family, etc.

**B. Kirk's Interpretation of Section 6 Is That A 14 Year Old Child Has The Right To Make, Presumptively, Infrequent *Requests* For Minor Departures To the Agreed To Custody Schedule**

As can be readily seen from the letter from Kirk's counsel, **Exhibit 2**, it is Kirk's position that it is unreasonable to interpret Section 6 is such a way to give a 14 year old child, "carte blanche to make changes to the custodial schedule whenever they see fit." It is Kirk's interpretation of Section 6, assuming, *arguendo*, for the moment that Vivian's prior material breaches of Section 6 have not rendered the provision totally unworkable, that the 14 year old child has the right to request, presumably, on a very infrequent basis, a limited departure from the regular custody schedule. In the event of such a *request*, it is implicit that both parents must not unreasonably withhold their consent to such a request, taking into account the particular circumstances existing at the time of the request – as every responsible parent should do regardless.[3] Tom Standish, Esq., who negotiated the provision, is unequivocal that it was never intended that a 14 year old child was given the right to determine departures to the agreed custody schedule between the parties, "[I]t was never intended that a child could assert control over their own timeshare merely because they have reached the age of 14 years." Affidavit of Thomas J. Standish, Esq., dated October 29, 2013, ¶6, which is attached hereto as **Exhibit "4."**

Section 6 does not provide a 14 year old child with authority to "decide" where she is going to be. As a matter of fact, Section 6.1 specifically provides that "the parties ***do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent.***" If

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[3] It should be noted that Kirk has acted in good faith, and has in fact acquiesced to Brooke's four (4) prior requests, despite the fact they were, in all likelihood, "prompted" or "suggested" by Vivian – to spend additional time with Vivian during his custodial period to buy dance shoes, to do make up for the Homecoming dance, to work on a project (because Vivian or, rather, Heather Atkinson, had the materials), and to do make up for Halloween. In fact, Kirk even voluntarily offered for Brooke and Rylee to spend additional time with Vivian Halloween night as an olive branch and because Halloween is a much more significant event for Vivian than for Kirk.

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the actual intent was to give a 14 year old child carte blanche to stay where she wants, with whatever parent she wants, whenever she wants, it would have said so and in that case a custody schedule would not mean anything, yet there is a custody schedule set forth in the same custody order.

### C. The Language of Section 6 and The Application of Common Sense Inescapably Result In the Conclusion the 14 Year Old Child Has The Right To Make A *Request* For A Departure From The Agreed To Custody Schedule

Subsections 6.1, 6.2 and 6.3 provide:

> 6.1. ***The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent.*** Rather, the parties intend to allow the children to feel comfortable in ***requesting and/or making adjustments to their weekly schedule***, from time to time, to spend additional time with either parent or at either parent's home.
>
> 6.2. Such adjustments ***shall not be prompted or suggested by either parent***, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they ***shall each encourage the children to follow the regular schedule*** to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.
>
> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. ***Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations***.
>
> (Emphasis added)

Kirk respectfully submits that when this provision is read as a whole, the undeniable conclusion, based not only upon the literal language, but upon common sense as well, is that the 14 year old child may make a **request** for a departure to the schedule, but does not have the authority to determine that the departure will be made. All of the controlling highlighted language above supports such a conclusion, except for the grammatically questionable use of the conjunctive and disjunctive "and/or" in Subsection 6.2. Despite the single incident of poor language choice, in the context of the rest of the language contained in Section 6, it is absolutely inconsistent to interpret this language as granting the . . .

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14 year old child the absolute right to "make" the custody determination. In fact, it is nonsensical to provide that the 14 year old child has the right to request "and/or" the right to make the determination. If the 14 year old child has the right to make the determination, then there would be no reason to simply make a request.

### D. There Are Several Independent Additional Reasons Why Section 6 Should Be Stricken And Vivian's Interpretation Of Section 6 Must Fail

There are several independent reasons why Section 6 should be stricken and Vivian's interpretation of the provision must fail.

#### 1. Section 6 Should be Stricken As Teenage Discretion Provisions Should Generally Be Suspect As They Unnecessarily Create Uncertainty and Instability for The Children and There Was No Meeting Of The Minds In the Negotiation And Drafting Of This Teenage Discretion Provision

"Teenage discretion" provisions such as this should be seriously questioned by the courts under any circumstances, but especially when the parents do not get along. These provisions create unnecessary uncertainty and instability for the children. Under a joint custody arrangement, the children know from week to week the time they will be spending with each parent. These provisions undermine and disrupt that certainty and stability, unnecessarily creating uncertainty and instability on a weekly basis. As the Court has already seen, this is especially true in this matter.

There was clearly no meeting of the minds by the attorneys who negotiated the terms of this provision. Tom Standish, who negotiated this provision, is adamant this provision was never intended to give a 14 year old child control over the determination. The child is only given the right to make a **request** without any "suggestion" or "prompting" by either parent and where both parents are obligated to "encourage the children to follow the regular schedule." On the other hand, as evidenced by his letters, Mr. Smith argues this provision gives a 14 year old child the absolute right to determine their own timeshare. According to Mr. Smith, the child issues the *order* and the custodial parent must *obey* the order without any question or discussion.

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Where such a provision is highly suspect and generally questionable under any circumstances, where there was clearly no meeting of the minds by the individuals who negotiated the provision, resulting in interpretations which are essentially polar opposites, the provision should be stricken by the Court.

**2. Section 6 Should Be Stricken As Vivian's Suggestions, Prompting, And Encouragement To Brooke To Depart From The Regular Schedule Whenever Possible, In Direct Violation and Contravention Of The Explicit Terms of Section 6, And Vivian Telling Brooke She Has The Absolute Right To Dictate Her Timeshare On A Daily Basis, Have Created A Totally Untenable Situation For the Children and Kirk**

After Vivian had uninterrupted custody of Brooke and Rylee for 21 days, the first day back with Kirk, on July 17, 2013, Brooke announced that since she was now 14 years old, she can decide where she lives. After Vivian had uninterrupted custody of Brooke and Rylee for 14 days, on August 2, 2013, Brooke announced she was going to live with Vivian full time.[4] It is evident that Vivian has convinced Brooke that Brooke has the absolute right to dictate her timeshare on a daily basis. On August 25, 2013, Brooke informed Kirk that he had to take her to Vivian's house *anytime she wanted* and Brooke had the *right to stay for as long as she wanted.* It is not a coincidence that Brooke's position mirrors the extreme position taken by Vivian.

The disputes which the parties and their children are now embroiled are a foreseeable direct consequence of Vivian's material breaches of the safeguards Kirk's counsel put in place to avoid the very scenario which now exists. *See*, Affidavit of Thomas Standish, **Exhibit "4"** hereto. Vivian's prior and continuing misconduct is a blatant violation of the safeguards in Section 6 and constitute material breaches of material and essential provisions, which has, in effect, prospectively nullified the effectiveness of those provisions to protect the best interests of Brooke and Rylee, as well as Kirk's rights under the joint custody order.

On Thursday, November 14, 2013, Brooke informed Kirk she intended to go to Vivian's house during the upcoming weekend to work on props and costumes for dance, etc. Brooke had just been with

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[4] Vivian's attorneys actually assert that Vivian has not discussed the "teenage discretion" provision with Brooke since sometime before this Court's custody order was entered July 11, 2012, and, therefore, the timing of all of this is just an incredible coincidence.

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Vivian for 13 uninterrupted days and was to return to Vivian on Monday, November 18, 2013. The costumes are not to be turned in until Wednesday evening, November 20, 2013. Kirk told Brooke he would like to think about it and perhaps Brooke could spend a shorter period at Vivian's house this weekend and the rest could be done while she was with Vivian on Monday and Tuesday. Brooke spoke with Vivian that night on the telephone and was visibly upset with Kirk the next day for no otherwise apparent reason.

At 1:33 p.m. on Saturday, November 16, 2013, Brooke came to Kirk and informed him that *he had to take she* ***and Rylee*** *to Vivian's house at 2:00 p.m.* to make the props and costumes that had to be turned in to Dance, Etc. on Wednesday evening, November 20, 2013. Kirk asked Brooke why they couldn't do it at his house and Brooke responded that Vivian already had gotten the materials. When Kirk asked why they couldn't simply go to the store and purchase the needed materials, Brooke said she didn't want to do that. Kirk asked how long it would take and Brooke said two to three hours. When Kirk asked what would happen if it took longer than three hours, Brooke responded that *Vivian and she had been texting and Vivian had to leave at 5:00 p.m.* Kirk relented and took both Brooke and Rylee to Vivian's house at 2:00 p.m. All of the foregoing, was coordinated by Vivian and Brooke, around Vivian's schedule. It was irrelevant that the plans Vivian made included Rylee. It was irrelevant that Vivian did not discuss the matter with Kirk, but used Brooke as the conduit. It was irrelevant that Kirk had previously made plans with Brooke, Rylee and Joseph to decorate the Christmas tree that afternoon and to have dinner together.[5] Those plans, during Kirk's custody time with the children, had to take a back seat and be delayed.

Vivian has wrongfully, in direct contravention of the explicit terms of Section 6, firmly embedded in Brooke's mind that Brooke has the absolute right to determine her custody on a daily basis, and if Kirk does anything other than immediately and fully comply, Brooke perceives Kirk as doing something horribly improper and contrary to what she is entitled. Under such circumstances, Section 6 must be stricken.

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[5] Under the agreed custody schedule, the next weekend Kirk has Brooke and Rylee is the weekend of December 13, 2013, and Kirk is taking Brooke and Rylee to Whitney's graduation ceremony from Physician's Assistant School at Methodist University in Fayetteville, North Carolina..

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### 3. Any Teenage Discretion Provision, As Applied, Which Causes A 14 Year Old Child To Feel Like She Must Chose Between Her Parents And, Importantly, Motivates One Of The Parents To Encourage that Child To Make That Choice On A Weekly Basis, Is Fundamentally Wrong

Custody arrangements should be determined by parents. The best interests of the children should be paramount in making that determination. The choice of how much time a 14 year old child spends with each parent should not be foisted upon that child through an ill-conceived and misinterpreted "teenage discretion" provision. A 14 year old child should not be compelled on a weekly basis to determine how much time she wants to spend with each parent for that particular week, especially when there is an indisputable history of one of the parents manipulating that child.

The interpretation advocated by Vivian, that a 14 year old child has the absolute right to determine departures from the agreed custody arrangement, not only undermines the joint custody agreement between the parties, but it unduly places too much stress upon a 14 year old child to make a choice between her parents on a weekly basis, and which choice, in most instances, inherently involves leaving her 10 year old sister.

Encouraging a 14 year old child to chose which parent to spend time with on a weekly basis is not in the best interests of the child, unnecessarily creates uncertainty and instability for her 10 year old younger sibling, undermines the certainty and stability inherent in an agreed parenting arrangement, creates an atmosphere which will motivate one of the parents to do what is most popular with the 14 year old child, as opposed to doing what is best for the 14 year old child, and encourages a parent, so inclined, to continue a parental competition, which is not in the best interests of the children. The continued existence of Section 6 provides a vehicle for the continued unnecessary manipulation of the children.

The Court is respectfully urged to do what is clearly in the best interests of these children and strike Section 6.

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**4. Section 6, As Interpreted by Vivian, Violates NRS 125.510(5) and NRS 125C.010 as the Right To Visitation On A Weekly Basis Is Not Defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved."**

NRS 125.510 states in pertinent part as follows:

> 1. In determining the custody of a minor child in an action brought under this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:
>
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
>
> (b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties. The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.
>
> 2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.
>
> * * * *
>
> 5. **Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.**

(Emphasis added.)

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NRS 125C.010 contains language similar to NRS 125.510(5). These statutes implement specific custody and timeshare rules in the best interests of a minor child. Specifically, these statutes, as well as, NRS 125.460, provide for the children to have specific, ongoing and frequent contact with both parties. Allowing the children to have the unhampered right to determine their own schedule with each parent flies in the face of these statutes, as well as the parties' intent at the time they entered into the Stipulation and Order Resolving Parent/Child Issues.

Section 6, as interpreted by Vivian, violates both NRS 125.510(5) and NRS 125C.010 as the right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved." According to Vivian, the 14 year old child has the absolute right to order a departure from the agreed custody schedule at any time, regardless of the circumstances. Based upon Vivian's interpretation, the right to visitation on a weekly basis is **not** defined with sufficient particularity. The right to visitation is whatever the 14 year old child arbitrarily determines it will be at any time, with Vivian's suggestion, prompting, and encouragement. For the same reason, the "specific times and other terms of the right of visitation" as set forth in this Court's order are also without "sufficient particularity" as they are subject to change on a weekly, if not daily basis, by the unfettered determination of a 14 year old child. None of this should be acceptable to the Court.

During the hearing on October 30, 2013, the Court confirmed that teenage discretion should ***not*** give a child full and complete control to make decisions regarding the custody timeshare. Specifically, at 10:59:10, the Court stated as follows:

> "I don't need a child interview. The less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process. The parties agreed that it was in the best interest of the children to exercise joint physical custody. I don't want this to become a situation where it is just a matter of time, where as soon as you turn fourteen you get to decide where you want to live, that's not how it works. Under NRS 125.490, there is a presumption now because you agreed to joint physical custody. There is a presumption that joint physical custody is in the best interest of the children and to overcome that I don't find... say an interview came forward and that's what I hear, that there is a desire to live primarily with Mom. If that is, I find, I would be hard pressed to find that the expressions standing alone, of a fourteen year old child, would be sufficient to overcome that presumption. That's why I don't need it."

. . .

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The bottom line is that by allowing the present untenable situation to continue (a situation wholly created by Vivian's blatant violations of the written safeguards and her *continuing* misconduct), it continues to empower a 14 year old child to do Vivian's bidding and continues to allow Vivian to wrongfully empower that 14 year old child. That ***is not*** what Kirk bargained for when reaching a parenting agreement with Vivian. Kirk will continue to pursue resolution of this matter with Margaret Pickard while this Motion is pending. However, given the interpretation advocated by Vivian , and supported by her attorneys, it cannot be resolved absent a judicial determination by this Court. According to Vivian's attorneys, Brooke has full right and control to *decide* where she wants to be and when, and Kirk would be "violating the rules" if he even attempts to talk to Brooke about the same – Vivian however, appears to be free to continue her discussions with Brooke with impunity.

**5. Section 6, As Interpreted by Vivian, Violates NRS 125.460 As It Encourages A Parent, Vivian, To *Not* Share The Rights And Responsibilities of Child Rearing**

NRS 125.460 states as follows:

> The Legislature declares that it is the policy of this State:
> 1. **To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage**; and
> 2. To encourage such parents to share the rights and responsibilities of child rearing.

(Emphasis added.)

Section 6, as interpreted by Vivian, violates NRS 125.460, which provides "that **it is the policy of this State** . . . **[t]o encourage such parents to share** the rights and responsibilities of child rearing." Clearly, Vivian is using her interpretation to undermine Kirk's right to share in the rights and responsibilities of child rearing. According to Vivian's attorneys, Vivian, based upon Vivian's interpretation, can utilize Section 6 to obtain "defacto primary custody." (Exh. S to Vivian's opposition to Kirk's countermotions re attorneys' fees, p. 9, l. 16-17)

It is respectfully submitted that to allow a 14 year old child the absolute right to "make" these type of custody decisions, which are ongoing departures from the agreed schedule, is against the stated policy of this State, as it will undermine Kirk's right to share in the rights and responsibilities of child rearing.

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A.App. 1295

## IV. CONCLUSION

The parties urgently need guidance from this Court by making a timely determination of Section 6. Section 6 should be stricken by this Court. This provision creates uncertainty and instability for the children and conflict between the parties, within which the children will remain embroiled until there is a resolution. At a minimum, it is obvious that there was no meeting of the minds between the parties regarding essential terms. Vivian's material breaches of material and essential terms of Section 6, including embedding in Brooke's mind that she has the absolute unfettered right to determine her own custody, has undermined any chance for the provision to be reasonably applied.

However, if the Court is not willing to strike the provision at this time, the parties need this Court's determination as to whether, under the existing provision, a 14 year old child has the right to ***order*** a departure from the agreed to custody schedule, as argued by Vivian, or whether, under the provision, a 14 year old child has the right to ***request*** a departure from the agreed to custody schedule.

Kirk has been reasonable and accommodating, if only to keep the peace and to prevent a needless confrontation, but it has resulted in continued demands, further immersion of the children into their parents' custody dispute and ongoing encroachment into his custodial periods. Vivian does not care about the impact on Brooke, who is placed in emotional turmoil and now forced to choose between her parents on a weekly basis in order to placate one of them - even on the most basic of issues as when to return to the car. Vivian, consumed by competition at every interaction, has tried to create problems by not being able to exercise even a modicum of common courtesy in day-to-day situations (e.g. keeping the girls talking in the house for 20 to 35 minutes while Kirk waits in the car outside her house). As a result of Vivian immersing Brooke in this conflict (both by sharing information Brooke never should have had, and by completely butchering the explanation of the provisions), the parties are in all too frequent conflicts, that was otherwise much more limited.

Kirk implores the Court, in the best interests of Brooke and Rylee, to revoke this provision in its entirety. In the alternative, Kirk requests the Court to determine that a 14 year old child has the right to *request*, rather than the right to *order*, a departure from the agreed to custody schedule. However, under the latter alternative, Vivian will continue to manipulate and embroil the children in conflict.

. . .

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A.App. 1296

Accordingly, Kirk requests the following:

1. That the Court modifies the Stipulation and Order Resolving Parent/Child Issues by revoking and striking Section 6 so that this type of abuse by Vivian can be avoided in the future.

2. That Kirk be given two custodial days for the two custodial days – November 6 & 7 – which were wrongfully taken from him as a consequence of Vivian's misconduct and her manipulation of Brooke.

3. That Kirk be given the two custodial days for the two custodial days – July 31 and August 1 – Vivian fraudulently took from Kirk as a result of her "change" of the dates for the sewing camp, as set forth in **Exhibit "5"**, hereto.

4. That the Court impose an additional penalty upon Vivian as a deterrent to future attempts by Vivian to wrongfully take custodial days from Kirk (if Kirk only gets back the four days which were wrongfully taken by Vivian, then Vivian has incurred no penalty for what she has done, and there is no deterrent from doing it again).

5. That the Court award Kirk attorney's fees for having to bring this matter to the Court's attention.

6. For such other and further relief as the Court deems just and proper in the premises.

DATED this 18 day of November, 2013.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
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*Attorneys for Plaintiff*

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# EXHIBIT 1

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KELLYE BLANKENSHIP, PARALEGAL

FAXED
NOV 06 2013

**VIA FACSIMILE**
Edward Kainen, Esq.

November 6, 2013

*Re: Harrison v. Harrison*

Dear Ed:

This morning Vivian dropped Rylee off for a two-day school trip to Catalina. Brooke approached Vivian, without prompting from Vivian of any kind, and indicated that she would like to stay with Vivian for the next couple of days. Under the provisions of paragraph 6 of the parties' parenting plan (the July 11, 2012 order), Brooke has the discretion to choose to spend this time with Vivian. That provision reads in pertinent part:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting ***and/or making adjustments to their weekly schedule***, from time to time, to spend additional time with either parent or at either parent's home.

When Brooke advised Kirk of her choice to make the adjustment to the weekly schedule on this occasion, Kirk incorrectly informed Brooke that she does not have that discretion. Kirk's statement is contrary to the plain language of the agreement. Brooke does have that discretion, and Vivian intends to honor it.

If Kirk feels that either Brooke's choice or Vivian's actions are in violation of the Parenting Plan, the remedy is spelled out in paragraph 6.

> 6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.

Thus, under the plain terms of the Parenting Plan, if Kirk believes that the child's discretion has been exercised in violation of the Plan, he may bring this matter to mediation with Ms. Pickard under the Order entered by Judge Duckworth appointing her, or he may file a motion with the Court. He does not have the unilateral ability to deny the exercise of Brooke's discretion. Consequently, consistent with Brooke's exercise of that discretion, Vivian will pick her up after school.

Kirk's suggestion to Brooke that she does not have discretion, and the pressure that he has placed on Brooke as outlined in Vivian's Opposition to Kirk's motion to remove paragraph 6 from the parenting plan (which motion Judge Duckworth denied), is precisely what Vivian wanted to avoid. The intent of the paragraph was to allow either child, after reaching 14 years of age, to exercise occasional discretion to spend time with a parent outside the custodial schedule. The paragraph is neutral, and grants the children the right to vary the schedule and avoid any demand by the other party for strict compliance with the weekly visitation schedule. Kirk seeks to undermine the application of the provision by the very means it was designed to avoid.

Vivian strongly hopes that Kirk will not continue to violate the provision by either informing Brooke that she cannot exercise the discretion granted to her, or by causing havoc (by demanding that she come with him for example) in order to intimidate and pressure Brooke. Paragraph 6 sets up a reasonable and specific method for addressing concerns of either parent regarding a child's exercise of discretion, and Vivian will participate in any sessions with Ms. Pickard to address Kirk's concerns. She has already contacted Ms. Pickard, and I am providing a copy of the Parenting Plan and Order appointing Ms. Pickard to her. Also, Judge Duckworth has appointed Lisa Linning as the child's therapist per Vivian's request, but Ms. Linnings office has declined the appointment. Consequently, Vivian accepts the appointment of Dr. Jamal Ali, who Kirk had proposed as the children's therapist. Vivian will contact Dr. Ali, and we will provide him a copy of the parenting plan and order appointing him as therapist.

Please let me know Kirk's intended actions so we can avoid any difficulties that may arise by any actions he intends to take in response to Brooke's exercise of the discretion granted her under paragraph 6 of the Parenting Plan.

I you would like to discuss this matter, I will be available most of the day either at the office or on my cell. I look forward to hearing from you.

Sincerely,

RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.
Board Certified Nevada Family Law Specialist

RJS:

Enc:
cc: Vivian Harrison
Gary Silverman, Esq.
Thomas Standish, Esq.

# EXHIBIT 2

KAINEN
LAW GROUP
A Professional Limited Liability Company

November 6, 2013

**Via Facsimile: (702) 990-6456**
Radford Smith, Esq.
Radford J. Smith, Chartered
64 north Pecos Road, Suite 700
Henderson, Nevada 89074

Re: **Kirk Harrison v. Vivian Harrison**

Dear Rad:

I am in receipt of your letter dated November 6, 2013, regarding this matter.

The parties' parenting agreement gives the children the ability to *request* changes to the custodial schedule. It *does not* give the children carte blanche to make changes to the custodial schedule whenever they see fit. The children cannot simply "advise" their parents when they are going to adjust the custodial schedule. This is confirmed in paragraph 6.1 of the agreement, which plainly provides:

> 6.1 The parties ***do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent.*** Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home."

In other words, the children are to discuss any proposed adjustments with the parent who has custody at the time they wish to make a request to the schedule -- in this case, Kirk, not Vivian.

Kirk took Brooke to school last Friday morning, November 1, at which time Vivian's custodial time began. Kirk will pick Brooke up today at 2:06 p.m., and will only have her until this coming Friday morning. After dropping Brooke off at school Friday at 7:30 a.m., he will not see Brooke again until next Wednesday, November 13, 2013. Further, tomorrow, November 7, Brooke has dance from 3:45 p.m. until 9:00 p.m. As you can see, Brooke's time with Kirk over this two-week period is already very limited.



A.App. 1303

Accordingly, Kirk will pick up Brooke up from school, as this is his custodial time, and he will discuss the matter with Brooke. Should Vivian pick up Brooke after school today or keep Brooke during his custodial period over his objection, she will be in violation of the parties' parenting agreement and will be cause for Kirk to file a Motion with the Court to resolve this matter.

Your attention to this matter is appreciated.

Very truly yours,

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.

ELK/cn
cc: Kirk Harrison

# EXHIBIT 3

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KELLYE BLANKENSHIP, PARALEGAL

FAXED
NOV 06 2013

**VIA FACSIMILE**
Edward Kainen, Esq.

November 6, 2013

*Re: Harrison v. Harrison*

Dear Ed:

Reference is made to your letter of earlier today. Brooke's exercise of discretion to spend a brief period of time with Vivian is not a request to change the custodial scheduled contained in the agreement, that custodial schedule will continue. The provision reads:

> "[T]he parties intend to allow the children to feel comfortable in requesting **and/or *making* adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.**"

There is no other way to read that provision other than a grant to allow Brooke to "make adjustments" to her weekly schedule. This was the discretion that was granted to her as part of the order. It appears that because he was unable to have the Court eliminate the stipulated provision, Kirk intends to ignore it, cause additional problems, then undermine it. Vivian will proceed according to the order, and retrieve Brooke today from school per her wishes.

Moreover, his plan to discuss Brooke's stated exercise of discretion with her, and obviously attempt to influence her not to spend time with Vivian, is exactly what is prohibited by the provision. Kirk should follow the procedure outlined in the plan and have him address this issue through Ms. Pickard.

I cannot comprehend why Kirk would continue to put Brooke through this kind of pressure. I believe that if he just took the pressure off her, allowed her to meet with a counselor, addressed his relationship or issues with the relationship through the Parenting Coordinator, that this issue would resolve itself. Instead, his response is to threaten to file a motion. I would ask that he reconsider that course.

While I appreciate that he will miss time alone with Brooke, she has unequivocally advised him of her desire to spend the next couple of days with Vivian. There may come a time when either Brooke or Rylee want to spend time with him on a day Vivian is scheduled to have them – she will, of course, comply with the provisions of the agreement.

Your letter did not respond to Vivian's acceptance of Kirk's proposal of Dr. Ali. I presume, since Kirk originally proposed him, he would be acceptable. Please let me know.

Sincerely,

RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.
Board Certified Nevada Family Law Specialist

RJS:
cc: Gary Silverman (via email)
Vivian Harrison (via email)
Thomas Standish, Esq. (via email)

# EXHIBIT 4

Electronically Filed
10/29/2013 05:03:43 PM

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant | CASE NO.: D-11-443611<br>DEPT NO.: Q<br><br>Hearing Date: October 29, 2013<br>Hearing Time: 10:00 a.m. |

**AFFIDAVIT OF THOMAS J. STANDISH, ESQ.**
**filed in Support of Plaintiff's Reply In Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, and Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, For an Interview of the Minor Children, and For Attorney's Fees and Sanctions**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

Thomas J. Standish, Esq., being first duly sworn, deposes and says:

1. The matters stated in this Affidavit are based upon my personal knowledge or upon information and belief, if so stated. If called upon to testify, I could and would competently testify to the facts set forth herein.

2. I am the attorney for Kirk Harrison (hereinafter "Kirk"), the Plaintiff in case number D-11-443611-D. I am employed by the law firm of Jolley Urga Wirth Woodbury & Standish, and am duly licensed to practice law in the State of Nevada. I was retained as co-counsel to Edward Kainen, Esq. for Kirk, in June 2011.

3. On behalf of Kirk Harrison, I negotiated the terms of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, with Radford J. Smith, Esq.

4. In particular, I negotiated with Mr. Smith Paragraph 6 of said stipulation and order, which for purposes of clarity is set forth hereafter:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.
>
> 6.2. Such adjustments **shall not be prompted or suggested by either parent**, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they **shall each encourage the children to follow the regular schedule** to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.
>
> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. **Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.**

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> 6.4. In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

5. The emboldened language was specific material language that I bargained for on my client's behalf. I advised my client that these emboldened provisions were critical to the teenage discretion provision and to safeguard the situation from either parent wrongfully pressuring, influencing, or encouraging a child to change the timeshare in that parent's favor.

6. Upon reviewing Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, it is clear that the actions described in that motion constitute multiple violations of the above revisions prohibiting either parent from prompting a child or suggesting to a child that such child should advocate a shift in the timeshare in favor of the prompting parent. The actions as alleged against Vivian in that Motion, would constitute a clear effort by a parent to undermine the entire Paragraph 6, as it was never intended that a child could assert control over their own timeshare merely because they have reached the age of 14 years.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of October, 2013.

THOMAS J. STANDISH, ESQ.

State of Nevada
County of Clark

Subscribed and sworn before me
this 29 day of October, 2013.

Notary Public

AMY CONNELL
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 10-23-2013
Certificate No: 10-1108-1

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# EXHIBIT 5

**EXHIBIT 5**
***(to Plaintiff's Motion For a Judicial Determination of the Teenage Discretion Provision)***

Vivian has demonstrated again and again throughout this litigation that she cannot be trusted to abide by the orders of this Court or do the right thing. Subparagraph 6.2 specifically and affirmatively requires each parent to **"encourage the children to follow the regular schedule"** and to not "**prompt**" or "**suggest**" any changes in the regular schedule. These provisions require and presume good faith conduct on the part of each parent **not** to encourage or manipulate the child to seek to be with one parent more than the other. Vivian's behavior throughout this litigation gives every indication that presumption, with respect to Vivian, is erroneous.

Section 7.1, entitled, "Summer Vacation or Intersession Break" of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, sets forth the procedure to be followed in establishing the parties vacations with the children each summer. Pursuant to that provision, sometime prior to March 1 of each year, Vivian must notify Kirk of the dates of her ten day sewing camp each summer. By the explicit terms of Section 7.1, Kirk "shall not designate vacation time during the period of the children's sewing camp." Therefore, Vivian must *first* designate the dates of the sewing camp.

In accordance with Section 7.1, Vivian identified the dates of the sewing camp as **July 20-30**.[1] Kirk thereafter, in accordance with Section 7.1, then designated his vacation times with the children as follows: "The dates for the Utah/Lagoon trip are August 14 through August 20. The dates for my summer vacation with the girls are as follows: June 19 through June 25 and August 2 through August 8." In addition, under the regular custody schedule during the summer, Kirk has

---

[1] Although this is for 11 days, rather than 10 days, Vivian was then obligated to take the sewing trip of 10 days within that 11 day period.

Brooke and Rylee from Wednesday at 9:00 a.m. until Friday at 9:00 a.m. each week. Therefore, based upon Vivian's designation of sewing camp and Kirk's designation of summer vacations, *Kirk was have Brooke and Rylee, among other days, Wednesday, July 31 and Thursday, August 1.*

Despite the foregoing, three weeks later, in direct contravention of the procedure set forth in Section 7.1, Vivian notified Kirk that she unilaterally "changed" the dates of the "sewing camp" to **July 24 through August 1, 2013 (**Vivian already had July 20 though July 23, as part of her normal visitation). However, by making the change, Vivian "took" two days from Kirk with the girls – July 31 and August 1. Vivian then, incredulously, took the position that even though she was in actuality taking *more days*, since she only "took" 9 days *for the sewing camp*, she was entitled to take another day from Kirk. As a consequence of these manipulations, Kirk was forced to take the Utah/Lagoon trip at about the time he had planned to take the California trip and take the Utah/Lagoon trip at about the time he had planned to take Brooke and Rylee to California. Through this ploy of Vivian in "changing" the dates of the "sewing camp," ***Vivian fraudulently took two days of Kirk's time with Brooke and Rylee.***

The truth is, that Vivian's late and improper "change" was nothing more that calculated manipulation of the custody schedule, and it is undisputed that ***the actual dates of the sewing camp never changed***. The sewing camp – the Martha Pullen School of Art Fashion was in Huntsville, Alabama from **July 21 until July 28, 2013**. These dates are well within the confines of Vivian's pre-March 1 notice that the sewing camp was between **July 20-30.** Vivian checked out of the hotel in Huntsville, Alabama on August 30, 2013 and Vivian and the girls flew home that day as already planned. The ***sole purpose*** of Vivian's late and improper notification of a "change" of the sewing camp dates to Kirk was to take two of Kirk's days with Brooke and Rylee and to try to steal a third.

When Kirk picked up Brooke and Rylee on the morning of August 2, 2013, the first thing Brooke said to Kirk was that she and Rylee were "suffering from jet lag", implying they had flown home the day before. However, a couple of days later during their trip, Kirk and the girls were in a Walmart in Lehi, Utah, and Kirk suggested they buy school supplies like they had done previously during the annual Utah/Lagoon trip. Rylee responded they had already gone with Vivian to buy school supplies. When Kirk asked if they did so during their sewing camp trip, Rylee responded that they had gone shopping in Las Vegas a couple of days ***after*** they got back from the sewing camp.[2]

If the Court only grants Kirk the two days Vivian fraudulently took from Kirk, there is no deterrent to future antics like this from Vivian. Vivian will have the time with the girls she otherwise should have had – she would lose nothing. Kirk respectfully requests, that some sort of sanction be imposed on Vivian to discourage such future conduct.

---

[2] The fact that Vivian would involve Brooke in the perpetuation of this fraud and the attempted cover up of her fraudulent behavior, speaks volumes as to what Vivian is capable and routinely does. More specifically, it is highly relevant circumstantial evidence of Vivian's continuing manipulation of Brooke regarding the teenage discretion provision.

0001

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff(s),

-vs-

VIVIAN MARIE LEE HARRISON,

Defendant(s).

CASE NO. D443611

DEPT. NO. Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR OPPOSITION TO JUDICIAL DETERMINATION RE: TEENAGE DISCRETION

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded.** (NRS 19.0312)

***NOTICE:***

*If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*

**Mark correct answer with an "X."**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed solely to adjust the amount of support for a child. No other request is made.
☐ YES ☒ NO

3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 18th of November, 20013

Carol Navarro
Printed Name of Preparer

Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

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Attorneys for Defendant

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT.: Q

**FAMILY DIVISION**

**DEFENDANT'S OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES**

DATE OF HEARING: December 18, 2013
TIME OF HEARING: 11:00 a.m.

VIVIAN MARIE LEE HARRISON ("Vivian"), through her attorneys Radford J. Smith, Esq. of the firm of Radford J. Smith, Chartered, and Gary R. Silverman, Esq. of the firm of Silverman, Decaria & Kattleman, requests that Plaintiff, KIRK ROSS HARRISON's ("Kirk") Motion for Judicial Determination

of the Teenage Discretion Provision be denied in its entirety. Vivian countermoves for attorney's fees under EDCR 7.60 for Kirk's unnecessary multiplication of these proceedings.

This Opposition and Countermotion are based upon the papers and pleadings on file, the Points and Authorities and oral arguments of counsel to be adduced at the time of the hearing.

Dated this 6 day of December, 2013

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
*Attorney for Defendant*

## I.

## STATEMENT OF FACTS

On October 1, 2013, Kirk moved to eliminate the "teenage discretion" provision from the parties' stipulated parenting plan. Vivian opposed that motion, and the Court denied Kirk's request. Unsuccessful at eliminating the provision, Kirk now moves to emasculate it.

The "teenage discretion" provision, section 6 of the July 11, 2012 stipulated order ( "Parenting Plan"), permits either of the parties' minor children (after age 14) to alter the "weekly schedule" under the parenting plan "from time to time" to spend time with one parent. (Parenting Plan ¶6.1). The provision contains safeguards to prevent exercising discretion from "unduly eroding" the timeshare of one parent. (Parenting Plan ¶6.3)

Kirk now requests that the Court ignore or alter the language granting discretion, and find that a child older than fourteen may only ***request*** a modification, leaving the parent with absolute control. This was not agreed by the parties. There would be no point to include in a parenting plan a separate provision



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that allows a teenager to "request" modifications of the parenting plan; any child can ask to spend more time with one parent regardless of the language in any parenting plan. The provision does what its title implies – it grants "discretion."

Kirk has filed a second motion because he is unsatisfied with the Court's order that denied his first. The present Motion, like all he has filed, attacks Vivian. He claims that in violation of the teenage discretion provision, Vivian has improperly influenced Brooke to spend time with her during his scheduled custodial time. She has not. The few times that Brooke has exercised discretion to be with Vivian have been reasonable and predictable. Kirk multiplied these proceedings by the filing of a second motion which presents no theory or legal argument he could not have presented in the first motion, which the Court denied.

Vivian addresses-Kirk's claims that Brooke's exercise of teenage discretion has undermined Kirk's timeshare in the facts set out below and affirmed by her Affidavit. Vivian submits the facts show Brooke exercised teenage discretion on four occasions for rational reasons consonant with a teen's life and growth, but only once for an overnight period (a two day timeframe where Rylee was on a separate trip to Catalina and Brooke could spend alone time with Vivian). Brooke-used the teenage discretion provision in the way that it was intended, and consistent with its express terms.

## II.

## THE PLAIN LANGUAGE OF THE PARENTING PLAN GRANTS TEENAGE DISCRETION

### 1. The Teenage Discretion Clause

Vivian fully discussed the genesis of the provision in her October 17, 2013 Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues: Brooke's adamant objection to spending equal time in Kirk's care. **Specifically, she re-avers** that in June 2012, Vivian had two options – seek primary custody, or develop a way that Brooke could choose to spend more time with Vivian or



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Kirk "from time to time" without altering a plan of joint custody--that is not alter the legal boundary of "custody" as the cases define it. Vivian proposed a plan of "teenage discretion" that is contained in the parenting plan. Vivian also wanted to give time to Kirk to improve his relationship with Brooke in the year before her 14th birthday, and with a therapist that was envisioned under the parenting plan. (*See* Letter from Radford J. Smith, Esq. to Thomas J. Standish, Esq. dated June 1, 2012, attached hereto as Exhibit "A").

Kirk's relationship with Brooke deteriorated over the past year, but Kirk, contrary to the specific provisions of the parenting plan, did not propose a therapist over that year, and then sought to eliminate the teenage discretion provision. As Kirk's relationship with Brooke deteriorated over time his incentive to torpedo the teen discretion clause increased. (*See,* Vivian's October 17th Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, pages 17 through 22).

Kirk's claim, in part, is the Parenting Plan is ambiguous. The relevant language of the Parenting Plan (Para 6.1): "[T]he parties intend to allow the children to feel comfortable in requesting **and/or making** adjustments to their weekly schedule, from time to time, to spend additional time with either part or at either parent's home." [Emphasis supplied]. Under that provision a child may ask for an adjustment or, simply, take an adjustment--ask or act. The child may *request* an adjustment **"AND" *make* an adjustment, "OR"** simply **make an adjustment.** The language cannot logically be read any other way, and is thus not subject to interpretation. A settlement of pending litigation is a contract, and is subject to general principles of contract law. *Grisham v. Grisham,* 289 P.3d 230 (2012). If there is no ambiguity, there is not need for interpretation. Kirk's request that the Court look to what he claims was the "intent" of the parties to alter the plain meaning of the unambiguous provision is contrary to well established principles of contract law. Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, "since all prior negotiations and agreements are deemed to have been

merged therein." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

Kirk's next claim is that the Parenting Plan allows the children "unfettered" right to modify the Court's order. The use of the teenage discretion is limited to "weekly visitation," and is to be only exercised "from time to time." Parenting plan, ¶6.1. The provisions specifically prohibit the child from using discretion to permanently alter the *timeshare* ("The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent"). *Id.* Further, the provisions grant the remedy of intervention by the Parenting Coordinator or the Court if either party believes Brooke, or Rylee (after she turns 14), uses the teenage discretion provision to "unduly erode" the timeshare of either party. Parenting Plan ¶6.2. Indeed, the provisions distinguish between modifications "from time to time" and the intent or desire of the child to change custody. Paragraph 6.4 of the Parenting Plan reads:

> In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

This distinction between the child's ability to "from time to time" exercise discretion to visit with the other parent is made apparent by the distinction in ¶6.4: the parties intended to allow discretion to a point, but not allow the child to dictate her schedule with the other parent. If the child desired to change custody, the parties developed a plan to ensure that the child received counseling through the therapist or parenting coordinator, and allowed the parties a non-judicial means for addressing any dispute regarding a child's desire to change custody. Again, the unambiguous "teenage discretion" provisions were designed to discourage litigation by allowing some flexibility and independence for teens, and develop a system of



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non-judicial intervention to resolve disputes. Kirk's has undermined that goal by first refusing to submit his choice of therapist, and then by filing two motions designed to eliminate the provision or its effect.

On October 30, 2013, the Court found the teenage discretion provisions (¶6 of the Parenting Plan) to be valid and enforceable. They are an integral part of the plan that contemplated the children's strong preference to spend additional time with Vivian, but the provision is neutral, and Vivian understands that the children can use that same discretion to spend time with their father. Indeed, this is how she and her counsel designed the provisions. *See* Letter from Radford J. Smith, Esq. to Edward Kainen, Esq. dated November 6, 2013, attached hereto as Exhibit "B."

Vivian never advised Brooke, as Kirk has suggested, that Brooke could permanently alter her custody or timeshare. Specifically, Vivian did not advise Brooke that Brooke would have an "unfettered absolute right to order changes in the agreed to custody schedule,"[1] and Vivian has not taken that position in discussions with Kirk's counsel. Unfettered means "without restraint," but here the plain language of the provisions set forth criteria for the exercise of such discretion, and provides two separate methods for a party to object to a child's use of teenage discretion that "unduly erodes" that parties timeshare. Vivian today is forced to repeat the position she took in her October 17th Opposition to Kirk's Motion to Resolve Parent Child Issues that there are more than adequate reasons (including the extremely close bond the children have with Vivian, and Kirk's use of anger, guilt, and criticism to attempt to control them) that could account for either child's desire to spend more time with Vivian. Here, however, Brooke's exercise of time had little to do with Kirk, and instead was based upon activities or time that she logically wanted to spend with her mother.

[1] *See,* Kirk's Motion for a Judicial Termination, page 5, line 16, and Vivian seriously doubts that Brooke has ever indicated to Kirk, as Kirk has also suggested, that she, Brooke, could alter custody when she turned 14.

**2. Brooke's Limited and Predictable Exercise of Teenage Discretion**

Since turning 14 on June 26, 2013 (almost 6 months ago), Brooke has exercised teenage discretion on four occasions. On three of those occasions, the schedule was altered only by a few hours, and for what Vivian submits are sensible reasons. Brooke exercised overnight stays with Vivian during only one period (a two day timeframe where Rylee was on a separate trip to Catalina, and Brooke could spend alone time with Vivian). Brooke has utilized the teenage discretion provision in the way that it was intended, and consistent with its express terms.

The first time Brooke exercised teenage discretion was on August 24, 2013 when Brooke wanted to be with Vivian when shopping for ballet point shoes on a Saturday she was scheduled to be in Kirk's care. Brooke exercised discretion for five (5) hours on that day. *See* Kirk's Motion to Modify Order re: Teenage Discretion filed on October 1, 2013, page 7, line 14. Vivian and the children had bought dance shoes together throughout the years that Brooke and Rylee have been in dance. Brooke told Vivian that she wanted Vivian to take her shopping.

The second time Brooke exercised teenage discretion was on the day of Brooke's Homecoming Dance (a Saturday) when Brooke desired to be at Vivian's home to dress and do make-up with her friends for the dance. This request by Brooke is not surprising. Brooke wanted to be with her mother who is skilled and experienced in applying make-up, and helped her learn how to apply make-up. On that day, Brooke and her friends planned to go from one mother's home to another when preparing for the dance. Brooke and her friend's mother told Vivian about the plan the day before; Vivian did not prompt Brooke nor organize any aspect of the plan. The plan involved the girls traveling to three different homes for different events (hair and make-up at Vivian's home, other events at two other homes). Brooke was with Vivian for approximately two to three hours.

The third time Brooke exercised teenage discretion caused Kirk to file his current motion. This was the only time when Brooke spent overnights with Vivian. On November 6, 2013, Vivian dropped Rylee off to attend school trip to Catalina Island. After dropping Rylee off for the trip, the normal parenting schedule called for Brooke to be in Kirk's care from November 6 through November 8. Without prompting, Brooke expressed her desire to be with Vivian while Rylee was away.

The fourth time Brooke exercised teenage discretion (if it can be called that since both children wanted to go to Vivian's house for necessities for dance) was on November 16. On Wednesday, November 13, Brooke and Rylee attended their musical theater class. Their instructors advised them at that class that they needed to have their props and two costumes for two scenes in the upcoming Winter recital. They were in Kirk's care the following Thursday and Friday. Both Brooke and Rylee requested that they be allowed to go to Vivian's home on Saturday, November 16 to retrieve the props, to make shopping bags, wrap presents, and prepare costumes, all for their Winter Recital. Vivian has a craft and sewing room in her home that is equipped with arts, crafts and sewing supplies. Vivian has been the parent that has taken the historical responsibility of preparing the props and costumes for the children's school projects and dance. It is understandable that the children wanted to be with Vivian to help them prepare for the recital. They were with Vivian for approximately three hours.

Vivian submits that all of these four (including the children's need to gather material for the winter recital) instances of exercise of teenage discretion are reasonable and predictable (spend "one-on-one" time with her, shopping for dance clothes, putting on make-up for a dance, sewing costumes.

The standard for review of Kirk's motion is contained in the parties' contract: Has Brooke's exercise of Kirk's claim that Brooke's exercise of discretion "unduly eroded" Kirk's timeshare. In light of the few instances in which she has exercised discretion, Kirk's claim is ludicrous. Kirk's claim that Brooke's exercise of discretion caused her to be outside Kirk's care for two weeks does not fully inform

the Court of the parties timeshare surrounding that period. Kirk did not tell the Court that Kirk had Brooke and Rylee in his care for two prior consecutive weekends, including the extended Nevada Day weekend. Brooke and Rylee did not have school on Monday after Nevada day due to "staff development day." As a result, Kirk had the children with him for four consecutive days on that weekend. Below is a list of dates that Kirk and Vivian had the children from October 16 through November 17.[2]

Kirk had the children on the following days -

In October -

16, 17, 18, 19, 20, 23, 24 (Staff Dev day-no school), 25 (Nevada day- no school 4 day weekend), 26, 27, 30, 31

In November -

13, 14, 15, 16, 17

**Total number of days for Kirk = 17 days**

Vivian had the children on the following days -

In October -

21, 22, 28, 29

In November -

1, 2, 3, 4, 5, (6, 7 Brooke decided to spend these days with Vivian instead of with Kirk) 8, 9, 10, 11, 12

**Total number of days for Vivian = 16 days (including the two days that Brooke choose to be with Vivian instead of with Kirk)**

As shown above, even after Brooke exercised teenage discretion, Kirk had more days with the children than Vivian during that period. Brooke's exercise of discretion could not possibly be fairly characterized as eroding his time with the children.

[2] I am using the 30 day time period from October 16 through November 17 as a point of reference to show the Court the custodial arrangement Kirk for the past 30 days prior to the Thanksgiving Holiday schedule.



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**3. Why the Children Continue to Express Their Desire to Spend More Time with Vivian.**

Inherent in Kirk's Motion is his false narrative that the only reason the children want to be with Vivian is that she has improperly coached them as part of her competition with Kirk. Kirk's claim is not supported by any evidence.

There are only three ways to evaluate the "improper coaching" claim:

First, the Court could ask Vivian. Vivian denies that she has lobbied or encouraged the children to be with her during Kirk's time.

Second, the Court could review the reasons other than Vivian's encouragement that would explain why the children want to spend additional time with Vivian. Here, there is substantial and adequate reasons why the children have formed a close bond with Vivian, and desire to be with her. In sum:

a. Vivian read extensively with and to Brooke and Rylee. As a result, both Brooke and Rylee were able to read and write before entering Kindergarten. Vivian reads and prays with them every night before they go to sleep. Both children have reading awards for number of pages or minutes read during a specific school year. Before the time that the children could read independently, Vivian read all of those pages with the children.

b. Vivian is very active with the children's school. She volunteers regularly and has received awards for her involvement in their classroom and school activities. Vivian supplied numerous additional declarations of witnesses attesting to various activities in which Vivian had participated with Brooke and Rylee. *See* Vivian's October 17th Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, pages 8 through 9.

c. Vivian has volunteered weekly in the past for Rylee's Church related activities. Vivian encourages Brooke and Rylee to volunteer and help with various charitable events such as Special



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Olympics, the Humane Society, school fundraisers and rummage sales, Brooke's class's Carson City trip, at lemonade stands, etc.

d. The children and Vivian have common interests. They enjoy sewing, cooking, dancing, make-up, hair, and fashion. They have taken sewing classes, quilting classes, cooking classes, crochet classes, knitting classes, special art project classes at Michaels and Joann's, and have made projects together. Vivian taught at a fashion design school, and Brooke is very enthusiastic about fashion. Vivian alters and makes costumes for dance performances and school plays for both Brooke and Rylee. She also does their hair and make-up for the performances

e. Vivian works with the children on their homework and school projects. The children have received mountains of awards based on academics. With some encouragement and help from Vivian, the children have achieved the World Traveler Award, Nevada Citizenship Award, and Great American Award.

f. Vivian registers Brooke and Rylee for sports activities (soccer, basketball, volleyball, tee ball, and swimming). She also has and continues to arrange for their private lessons in dance, piano, guitar and drum (they not currently taking guitar and drum) gymnastics and voice. In the past, Vivian has scheduled and attended all of the children's doctor's appointments, hair appointments, and nail appointments

g. Vivian lives in the marital residence Brooke and Rylee were born and raised in that home. They have several very close friends in the neighborhood who they like to visit when they visit Vivian.

Vivian's activities with Brooke and Rylee are no different that her activities with the parties three adult children during their childhood. Those children (All-state in sports, Miss Teen Nevada, top of their class in school, great colleges) were incredibly successful in their endeavors, and so are Brooke and Rylee. The *facts* show why Brooke and Rylee are close to her, and want to spend time with her.

The third and final way the Court could determine whether Vivian has inappropriately encouraged or influenced Brooke to spend time with her is to ask Brooke. As previously stated in her first opposition to Kirk's motion to eliminate the teenage discretion provision, Vivian welcomes such an interview.

When the Court stated it did not want to hear from the girls, the field of fire was opened up for Kirk--he could conjure any facts he wanted to support his claim Vivian was campaigning to dissasociate and isolate the girls from him. His reasoning that "because Brooke does not want to spend every second to which she is entitled with me, Vivian is campaigning and alienating her" is illogical and is given the lie because he points to no other recognized external, objective alienation factor arising in either girl, e.g., becoming withdrawn and dependent in all aspects of life, psychosomatic symptoms, e.g., eating or sleep disorders, etc.

## III.

## THE COURT SHOULD DENY KIRK'S MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION, AND CONFIRM THE PARTIES' TEENAGE DISCRETION PROVISION TO BE CONSISTENT WITH NEVADA LAW

Kirk's present Motion again argues that the teenage discretion provision is contrary to Nevada law. Vivian addressed Kirk's argument at length in her previous brief. *See,* Opposition filed October 13, 2013. The Court denied Kirk's motion to eliminate the teenage discretion provisions. The Court should again deny Kirk's repetitive motion to accomplish the same goal, find it vexatious and award fees and other appropriate relief.

## VI.

## THE COURT SHOULD ORDER KIRK TO PAY VIVIAN'S ATTORNEY'S FEES AND COSTS EXPENDED TO RESPOND TO THE PRESENT MOTION

At the hearing on October 30, 2013, Court denied Kirk's first request to eliminate the "teenage discretion" provision from the parties' stipulated parenting plan. Perhaps believing the Court did not

understand the issue, but in any case unsatisfied with the Court's order denying his first request, Kirk has filed a second request seeking to emasculate the teenage discretion provision. Given the arguments replicate themselves and come on the heels of the very motion they copy, the Court can find the pending Motion from Mr. Harrison to be frivolous. It is legitimate to ask why it is not.

EDCR 7.60 permits a Court to order a party that files a frivolous motion, or a party that unnecessarily multiplies the proceedings in a case to pay the attorney's fees and costs of the other party. The Court should exercise that discretion here.

## V.

## CONCLUSION

Vivian requests the Court's Order denying Kirk's Motion for Judicial Determination of the Teenage Discretion Provision, and awarding awarded attorney's fees for having to respond to Kirk's frivolous motion.

Dated this 6 day of December, 2013.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 2791
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Henderson, Nevada 89074
*Attorney for Defendant*

**DECLARATION OF VIVIAN MARIE LEE HARRISON**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

VIVIAN MARIE LEE HARRISON, declares:

1. I am the Defendant in the above-entitled matter. I have personal knowledge of the facts contained or incorporated herein, and I am competent to testify thereto

2. I make this Affidavit based upon facts within my own knowledge.

3. I have reviewed the foregoing Opposition and Countermotion and can testify that the facts contained therein are true and correct to the best of my knowledge. I hereby reaffirm and restate said facts as if set forth fully herein.

I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT.

VIVIAN MARIE LEE HARRISON
Date: 12-6-13

## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Radford J. Smith, Chartered ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "

DEFENDANT'S OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES

on this 16 day of December, 2013, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

☐ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

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Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

# EXHIBIT "A"

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June 1, 2012

**VIA FACSIMILE**
Thomas Standish, Esq.

*Re: Harrison v. Harrison*

Dear Tom:

Thank you for your letter of May 31, 2012. I have had an opportunity to review the letter with Vivian. As I understand Kirk's position, he is requesting three modifications to the proposed MSA I forwarded to you on Friday, May 25, 2012:

1) He seeks to eliminate the "teenage discretion" language set forth in paragraph 6 of the draft parenting plan;

2) He seeks an additional 10 day period of care during the summer vacation months; and,

3) He seeks to change his time to have the girls in his care from Monday and Tuesday to Wednesday and Thursday of each week.

Let me address each of those requests individually:

1) *Teenage Discretion*: As we have discussed over the last several weeks, part of Vivian's reluctance to enter into a final agreement without the input from Dr. Paglini was based upon what appears to be Brooke's deteriorating relationship with Kirk. Brooke has regularly indicated to Vivian that she desires spend more time with Vivian. Vivian has compromised in large part based upon the desire of the other members of the family to see this matter close. She still has significant concerns about Kirk's relationship with and care of Brooke, but she has listened to the advice that the resolution of the matter would lead to an improvement of that relationship.

   What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care – we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.

   Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. The provision does not place the responsibility of choosing on Brooke, it simply gives each child discretion after 14 to spend more time with one parent or the other, a request that will likely be granted to them in any event by the Court. Again, the provision is designed to avoid litigation.

2) *Summer vacation:* The girls have attended sewing camp with Vivian in the past. Brooke has gone to the camp for four years since she was eight years old, and Rylee attended last year at eight years old. It is an activity both girls enjoy, and sewing is considered a life skill. In order for the children to go to this camp, Vivian must accompany them, and she must enroll in the program. The camp is filled with days of instruction and sewing. Kirk is welcome to attend the camp. If the children do not want to attend the camp in the future, this issue is moot. Vivian does not feel it is in the best interest of the children at this time to expand the summer visitation periods, particularly in light of Brooke's current difficulty in her relationship with Kirk.

3) *Days of the Week:* Vivian too desires to have the children on Wednesday and Thursday of each week. She permitted Kirk to choose between an alternating week schedule and a five/two - two/five schedule, and she feels she should be able to choose which weekdays she has the children. Moreover, it is not our experience that mediations occur more often on Monday and Tuesday, and because there are so few there does not appear to be a substantial need to change the proposed plan. Vivian would be willing to work with Kirk to arrange exchanges in those instances that Kirk has a mediation that is going to last into the evening after the children are out of school.

Please call with questions.

Sincerely,

SMITH & TAYLOR

Radford J. Smith, Esq.

RJS:

cc: Gary Silverman, Esq.
Vivian Harrison

# EXHIBIT "B"

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**VIA FACSIMILE**
Edward Kainen, Esq.

November 6, 2013

*Re: Harrison v. Harrison*

Dear Ed:

This morning Vivian dropped Rylee off for a two-day school trip to Catalina. Brooke approached Vivian, without prompting from Vivian of any kind, and indicated that she would like to stay with Vivian for the next couple of days. Under the provisions of paragraph 6 of the parties' parenting plan (the July 11, 2012 order), Brooke has the discretion to choose to spend this time with Vivian. That provision reads in pertinent part:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting ***and/or making adjustments to their weekly schedule***, from time to time, to spend additional time with either parent or at either parent's home.

When Brooke advised Kirk of her choice to make the adjustment to the weekly schedule on this occasion, Kirk incorrectly informed Brooke that she does not have that discretion. Kirk's statement is contrary to the plain language of the agreement. Brooke does have that discretion, and Vivian intends to honor it.

If Kirk feels that either Brooke's choice or Vivian's actions are in violation of the Parenting Plan, the remedy is spelled out in paragraph 6.

> 6.2. Such adjustments shall not be prompted or suggested by either parent, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they shall each encourage the children to follow the regular schedule to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.

> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.

Thus, under the plain terms of the Parenting Plan, if Kirk believes that the child's discretion has been exercised in violation of the Plan, he may bring this matter to mediation with Ms. Pickard under the Order entered by Judge Duckworth appointing her, or he may file a motion with the Court. He does not have the unilateral ability to deny the exercise of Brooke's discretion. Consequently, consistent with Brooke's exercise of that discretion, Vivian will pick her up after school.

Kirk's suggestion to Brooke that she does not have discretion, and the pressure that he has placed on Brooke as outlined in Vivian's Opposition to Kirk's motion to remove paragraph 6 from the parenting plan (which motion Judge Duckworth denied), is precisely what Vivian wanted to avoid. The intent of the paragraph was to allow either child, after reaching 14 years of age, to exercise occasional discretion to spend time with a parent outside the custodial schedule. The paragraph is neutral, and grants the children the right to vary the schedule and avoid any demand by the other party for strict compliance with the weekly visitation schedule. Kirk seeks to undermine the application of the provision by the very means it was designed to avoid.

Vivian strongly hopes that Kirk will not continue to violate the provision by either informing Brooke that she cannot exercise the discretion granted to her, or by causing havoc (by demanding that she come with him for example) in order to intimidate and pressure Brooke. Paragraph 6 sets up a reasonable and specific method for addressing concerns of either parent regarding a child's exercise of discretion, and Vivian will participate in any sessions with Ms. Pickard to address Kirk's concerns. She has already contacted Ms. Pickard, and I am providing a copy of the Parenting Plan and Order appointing Ms. Pickard to her. Also, Judge Duckworth has appointed Lisa Linning as the child's therapist per Vivian's request, but Ms. Linnings office has declined the appointment. Consequently, Vivian accepts the appointment of Dr. Jamal Ali, who Kirk had proposed as the children's therapist. Vivian will contact Dr. Ali, and we will provide him a copy of the parenting plan and order appointing him as therapist.

Please let me know Kirk's intended actions so we can avoid any difficulties that may arise by any actions he intends to take in response to Brooke's exercise of the discretion granted her under paragraph 6 of the Parenting Plan.

I you would like to discuss this matter, I will be available most of the day either at the office or on my cell. I look forward to hearing from you.

Sincerely,

RADFORD J. SMITH, CHARTERED

Radford J. Smith, Esq.
Board Certified Nevada Family Law Specialist

RJS:

Enc:
cc: Vivian Harrison
Gary Silverman, Esq.
Thomas Standish, Esq.

0001

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

**FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition : ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

DEFENDANT'S OPPOSITION TO MOTION FOR JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION; COUNTERMOTION FOR ATTORNEY'S FEES

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRSS 125, 125Bor 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded (NRS 19.0312)**

***NOTICE:***

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

**Mark correct answer with an "X"**

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed soley to adjust the amount of support for a child. No other request is made. ☐ YES ☒ NO

3. This Motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order if YES, provide file date of Order:____ ☐ YES ☒ NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☒ IS ☐ IS NOT subject to $25 filing fee

Dated this 6TH day of December, 2013

Jolene Hoelt
Printed Name of Preparer

Signature of Preparer



A.App. 1339

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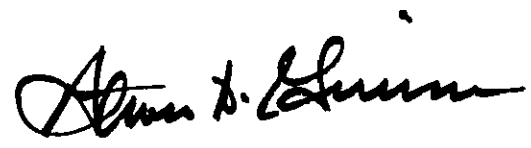

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D
DEPT NO. Q

Date of Hearing: December 18, 2013
Time of Hearing: 11:00 a.m.

**PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION**
**AND**
**PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES**

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys, THOMAS J. STANDISH, ESQ., of the STANDISH LAW GROUP, and EDWARD L. KAINEN, ESQ.,

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of the KAINEN LAW GROUP, PLLC, and hereby submits his Reply to Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision and his Opposition to Defendant's Countermotion for Attorney's Fees.

DATED this 13 day of December, 2013.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Contrary to Vivian's false assertions, the within motion was filed because: (1) Vivian's butchered explanation of Section 6 to Brooke resulted in Kirk losing the only two days he otherwise had with Brooke during an entire two week time period; (2) Vivian's attorneys' correspondence revealed their extremely illogical interpretation of Section 6, which is contrary to the explicit language contained in Section 6, which explicit language is consistent with the best interests of the children; (3) a judicial interpretation is required, which can only be made by the Court, and; (4) Kirk is entitled to seek that judicial interpretation by the Court pursuant to Section 6.2, which provides an aggrieved party under Section 6 can seek relief with "the Court." Contrary to Vivian's false assertion, Kirk has not unduly multiplied these proceedings. Kirk is, without question, trying to eliminate a provision which, as a consequence of Vivian's material breaches, is causing unnecessary instability, uncertainty, and undue stress in the lives of Brooke and Rylee.

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Vivian's "statement of facts" attempt to gloss over the core issue, by falsely asserting that section 6 "permits either of the parties minor children (after age 14) to ***alter*** the "weekly schedule" under the parenting plan "from time to time" to spend time with one parent." (Opposition, p. 2, l. 21-22) (emphasis added). In contrast to this representation, the actual language provides:

> "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. . . The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and the shall each encourage the children to follow the regular schedule."

(Section 6.1 & 6.2)

As a consequence of Vivian's material violations of this provision, Vivian's informing Brooke she has the absolute unfettered right to **order** changes to the custody schedule and Brooke's resentment of Kirk if he does not immediately obey her **directives**, and Vivian's overt continued manipulating Brooke to **order** changes in the agreed to custody schedule, Section 6 must be stricken. There is no question that it is in the best interests of the children that Section 6 be stricken as this provision creates an environment of instability and uncertainty, and motivates a manipulative and vindictive parent to further embroil the children in continued unnecessary conflict between the parents.

If for some reason this Court is unwilling to strike Section 6 under these circumstances, the issue, as set forth in Kirk's moving papers, is whether the children have the unfettered right to **order** a change in the agreed custody schedule, as advocated by Vivian, or whether they have the right to **request** a change in the custody schedule, as advocated by Kirk. Kirk respectfully submits that in the Court's interpretation of this provision, the Court should make an interpretation which supports and is consistent with the agreed custody schedule between the parties – as opposed to an interpretation that undermines and erodes the agreed custody schedule – and is in furtherance of maintaining stability, continuity and certainty in these children's lives.

Vivian's opposition, pursuant to EDCR 5.25(b) was to be filed and served on or before December 5, 2013. However, true to form, Vivian failed to file and serve her opposition until 4:47 p.m. on December 6, 2013. Throughout this litigation, Vivian's attorneys have shown no respect for the rules of this Court or this Court. Kirk, respectfully, requests the Court to strike said opposition as untimely.

. . .

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## II. ARGUMENT

Vivian's argument ignores all of the blatant material breaches of Section 6 by Vivian which have effectively nullified the critical safeguards contained in Section 6. Those material breaches where Vivian not only told Brooke of the provision, but butchered the explanation of the provision by telling Brooke she had the *absolute right to dictate changes* to the agreed custody schedule at any time and without any reason.

Vivian's interpretation is so extreme and turns the parents' right to jointly determine custody, which they did, on its head. There is an agreed custody schedule between the parties, but according to Vivian, it is rendered meaningless by the whim of a highly manipulated 14 year old child. The Court, respectfully, should have zero tolerance for such an extremely absurd position, which is so patently contrary to the best interests of the children, the agreed custody schedule between the parties, common sense, and NRS 125.510(5), NRS 125C.010, and NRS 125.460.

### A. Continuing the Pattern Exhibited In Prior Briefs, Vivian Makes One False Assertion to the Court After Another

Vivian avers that she considered seeking primary custody. In light of Vivian's neglect and abandonment of these children over a period of years, that was never going to happen. Vivian avers that, "Vivian proposed a plan of "teenage discretion" that is contained in the parenting plan." (Opposition, p. 4, 2-3) Contrary to Vivian's erroneous rendition of "her" teenage discretion provision, Section 6, as clearly evidenced by the Affidavit of Thomas J. Standish, attached as Exhibit 4 to the within motion, was a negotiated provision with critical safeguards. The provision described by Vivian may have been what she wanted, but it does not exist. Unfortunately, it is the provision which *does not exist* that is the one Vivian explained at length to Brooke, and that Vivian asserts gives Brooke the absolute unfettered right to **order** changes to the agreed custody schedule that Kirk must immediately **obey** without question or discussion.

Vivian disingenuously represents to the Court, "Vivian also wanted to give time to Kirk to improve his relationship with Brooke before her 14th birthday. . ." (Opposition, p. 4, l. 3-4) Contrast this ridiculous assertion with the fact that after Brooke was with Vivian for 14 uninterrupted days immediately after her 14th birthday, Brooke announced to Kirk that she wanted to live with Vivian full

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time. And this is in the context of the safeguard in Section 6, which provides, "Such adjustments shall not be prompted or suggested by either parent. . ." Again, contrary to the explicit provisions of Section 6 and the law, Vivian erroneously concluded and thereafter erroneously advised Brooke that after Brooke turned 14 years old she could unilaterally, without any Court involvement whatsoever, decide, dictate and order that she would live with Vivian full time. Vivian's material breaches of the provision, Vivian' erroneous explanations of the provision to Brooke, and Vivian's manipulation of Brooke have created an undeniably untenable situation for these children. Vivian's false assertions to the Court fly in the face of common sense and undisputed facts, and are an insult to the intelligence of everyone involved.

The singular nonsensical conjunctive/disjunctive "and/or" language in paragraph 6.1, is totally inconsistent with *all* of the other language and provisions contained in Section 6. It makes no sense whatsoever that the child would have the right to **request** – which is consistent with all of the other language – but would *also* have the right to **order**.

The bottom line is that Vivian is asserting the following: the parties, the parties' respective attorneys, and the Court have ordered and agreed to a detailed custody schedule, which sets forth in detail each parent's custody on a daily basis, including the specific time of transfer during school and when not in school, including vacation and holiday time, duly considering, at least in theory, the best interests of the children. Under this provision, according to Vivian, all of that can be nullified by the whim of a 14 year old child, who after Vivian's prompting and suggesting, informed Kirk, on August 25, 2013, that Kirk has to take her to Vivian's house *any time she wants* and she, Brooke, has the *right to stay as long as she wants*. Respectfully, this is utter nonsense!

Kirk urges the Court to strike Section 6. In the, hopefully, unlikely event the Court chooses to not strike Section 6, Kirk does not request the Court to "alter" Section 6 as Vivian asserts, but simply to make a common sense interpretation of the explicit language which is in the best interests of the children, that the provision, read as a whole, contemplates that the children can make ***a request*** to changes in the agreed custody schedule, but cannot **order** such changes.

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Vivian erroneously asserts, "Kirk's next claim is that the Parenting Plan allows the children "unfettered" right to modify the Court's order." (Opposition, p. 5, l. 3-4) Kirk's position is just the opposite – Kirk's position is that the child has the right to make *a request*. It is Vivian's position that the child has the unfettered right to **order**.

During the hearing on October 30, 2013, this Court made it clear on the record its preference to wait to have a Parenting Coordinator in place before the Court dealt with Section 6. Kirk's motion was not denied with prejudice. However, this did not stop Vivian from falsely asserting, "On October 30, 2013, the Court found the teenage discretion provision (¶6 of the Parenting Plan) to be valid and enforceable." This Court made no such finding.

**B. The Unequivocal and Explicit Section 6.1 Language Providing, "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent" Is Controlling and Is Outcome Determinative Of Any Reasonable Interpretation and Construction Of Section 6.1 – the 14 Year Old Child Has the Right to Make A Request and Not the Right to Make an Order**

Vivian's argues the language "The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent." only precludes a child from permanently making changes to the agreed custody schedule and is not applicable to changes in weekly visitation. (Opposition, p. 5, l. 5-8) This argument is patently wrong. This critical language is the first sentence contained in Section 6.1, which contains the conjunctive/disjunctive language – the sole basis of Vivian's argument that a 14 year old child has the absolute right to **order** changes to the agreed custody schedule. Any reasonable common sense construction of Section 6.1 leads to the inescapable conclusion that any interpretation of the intent of the conjunctive/disjunctive language is in the context and within the parameters of this language. The logical interpretation, therefore, is that the child does **not** have the right to *order* changes in the weekly agreed custody schedule. Based upon the explicit language contained in Section 6.4, which addresses permanent custody, it is evident, that the subject language which Vivian asserts only applies to permanent changes in custody, ironically, only applies to changes in the weekly agreed custody schedule and not to a permanent change in custody, as Section 6.4 is clear that permanent custody will ultimately be decided by the Court.

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**C. Brooke's Orders To Kirk Regarding Changes To the Agreed Custody Schedule Prior to Wednesday, November 6, 2013**

For whatever reason, Vivian has felt compelled to discuss the prior occasions where Brooke ordered Kirk to make changes in the agreed custody schedule. (Opposition, p. 7) Kirk has previously addressed these incidents in detail in the prior motion and will not belabor the true facts surrounding those incidents again. *See* Motion to Modify Order, filed 10.1.13, p. 6-8) However, it must be noted that because of summer vacations, as a practical matter, the **orders** from Vivian/Brooke could not have started six months ago, but only since the start of school. It is only since the start of school, that Vivian has forced Kirk to wait in the car for 20 to 35 minutes at a time while she visits with Brooke and Rylee; Vivian has now convinced Brooke and Rylee to not return Kirk's texts or speak to him on the telephone while they are with her, and to **order** Kirk to lose time with the girls during his custody time to do such things as shop for dance shoes when Kirk has taken them to buy dance shoes in the past and Vivian could have taken Brooke to get dance shoes shortly before or shortly after that time during her own custody time.

All of this is part of Vivian's self-created vindictive competition with Kirk. It is not out of Vivian's desire to do what is in the best interests of Brooke and Rylee. Given the fact that Vivian regularly absented herself from the minor children by spending months in Europe and Asia delusionally pursuing her "soul mate" and other love interests without any regard whatsoever for Brooke and Rylee, and that she lived behind a closed door in their home for years, intentionally isolating herself from Brooke and Rylee and the rest of the family, a loss of two days may not be much to Vivian, but Vivian knows it is a very big deal to Kirk.

Vivian and Vivian's attorneys now argue that the provision was never intended to erode Kirk's custody time with the girls and Kirk is over reacting. This argument is yet another in a long line situational baseless arguments made by Vivian. The Machiavellian intent of this provision by Vivian has been previously revealed. The Court will recall Mr. Silverman's affidavit wherein he opined that this provision will be utilized so that "**it is Vivian who will have de facto primary custody**." (Exh. S to Vivian's opposition to Kirk's countermotions re attorneys' fees, p. 9, l. 16-17)

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A.App. 1347

**D. Vivian Misleads the Court Regarding The Relative Time Each Parent Has With the Children**

Kirk has previously advised the Court that Dr. Roitman advised Kirk it was critical to end the contentious divorce to avoid significant emotional damage to Brooke and Rylee. At that point, Kirk had given up on his attempts to get Vivian into therapy – which was clearly in the best interests of the children and Vivian. Although he did not believe it was in Brooke's and Rylee's best interest to have joint custody given Vivian's condition and past behavior, based on Dr. Roitman's strong advice he felt he had no other choice but to allow Vivian to have joint physical custody. As a penalty for Kirk to do what was best for Brooke and Rylee, Vivian insisted that she have all four of the major national holidays with Brooke and Rylee – "1) Martin Luther King Day; 2) President's Day; 3) Memorial Day; and 4) Labor Day, VIVIAN shall have the children in her care both that Monday holiday and the preceding weekend," (Section 7.6 of the custody agreement.) In contrast, Kirk only gets Brooke and Rylee for one three day weekend during the school year that he can take them out of town – Nevada Day. In addition, Vivian gets the children for 3 more days than Kirk during the summer – 10 days for sewing camp versus 7 days for the Utah/Lagoon trip. (Section 7.1 of custody agreement)

Based upon the foregoing, each year, Vivian will have Brooke and Rylee with her more than Kirk will have Brooke and Rylee with him. Therefore, Vivian's attempt to have the Court only focus upon just one 33 day period of time, to suggest that Kirk's loss of two days with Brooke is no big deal is disingenuous. As noted previously, the two days wrongly and inequitably taken from Kirk were the only two days Kirk was going to see Brooke during an entire two week period.

Vivian makes much to do about a 33 day time period where Vivian had Brooke and Rylee for **16 days** and Kirk had Brooke and Rylee for **17 days**, arguing that Kirk is unreasonable and implying there must be something wrong with Kirk for complaining he lost two days with Brooke. (Opposition, p. 8, l. 27-28; p. 9, l. 1-28) Vivian attempts to impugn Kirk's character with this window of time asserting Kirk "does not fully inform the Court of the parties timeshare surrounding this period." (Opposition, p. 8, l. 28; p. 9, l. 1) And further, "Brooke's exercise of discretion could not possibly be fairly characterized as eroding his time with the children." (Opposition, p. 9, l. 23-24)

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First, as a consequence of Vivian's/Brooke's **order**, Kirk lost the only two days he had with Brooke during an entire two week period. Kirk respectfully submits that any time lost with his children is precious time he will never get back, unless this Court orders the return of those days. Second, consistent with what Vivian has done, Kirk could direct the Court's attention to the time period between Friday, November 22, 2013 through Tuesday, January 7, 2013. During this time period, Brooke and Rylee will be with Vivian for a total of **32** days compared to being with Kirk for **14** days, with each party sharing Christmas Day! Although this relative time sharing will generally be the opposite next year, it highlights that those two days wrongly taken from Kirk absolutely eroded Kirk's time with Brooke.

Kirk respectfully submits, that to be deprived of spending any time with his children for the entirety of two weeks is a very big deal. The parties' agreed custody schedule provided he could spend those two days with Brooke. However, those days were wrongly taken from him in Vivian's effort to obtain **"de facto primary custody**."

### E. The Circumstantial Evidence is Overwhelming That Vivian Is Coaching Brooke and Rylee To Spend More Time With Vivian

Vivian falsely asserts "[t]here are only three ways to evaluate the "improper coaching" claim. None of the three ways identified by Vivian is the irrefutable circumstantial evidence already before the Court. These are the facts: Brooke was with Vivian for 21 straight days and the very next day announced to Kirk and Whitney that she now had the *right* to decide where she lives. Brooke was then with Vivian for 14 straight days and within one day of her return to Kirk, crying and distraught, announced she wanted to live with Vivian full time, thus leaving her little sister for one-half the time. Vivian and Heather Atkinson have both been telling Brooke and Rylee that "girls are supposed to live with their mommies."

The sum and substance of Vivian's most recent volley is a rehash of the same misrepresentations that was in her prior opposition. Vivian's involvement with the girls, as described, is only since mid-September of 2011. Vivian was missing in action during the years prior to that time.

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Until mid-September of 2011, Kirk was the only consistent parent Brooke and Rylee had on a daily basis for many years, beginning in February of 2006. From late 2008 until mid-September of 2011, Vivian was a parent in name only. Kirk did everything for and with Brooke and Rylee during that time period.

Since mid-September of 2011, Kirk has continued to be an attentive parent. As the Court is aware, between February of 2012 until July of 2012, Kirk had Brooke and Rylee during the entire school week. It was Kirk – not Vivian – who was exclusively helping Brooke and Rylee with their homework, just as he had done for many years prior to that time. During the approximately one-half the time Kirk has Brooke and Rylee since this Court's order in July of 2012, Kirk has continued to care for Brooke and Rylee in the same manner. Brooke is now a Freshman in high school and predictably rarely requires any help with homework. However, Kirk continues to help Rylee with homework, when she needs help.

Vivian continues to make absurd representations of fact which have no basis in reality. Vivian represents, "Vivian lives in the marital residence. Brooke and Rylee were born and raised in that home." (Opposition, p. 11, l. 22) First, Brooke and Rylee were both born at Sunrise Hospital. Second, Brooke was born on June 26, 1999. The Harrisons did not even acquire the marital residence until October 24, 2001 and did not move into the house until a couple of months thereafter. Third, beginning in February of 2006, Kirk – not Vivian – primarily raised Brooke and Rylee in that home, and from the fall of 2008 until mid-September of 2011, Kirk exclusively raised Brooke and Rylee in that home. Vivian would not even sit down and have a meal with these little girls for months at a time when she wasn't in Europe or Asia.

Vivian's history of manipulation of Brooke and Rylee has been well documented. *See* Motion for Custody, filed 9.14. p. 30-33. Since the service of the Motion for Custody, Vivian has been doing a lot of things with the girls that she had not done for years.

The quoted language attributed to Kirk on page 12, lines 7-8 of the Opposition, was never said by Kirk. The argument that follows is nonsensical.

It is the "girls are supposed to be with their mommies" indoctrination by Vivian, similar manipulative antics, and Vivian's material breaches of Section 6.1 whereby she has convinced Brooke she has the absolute right to **order** changes in the agreed custody schedule, which are currently causing

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the problems. If the Court strikes Section 6, Vivian will be substantially less motivated to so callously manipulate these minor children.

Again, if this Court has any appetite whatsoever to interview anyone in an effort to seek out the truth, it is not going to be gleaned from interviewing a highly manipulated 14 year old child. The Court will, however, gain true incite from interviewing Tahnee and Whitney, the parties' adult children, who are eyewitnesses to what actually occurred.

**F. There is Absolutely No Basis Whatsoever To Award Vivian Attorney's Fees**

As previously noted, the Court made it abundantly clear on the record that the prior motion was denied because the Court wanted the parties to have a Parenting Coordinator in place before addressing the issues in the motion. The prior motion was denied without prejudice.

Kirk was unable to wait for the Parenting Coordinator to be in place for the following reasons: (1) Vivian's butchered explanation of Section 6 to Brooke resulted in Kirk losing the only two days he otherwise had with Brooke during an entire two week time period; (2) Vivian's attorneys' correspondence revealed their extreme interpretation of Section 6, which is contrary to the explicit language contained in Section 6, which is consistent with the best interests of the children; (3) a judicial interpretation is required, which can only be made by the Court, and; (4) Kirk is entitled to seek a judicial interpretation by the Court pursuant to Section 6.2, which provides an aggrieved party under Section 6 can seek relief with "the Court." Kirk is most certainly an aggrieved party as a consequence of conduct occurring **after** the prior motion was essentially postponed by the Court.

## III. CONCLUSION

For all of the reasons stated, the most important of which is the best interests of these children, Section 6 should be stricken. Vivian's material breaches of the critical safeguards contained in Section 6 has prospectively rendered them meaningless. Those safeguards were intended to avoid the very scenario the parties now find themselves – a 14 year old child adamantly believes she has the absolute right to **order** her father to immediately, without notice, and without consideration of prior plans or the interest of anyone else, including her little sister, change the agreed custody schedule on a weekly basis. According to the 14 year old child, her mother, and her mother's attorneys, the father must immediately **obey** this order without question and without discussion. This is nonsensical, contrary to the most

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elementary common sense, and renders meaningless the detailed custody schedule derived by the parties and ordered by this Court. It is also, without question, in direct violation of NRS 125.510(5), NRS 125C.010, and NRS 125.460.

If the Court does not strike Section 6, regardless of this Court's interpretation, Vivian will continue to be motivated to improperly manipulate these children. However, if the Court refuses to strike Section 6, there is no question the proper construction and interpretation of Section 6 results in this Court ordering that under Section 6 the minor child has the right to **request** a modification of the agreed custody schedule, but does not have the right to **order** a modification of the agreed custody schedule. The controlling operative language in this determination is from the very section pertaining to changes to the agreed *weekly* schedule, "***The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent.***" Vivian's attorneys', Vivian's, and Brooke's interpretation of this same section, namely that Brooke, at 14 years of age, has the absolute right to **order** changes to the weekly schedule and Kirk, her father, must immediately **obey** without any question or discussion, is obviously contrary to this controlling language.

Kirk respectfully begs the Court, for the sake of his children, to strike Section 6. The uncertainty about the future for minor children is one of the horrors of divorce litigation, particularly protracted litigation. It is not in Brooke's best interest to foist the responsibility upon her to choose which parent she wants to live with more than the other parent at a particular point in time. Such a decision would force Brooke to choose between living with Rylee all of the time or leaving Rylee to spend more time with one parent than the other. Such a scenario cannot be good for either child. Under the circumstances in this case, the continued existence of Section 6 unnecessarily disrupts the stability, certainty and continuity in these children's lives. It is in the best interests of Brooke and Rylee for the Court to make the judicial determination that the "teenage discretion" provision is stricken.

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Kirk also respectfully requests the Court to order that Kirk be given the four custodial days that have been wrongly taken from him – two days for November 6 & 7 and two days for July 31 & August 1. Kirk also requests the Court impose an additional penalty upon Vivian as a deterrent to Vivian to wrongfully attempt to take custodial days from Kirk in the future.

DATED this 13 day of December, 2013.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
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*Attorneys for Plaintiff*

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**DECLARATION OF KIRK R. HARRISON IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR A JUDICIAL DETERMINATION OF THE TEENAGE DISCRETION PROVISION AND PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES**

I am the Plaintiff in the above-entitled matter and I make this Declaration in support of my *Reply in Support of Plaintiff's Motion for A Judicial Determination of the Teenage Discretion Provision And Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees.*

That I make this Declaration based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true. I have read the foregoing Reply and Opposition and hereby declare that the facts contained therein are true and correct to the best of my knowledge. I reaffirm and restate said facts as if set forth fully herein. I am requesting that the Court grant my Motion, deny the Defendant's Countermotion in its entirety and award me attorney's fees for having to respond to same.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 13th day of December, 2013.

/s/ Kirk R. Harrison
KIRK R. HARRISON

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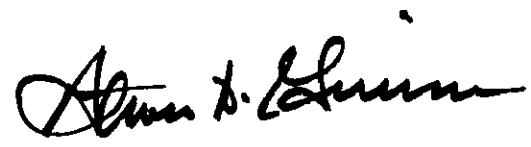

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: 10/30/13<br>Time of Hearing: 10:00 a.m. |

**ORDER**

This matter having come on for hearing this 30th day of October, 2013, before the Honorable Bryce Duckworth, Plaintiff, KIRK ROSS HARRISON ("Father"), present and represented by and through his attorneys, EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS STANDISH, ESQ., of the law firm of JOLLEY URGA WIRTH WOODBURY & STANDISH, and Defendant, VIVIAN MARIE HARRISON ("Mother"), present and represented by and

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through her attorneys, RADFORD J. SMITH, ESQ., of the law firm of RADFORD J. SMITH, CHARTERED, and GARY SILVERMAN, ESQ., of the law firm of SILVERMAN, DECARIA & KATTELMAN, CHARTERED; the Court having reviewed the papers and pleadings on file herein, being fully advised in the premises, and good cause appearing, makes the following Orders:

IT IS HEREBY ORDERED that Father's "Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" and Mother's "Countermotion to Resolve Parent/Child Issues, To Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions" are denied.

IT IS FURTHER ORDERED that the Court will address the issue of a Parenting Coordinator and therapist for the children in separate, independent Orders.

IT IS FURTHER ORDERED that, with respect to any future filings with the Court, both parties shall adhere to the 30-page limit unless they have received permission from the Court to exceed said 30-page limit.

IT IS FURTHER ORDERED that the Court will issue a separate written Order regarding each party's request for attorney's fees and costs herein.

DATED this DEC 12 2013 day of December, 2013.

DISTRICT COURT JUDGE

A2

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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Approved as to form and content:

RADFORD J. SMITH, CHARTERED

By: _____
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| KIRK ROSS HARRISON,<br><br>Plaintiff,<br><br>vs.<br><br>VIVIAN MARIE LEE HARRISON,<br><br>Defendant. | CASE NO. D-11-443611-D<br>DEPT NO. Q<br><br>Date of Hearing: 05/21/2014<br>Time of Hearing: 10:00 A.M.<br><br>**ORAL ARGUMENT REQUESTED:**<br>**YES _XX_ NO ____** |

**NOTICE: PURSUANT TO EDCR 5.25(b) YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

## PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF

COMES NOW, Plaintiff, KIRK ROSS HARRISON, by and through his attorneys EDWARD L. KAINEN, ESQ., of the KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH LAW GROUP, and hereby moves this Court, pursuant to NRS 125.510, NRS 125.230(1), NRS 125.480(1), NRS 125.460, and NRS 125C.101(1) to modify the Order Resolving Parent/Child Issues, entered July 11, 2012.

This Motion is made and based upon the papers and pleadings on file herein, the Affidavit of Plaintiff attached hereto, the Affidavit of Edward L. Kainen, Esq., attached hereto as **Exhibit "1,"** the Affidavit of Thomas Standish, Esq., attached hereto as **Exhibit "2,"** the Points and Authorities submitted herewith, and oral argument of counsel to be adduced at the time of hearing.

DATED this 21st day of April, 2014.

KAINEN LAW GROUP, PLC

By: _____
EDWARD L. KAINEN, ESQ.
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*Attorneys for Plaintiff*

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## NOTICE OF MOTION

TO: VIVIAN MARIE HARRISON, Defendant; and

TO: RADFORD SMITH, ESQ. and GARY SILVERMAN, ESQ., counsel for Defendant:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the 21st day of May, 2014, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 21st day of April, 2014.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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*Attorneys for Plaintiff*

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

### A. It is Indisputably In the Best Interest of the Children To Stop The Adversarial Positioning of the Parties As Soon As Possible

The longer the adversarial conflicts continue the greater the likelihood of causing long term emotional harm to Brooke and Rylee. The continued existence of the "teenage discretion" provision, as advocated by Vivian's attorneys and implemented by Vivian, **creates** adversarial positioning between the parties which places Brooke and Rylee right in the middle of the conflict. Conflicts between the parties regarding custody of any significance were infrequent between the date of this Court's Order Resolving Parent/Child Issues on July 11, 2012 and Brooke's 14th birthday on June 26, 2013.

Only this Court has the judicial authority to determine the meaning of the provision. Kirk was advised the provision, as drafted, provided nothing other than what the law already provided, which is a fourteen year old can simply make a request. That was Kirk's understanding at the time he signed the agreement. On the other hand, Vivian's position is that Brooke can *order* Kirk, her father, at any time to take her to Vivian's house during his custody time and he must *obey* his 14 year old daughter without question or discussion and it is irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to Rylee.

The "teenage discretion" provision creates the adversarial positioning between the parties in which Brooke and Rylee are inextricably enmeshed. The appointment of the parenting coordinator creates the forum to continue the adversarial positioning. Vivian is now insistent the parenting coordinator interview Brooke and Rylee.

Merely memorializing an intention to "intend to allow the children to feel comfortable" is not tantamount to knowingly agreeing that your 14 year old child can issue orders to a parent that must be immediately obeyed without question or discussion. Stating an intention does not equal an agreement. Similarly, a person "to resolve conflicts" is not sufficient specificity to bind a person to a parenting coordinator, as that term has been defined by the Court in its subsequent Order For Appointment of Parenting Coordinator, filed October 29, 2013, and certainly insufficient to compel a person to be bound by the overreaching terms contained in the parenting coordinator's proposed agreements. Both the

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teenage discretion and parenting coordinator provisions should be nullified and stricken by this Court for lack of specificity and for the inherent ambiguity in both. Moreover, both provisions should be nullified and stricken because the continued existence of both is clearly contrary to the best interests of Brooke and Rylee.

### B. Only This Court Can Make the Judicial Determination of the Teenage Discretion Provision and the Parenting Coordinator Provision

Kirk previously filed, "Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief" on October 1, 2013. Vivian filed an opposition and countermotions thereto on October 16, 2013. Kirk filed his reply and opposition to Vivian's countermotions on October 23, 2013. Vivian filed her reply regarding her countermotions on October 28, 2013. Said motion and countermotions were set for hearing before this Court on October 30, 2013. The Court denied the motion without prejudice.

Subsequent to this hearing, another incident occurred, where Kirk was deprived of seeing his daughter Brooke **for two weeks** as a result of Vivian's improper implementation of the teenage discretion provision. After that incident, the parties set forth their opposing interpretations of Paragraph 6 in an exchange of letters. It is evident from these letters, there was no meeting of the minds regarding Paragraph 6 and this provision should therefore be nullified and stricken. On that basis, Kirk filed, "Plaintiff's Motion for A Judicial Determination of the Teenage Discretion Provision" on November 18, 2013. Vivian filed an opposition and countermotion on or about December 6, 2013. Kirk filed his reply and opposition to Vivian's countermotion on December 13, 2013. The Court denied the motion without prejudice and indicated its preference to wait until there was a parenting coordinator in place and for Kirk to address the teenage discretion provision with the parenting coordinator.

The Court will see that part of the relief sought herein is for the Court to nullify and strike Paragraph 4 of the Order Resolving Parent/Child Issues on the basis there was never a valid legally enforceable agreement between the parties regarding the appointment of a parenting coordinator. The Court will readily see that it is absolutely black letter law that no agreement was ever made. Therefore, respectfully, the Court must make this important legal determination regarding the teenage discretion provision.

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Moreover, in an effort to assist the Court, an opinion has been obtained from Dr. Norton Roitman regarding the "teenage discretion" provision. More specifically, Dr. Roitman was asked to opine as to the effect upon Brooke and Rylee in the event the interpretation of that provision, which has been advocated by Vivian, were to be adopted by the Court. A true and correct copy of this opinion, dated January 14, 2014, is attached hereto as **Exhibit "3."** Upon the Court's review of Dr. Roitman's opinion, Kirk believes the Court will see the risk to the parties' children is too great and the need for a prompt judicial determination too urgent to wait any longer for the relief sought herein.

Respectfully, Kirk begs this Court to make a prompt judicial determination of the subject teenage discretion provision. Kirk is hopeful that when the Court reads the within motion it will understand Kirk, as a loving and caring parent, had no choice but to cause the motion to be filed, and the Court will further understand it is undoubtedly in the best interests of Brooke and Rylee to nullify and strike the teenage discretion and parenting coordinator provisions.

## II. STATEMENT OF FACTS

As the Court is aware, when the custody exchange takes place during the academic year, each parent takes the children to the other parent's home to pick up their things. When Brooke and Rylee pick up their things from Kirk's home, Vivian waits in her car almost always less than 5 minutes and, usually just 2 to 3 minutes. When Brooke and Rylee pick up their things from Vivian's home, for a long time, Kirk was forced to wait 20 to 35 minutes, while Vivian "visited" with Brooke. For several weeks, Vivian was more considerate and Brooke and Rylee have been taking about 15 minutes. On Wednesday, February 27, 2014, Brooke, with Rylee waiting, took about 30 minutes. When they got in the car, Kirk explained there was no reason why it would take less than 5 minutes to get the same items from his home that she was taking 30 minutes to get from Vivian's home. Brooke was upset with Kirk and disrespectfully argued otherwise during the drive home.

Later that night, right after speaking on the telephone with Vivian, Brooke told Kirk she was staying at Vivian's the next night, clearly in reprisal to Kirk telling Brooke earlier it was inconsiderate to keep him waiting in the car for 30 minutes, while she visited with her mother. Brooke, with Vivian's evident guidance, encouragement, and complicity, had the power to punish Kirk for even questioning her behavior. Kirk asked Brooke why she wanted to stay at Vivian's house the following night. Brooke

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said she cannot eat after 6:30 a.m. Friday morning.[1] Brooke then said she can get up earlier at Vivian's house. Kirk responded that he could get her up whenever she needed to on Friday morning. Brooke did not respond, but rather, reiterated she was staying at Vivian's house the next night. Brooke then said that Vivian was going to pick her up from her last dance class on Thursday night and take her to Vivian's house. This revealed that the plan was devised by Vivian and Brooke before Kirk was even made aware of the plan. Kirk said that it was not her decision to make and she should not be making such plans with her mother during her time with Kirk. Brooke said it was her decision and she was staying at Vivian's the following night. Kirk reiterated it was not her decision to make. The conversation ended with Brooke emphatically saying, "Yes it is."

The next night, Kirk drove to the dance studio to pick up Brooke and Rylee after their last dance class. Brooke got in Vivian's car and they drove away. As would be expected, Rylee was visibly upset. Kirk saw the pain in her face. Rylee's eyes were welling up with tears and her head bent over during the drive home. All of this seemed very unfair to the eleven year old child.

As the Court is well aware, this is just the latest disturbing incident caused by the implementation of the "teenage discretion" provision which has unnecessarily disrupted Kirk's time with his children and, much more importantly, created uncertainty and stress for Brooke and Rylee.

## III. ARGUMENT

### A. The Teenage Discretion Provision Must Be Either Nullified Or Interpreted To Allow A Fourteen Year Old Child To Make *Requests* To The Weekly Visitation Schedule Which Can Reasonably Be Denied By A Parent If The Parent Believes, In Good Faith, It Is Not In The Best Interest Of His Or Her Child Or In The Best Interests Of the Child's Younger Sibling

#### 1. The Continued Existence of The Teenage Discretion Provision, As Advocated by Vivian and Implemented By Vivian and Brooke Is Serious and Ill Advised From A Psychiatric Perspective and, May Well, have Deeply Damaging Impacts Upon Brooke and Rylee

The settlement of a contested divorce proceeding normally terminates the adversarial conflict between the parties, creating the desired stability and certainty for the children. Under a joint custody

[1] Kirk was already aware Brooke had an appointment with an oral surgeon at 12:45 p.m. on Friday, February 29, 2014.

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arrangement, each of the minor children know from week to week the time they will be spending with each parent. Children need stability and certainty in their lives.

During the divorce proceeding, Dr. Roitman advised Kirk to stop the adversarial conflict between the parties as soon as reasonably possible. Dr. Roitman advised the longer the adversarial conflict continued the greater the risk of long term emotional harm to Brooke and Rylee. Kirk responded by settling for joint custody as soon as reasonably possible. By settling for joint custody, Kirk thought he had stopped the uncertainty and conflict for Brooke and Rylee. However, under Vivian's interpretation of the teenage discretion provision, the joint custody agreement between the parties is undermined and too much stress is placed upon a 14 year old child to make a choice between her parents on a weekly basis, which choice, involves leaving her 11 year old sister. The teenage discretion provision, as interpreted by Vivian, **creates** stress for the children, creates opportunities for them to be enmeshed in their parents' conflict, and continues instability and uncertainty in their lives.

Vivian wants the minor children to be interviewed by the parenting coordinator in the context of the teenage discretion provision. This is clearly not in the children's best interest. This Court has previously noted its preference not to embroil minor children in the process, but rather to insulate them from the process, noting, "I don't need a child interview. The less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process. The parties agreed that it was in the best interest of the children to exercise joint physical custody." (Hearing Transcript, 10.30.13 at 10:59:10). Kirk adamantly opposes that the parenting coordinator have authority to interview the minor children, and it is clear the Court also seemed to oppose the children being interviewed given its statements at the hearing on October 30, 2013. Further, there is no language in the Order that provides that the minor children can be interviewed.

The teenage discretion provision, as advocated by Vivian and implemented by Vivian and Brooke, negatively compromises the entire parenting scheme and, may well, have **deeply damaging** impacts upon Brooke and Rylee. This fact cannot be the subject of legitimate debate. To empower the adolescent as the controlling party in such a circumstance is serious and ill advised from a psychiatric perspective.

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As noted earlier, sometime after the hearing on December 18, 2013, Dr. Roitman was requested to render an opinion under the assumption that the position advocated by Vivian is adopted by the Court, namely the fourteen year old becomes the decider and is granted the authority to order her parent to make changes to the weekly custody schedule, regardless of the lack of wisdom or judgment underlying her choices.

Kirk urges the Court to read this opinion in its entirety. It is, without question, in the best interests of Brooke and Rylee to nullify and strike the teenage discretion provision. This point cannot be the subject of legitimate debate. Dr. Roitman, referring to the Court's responsibility to insure the best interests of the children are met, opines:

> In this regard, to enable the family to achieve its natural balance in the aftermath of divorce, there needs to be minimal third party intermediaries to inject their various values into the family scheme once the asset and custody separation is enacted. Successful families, whether divorced or not, cannot be continuously subjected to the scrutiny of adverse party claims and counter claims without promoting blame and deterioration of the nest-like feeling children need for their own psychological well being (sic) and positive models for their own families once they get older. As soon as possible, after the family separation and breach, the system needs to be encouraged to heal to it's best potential. The only complaints that involve matters that are critical to the well being of the children should reopen the deliberation, and then limited to the least possible intervention. Like a wound in the process of healing, it should not be unnecessarily disrupted.

(Dr. Roitman, 1.14.14 Opinion, p. 3)

The continued existence of this provision, as interpreted by Vivian and implemented by Vivian and Brooke, is not in the best interest of these children. The parenting coordinator would have had a financially vested interest in the continued existence of this provision, as advocated by Vivian, and the continued conflict to which the children would have been unnecessarily and needlessly subjected.[2]

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[2] The importance of this point cannot be overstated. Under this Court's order appointing the parenting coordinator, filed October 29, 2013, this Court granted the parenting coordinator the same authority of a Discovery Commissioner in State Court and a Federal Magistrate in Federal Court. The parenting coordinator is empowered by this Court's order to render decisions and the standard of review of those decisions ("Recommendations") by this Court is "the Court will overturn a Recommendation of the Parenting Coordinator **only** upon the showing of evidence to the satisfaction of the Court to warrant such a result." (¶4.5 of Order) However, there is a fundamental and constitutional difference between the power granted to a Discovery Commissioner or a Federal Magistrate, as opposed to a parenting coordinator. Only the parenting coordinator has a **financial incentive** in this continued conflict. In contrast, a Discovery Commissioner and Federal Magistrate have no financial incentive to sustain the

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The serious risk to Brooke and Rylee is simply too high and too significant to allow this untenable situation to continue:

> In this matter, the court is being to (sic) asked to rule on the preferences of a fourteen year old and granting her a power over her parents, **and therefore control over her entire family**. The court is in the position to decide to what degree a teenager's wishes should determine her regulations.
>
> * * * *
>
> By empowering a teenager, the court imposes it's values and in so doing it determines how this family will work, despite the familial and religious traditions and family culture.
>
> * * * *
>
> Even in the best of circumstances, the court giving the adolescent decision-making power over the family system [is] of questionable psychological benefit. In the case of this family in particular, her choices are being made in the throws of constant parental dysfunction and allegations of unhealthy influence. **The ruling will effect the parental authority not just regarding this matter of time spent, but to all other issues for the next four years, since the adolescent has basically veto power.**[3] It set up the conditions in which the winning parent will be the indulgent parent and in this way, the youth escapes accountability. **There are no redos when it come to child development and mistakes are irreversible**. Only in delinquency, dependency and divorce is the state, through the court, given parental override.
>
> The willingness of the court to reenter into the fray of custody and it's implications is questionable from a child psychiatric perspective. **Authorizing a non-adult with a vested interest in their own pleasure can intoxicate them with power by undermining the relationship with family authority**. Children need their parents, not a court to chose winners and losers except where the child's health issue is critical and the differences between parents are detrimental and truly irreconcilable. A narrow participation is preferable to a global dictum, such is the case with the teenager discretion ruling.
>
> Instead of promoting the re-empowerment of the child's parental environment after a tumultuous divorce, **inserting the adolescent as the controlling party is an error. To do so is serious and ill advised from a psychiatric perspective. Placing the adolescent in the position of deciding when she is going to be with whom, even with an intact, functional family is a bad idea**. The teen should be granted increasing levels of authority in a step by step fashion so their expanding independence is supervised. At first they should not be given so much latitude that they can make irreversible mistakes. **Healthy families don't allow the child to go with one or another parent on impulse, just because they might be angry, or for some adolescent reason that don't (sic) make sense to the family as a whole**.

(Dr. Roitman, 1.14.14 Opinion, p. 4 & 5)(emphasis added)

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continuation of disputes.

[3] It will actually be for the next seven years as Rylee is just 11 years old.

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Dr. Roitman also makes it abundantly clear that the continued existence of this provision will have a devastatingly negative effect upon Rylee:

> A developing adolescent needs to be given discretion over some decisions to foster independence, but it is irresponsible to give to them the key to determine how her family works, the power to reject parents, replace them, set into motion a contest to see who is more apt to grant her wishes, reduce her responsibilities and punish and reward the one who does not frustrate her.
>
> * * * *
>
> Already in turmoil due to the long standing disturbances between parents sustained and serious enough to decide to end the marriage, the exacerbation of the conflict in the conduct of the separation and divorce, the impact of the changes in households and time with parents, **the younger child now sees her sister being able to control parents by coming and going on a whim**. A fourteen year old is not expected to see her role in the life of the sister, especially since very few teenagers have empathy towards their younger siblings.
>
> It is not uncommon for teens in intact families to want to leave their little brothers and sisters and wish they had an alternative place to go. The sibship, though, is effected by these escapes and may take an entirely different course for the rest of their lives. Values in dependency court have turned toward preserving sibling groups. The teenage discretion allowance is 180 degrees opposed to this principle. The stress of giving the responsibility for the bond with her little sister and the impact on their future relationship should not be given, but imposed. **The family unit should be not taken for granted and not be continuously up to negotiations with the teenager making the final decision. Later in life both sisters could regret that the younger one was left behind feeling like a loser, rejected and powerless.**
>
> While the teenager thinks she is just going over to the other parent's house, and it is no big deal, she has no experience making decisions about what is best for her in the long run, the effect on her sister, or how a family should work. **The teenage discretion provision inevitably can negatively affect the younger daughter who does not have this 'right,' but may, as seeing it implemented, long to get it. In her mind she can feel less than the other child. She sees a parent rejected, perhaps in the middle of an argument, demand a ride. She can see disrespect for parental authority and their powerlessness. She can be left by her sister at the drop of a hat and can't depend on long time periods with both families. Modeling on her sister she is encouraged to accept that momentary emotions, temptations and enticements are the basis for decision making. It is never a good idea to allow the teen to abandon the sister or a parent in the middle of a dispute. They need to work out differences and reestablish their bond, and accept the results whether with a sibling or a parent.**

(Dr. Roitman, 1.14.14 Opinion, p. 8)(emphasis added)

Kirk never agreed to the interpretation being advocated by Vivian and respectfully urges the Court to not allow this to happen to their children.

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Dr. Roitman concludes his opinion by writing:

> **I can't envision any scenario where it would be in the best interest of a teenager to be able to order a parent to modify their custody schedule. This is especially true when younger siblings are affected by those decisions.**

(Dr. Roitman, 1.14.14 Opinion, p. 13)

There is no question that it is in the best interests of Brooke and Rylee for this Court to nullify and strike the teenage discretion provision. Kirk respectfully submits that any responsible, loving, and caring parent would readily agree with the wisdom of Dr. Roitman's opinion. Kirk did not and would never agree to a provision, as it has been advocated by Vivian and implemented by Vivian and Brooke. Kirk loves Brooke and Rylee too much to ever subject them to what has been transpiring and will continue to transpire, unless this Court makes the judicial determination it must make. Kirk respectfully urges the Court to see and understand that Kirk could do no less for Brooke and Rylee.

### 2. The Language Upon Which Vivian Relies Contains the Phrase "And/Or" And Is Patently Ambiguous

The language which Vivian advocates empowers Brooke to order Kirk to make changes to the weekly custody schedule is the following sentence, "Rather, the parties intend to allow the children to feel comfortable in requesting **and/or** making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home." (Emphasis added.) Kirk respectfully submits the conjunctive disjunctive form in this context is patently ambiguous. All of the authorities agree. In *In re United Scaffolding, Inc.*, 377 S.W. 3d 685 (Tex. 2012) the trial court was ordered to grant a new trial to resolve the ambiguity created by the use of the phrase "and/or" stating, "Many courts and critics have denounced the use of 'and/or' in legal writing" because it leads to ambiguity and confusion. "**The term inherently leads to ambiguity and confusion.**" S.W. 3d at 689. (Emphasis added) *See*, *Cannell v. State of Texas*, 2013 WL 6729857 (Tex. App. 2013); *State ex rel. Adler v. Douglas*, 339 Mo. 187, 95 S.W.2d 1179, 1180 (1936) (en banc) ("The use of the symbol 'and/or' . . . should be condemned by every court."); WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE 40 (4th ed. 2000); *see also* BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE 1.80 (2ND ED. 2006).

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A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation. *Margrave v. Dermody Properties, Inc.*, 110 Nev. 824, 878 P.2d 291 (1994) This teenage discretion provision, as evidenced by the previously filed points and authorities, is susceptible to more than one interpretation.

### 3. Words Matter and the Parties Never Agreed the Children Could Order a Parent to Make Changes to the Weekly Custody Schedule And The Parent Must Obey

For something which is so negatively impactful upon the lives of Brooke and Rylee, it would be error to simply assume the parties have knowingly made an agreement providing the children can order a parent to make adjustments to the weekly custody schedule when they have clearly not done so. Words matter. The literal language **does not** provide that the parties agree or hereby agree that the children **can** request and/or make adjustments to their weekly schedule and the parent must obey without question or discussion. The language merely provides the parties "**intend to allow the children to feel comfortable. . .** in requesting **and/or** making adjustments to their weekly schedule. . ." As stated, Kirk's only intention was that the child would feel comfortable in making requests and/or making adjustments to their weekly schedule with their parents consent and if the child had not been influenced, prompted or suggested by a parent. However, assuming *arguendo*, that Kirk intended to allow the children to feel comfortable in ordering a parent to make weekly changes to the schedule, as advocated by Vivian, Kirk has clearly withdrawn that intention "to allow the children to feel comfortable" as all of the problems have been caused by Vivian's influencing, prompting, and suggesting to Brooke, all in direct violation of the provision. There is no agreement and there never was an agreement between the parties to anything other than a stated intention "to allow the children to feel comfortable. . ." There was never an agreement between the parties that a child would be able to order a parent to make changes to their weekly schedule and the parent must obey, as advocated by Vivian.

### 4. The Teenage Discretion Provision Must Also Be Nullified As There Was No Meeting Of the Minds, The Provision Is Susceptible To More Than One meaning And Is Therefore Ambiguous, And Vivian Has Violated Every Safeguard Placed In the Provision Which Was Designed to Protect The Children From What Has Already Occurred

As the Court is keenly aware, the teenage discretion provision is reasonably susceptible to more than one interpretation and is therefore ambiguous. A contract is ambiguous if it is reasonably

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susceptible to more than one interpretation. *Shelton v. Shelton*, Nev. , 78 P.3d 507 (2003); *Anvui L.L.C. v. G.L. Dragon, L.LC.*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) ; *Galardi v. Naples Polaris, LLC.*, 301 P.3d 364, 129 Nev. Adv. Op. 33 (2013) Because it is ambiguous, it must be construed against the drafter. *Moroni Corporate Investments, Intern. v. Edgemon*, 2012 WL 5378151 (2012); *Anvui L.L.C. v. G.L. Dragon, L.LC.*, 123 Nev. 212, 216, 163 P.3d 405, 407 (2007); *Mullis v. Nevada National Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535 (1982). Vivian's attorneys drafted the ambiguous language. Therefore, the provision must be construed as reasonably interpreted by Kirk and Kirk's attorneys, namely, the provision provides the 14 year old can make a request, which request can be either granted or denied by the parent in the parent's good judgment. However, the 14 year old cannot order the parent to make any modifications to the weekly custody schedule, which the parent must obey without question or discussion and without any regard to prior plans or arrangements or the best interest of the other minor child.

The teenage discretion provision is also ambiguous through indefiniteness of expression. *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir. 2009) (quoting *Whiting Stoker Co. V. Chicago Stoker Corp.*, 171 F.2d 248, 251 (7th Cir. 1948). Merely stating the parties intentions utilizing the inherently ambiguous conjunctive disjunction "and/or" is a provision which must fail for indefiniteness of expression.

**5. In the Court's Determination Of Whether to Modify A Provision Between the Parties Pertaining to Custody, Nevada Child Custody Law is Controlling, Not The Agreement Between the Parties.**

The teenage discretion provision, as interpreted by Vivian, is clearly not in the best interests of Brooke and Rylee.

There is ample authority for this Court to modify its prior order and strike, revoke, nullify, and/or delete the "teenage discretion" provision – Paragraph 6. Under NRS 125.510(1)(b), this Court may "modify or vacate" its order regarding custody. And generally under NRS 125.230(1), this Court has the authority to enter such orders "as it may deem proper for the custody . . . of any minor child or children of the parties. The Court's sole consideration in such a circumstance, "is the best interest of the child." NRS 125.480(1).

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This "teenage discretion" provision, as interpreted by Vivian, is in contravention of the clearly stated policy of the State of Nevada and NRS 125.460, which provides that it is the policy of the State of Nevada, "To encourage such parents to share the rights and responsibilities of child rearing." This "teenage discretion" provision clearly violates this statute as it has created, in Vivian's mind, a vehicle to pursue a vindictive competition with Kirk, wherein she has convinced Brooke that she should regularly leave Rylee. This provision not only does not "encourage" parents "to share the rights and responsibilities of child rearing", it does the opposite – it encourages a parent, Vivian, to not share the rights and responsibilities of child rearing.

Importantly, this "teenage discretion" provision, as interpreted by Vivian, also violates NRS 125C.010(1)(a) as the right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved." For the reasons previously noted, under this "teenage discretion" provision, the rights of the parties cannot be properly enforced and this "teenage discretion" provision totally disregards the best interests of Brooke and Rylee. This provision creates uncertainty, emotional issues, disrupts the family, causes inconsistency, needlessly instills fear, and facilitates immersing children in their parents' conflict.

Finally, under *Rivero v. Rivero,* 216 P.3d 213 (Nev. 2009), parties are free to contract and the Court will enforce those agreements, provided *they are not unconscionable, illegal or in violation of public policy. Id* at 227. Once a party moves to modify an agreement, however, the Court "must apply Nevada child custody law, including NRS Chapter 125C and case law." *Id.* Kirk has requested modification of the custody order to nullify this provision for teenage discretion at this time and therefore, the Court must look to Nevada law, rather than the parties' agreement. NRS 125C.010(1)(a) specifically provides that visitation must be defined with sufficient particularity. By its very nature, a teenage discretion provision such as this does not provide any particularity and is therefore improper under the statute. Furthermore, a teenage discretion provision such as the one at issue is in violation of public policy for several reasons. First, as interpreted by Vivian, it delegates parenting rights and decisions to the minor child and needlessly involves them in conflict. Second, it does not allow either party to have a clear understanding of their rights to time (an important enough consideration so as to merit statutory language under NRS 125C.010(1)(a) requiring sufficient particularity). Additionally it

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is important to note that even if Kirk were not seeking to nullify this teenage discretion provision, the Court can only enforce agreements which are not unconscionable, illegal or in violation of public policy. As this provision for teenage discretion violates NRS 125C.010(1)(a) and NRS 125.460 and public policy, the Court should not enforce the provision in any event.

Kirk respectfully urges the Court to avoid the unnecessary emotional gauntlet for the children, to which Vivian has otherwise demonstrated an eagerness to subject them. A truly caring parent would not regularly manipulate a 14 year old child to separate the child from a 11 year old sibling.

In *Fernandez v. Fernandez*, 222 .3d 1031 (Nev. 2010), the parties entered into a stipulation and order that provided the child support obligation was non-modifiable when the father was paying significantly more than the maximum amount under NRS 125B.070. The parties circumstances changed to the point that under NRS 125B.070 that neither party would be obligated to pay child support to the other. However, the trial court refused to modify the child support stating, "the Court is not bound by the provision of NRS 125B.145 where the parties have previously agreed in a stipulation and order modifying the Decree of Divorce that neither party will seek modification of child support." P.3d at 1034. The Nevada Supreme Court disagreed, holding that the parties stipulation was trumped by the Court's authority to review and modify a child support order and held a 'trial court always has the power to modify an existing child support order, either upward or downward, notwithstanding the parties' agreement to the contrary.' P.3d at 1035. The Nevada Supreme Court went on to state that, "Most courts agree that, absent a contrary statutory directive, public policy prevents a court from enforcing a purportedly nonmodifiable child support order, even if the parties stipulate to it." P. 3d at 1036. The same rationale applies here. If the Court adopts Vivian's interpretation of the teenage discretion provision, that provision is clearly contrary to public policy and the best interests of Brooke and Rylee and must be nullified and stricken on that basis.

**B. Kirk Never Agreed To A Parenting Coordinator With The Powers Set Forth In This Court's Order, filed October 29. 2013, Nor To The Powers Set Forth In the Parenting Coordinator Agreements Submitted by Margaret Pickard**

There is no statutory authority for the appointment of a parenting coordinator in the State of Nevada. Therefore, the only circumstance in which one can be appointed is when the parties agree to such an appointment, and importantly, when the parties agree to the **terms** of the appointment. *Schilder*

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*v. Hazelton*, 84 Mass. App. Ct. 1131, 2014 WL 288896. It is fundamental that such an agreement must be knowingly made. Vivian's attorneys presented a draft stipulation and order resolving parent/child issues containing paragraph 4, which provides as follows:

> 4. *Parenting Coordinator:* The parties shall hire a Parenting Coordinator **to resolve disputes** between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment. (Emphasis added).

Prior to this matter, Kirk had never heard the term parenting coordinator and was unaware of their role. Kirk had been retained hundreds of times as a mediator **to resolve disputes**. At the time the stipulation was signed, it was Kirk's understanding a parenting coordinator functioned as a mediator. Kirk naturally assumed the term parenting coordinator was used to describe a mediator who specialized in custody issues for Family Court cases. At that time, Kirk was unaware that Family Court would delegate judicial authority to an individual outside of the court system.

Since the signing of the stipulation, Kirk's position has been consistent with his understanding that the parenting coordinator would function as a mediator. Kirk's proposed Order For Appointment of Parenting Coordinator, which Kirk submitted to the Court, empowers the parenting coordinator with all of the powers of a mediator. *See* **Exhibit "4,"** attached hereto, which was also attached as *Exhibit "2"* to Plaintiff's Opposition To Defendant's Motion for an Order Appointing a Parenting Coordinator, filed July 19, 2013. Said opposition is also consistent with Kirk's understanding that the parenting coordinator functioned as a mediator.

When Kirk read Defendant's Motion for an Order Appointing a Parenting Coordinator, filed May 10, 2013, and later, this Court's Order Appointing a Parenting Coordinator, filed October 29, 2013, Kirk felt as though he had been sucker punched. Kirk did not and never would have agreed to allow a third party whom he had never met to make parental determinations involving his children.

On February 20, 2014, Kirk received an email from the office of the parenting coordinator requesting that certain agreements be executed. A follow up email enclosing the same proposed documentation was sent on February 27, 2014. The February 20, 2014, email from the designated

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parenting coordinator provided the parenting coordinator has "the judicial authority to resolve parent/child and custody/visitation issues" and enclosed a number of proposed agreements to be executed, which grant the parenting coordinator extensive judicial authority in excess of the authority granted by this Court's Order, filed October 29, 2013. More specifically, the following was provided: (1) Enclosure letter, dated February 20, 2014; (2) An Overview of Parenting Coordination; (3) Agreement for Parent Coordination Services; (4) Party Information Sheet; (5) Credit Card Charge Authorization Form; (6) Authorization for the interviewing of minor children; (7) Release of Information from the Clark County School District, and; (8) Authorization for the Release of Protected Health Information. True and accurate copies of these eight documents are collectively attached hereto as **Exhibit "5."**

The proposed agreements from the parenting coordinator go well beyond the terms of this Court's Order and, frankly, the proposed Agreement for Parent Coordination Services is extremely overreaching, unconscionable, and an unacceptable contract of adhesion. It requires the parties to basically provide a blank check to the parenting coordinator for the next seven years with no relief. For example, the Court's order provides a grievance procedure. However, the proposed parenting coordinator agreement effectively nullifies that procedure by requiring the complaining party to pay 100% of the attorneys fees of the parenting coordinator in defending any grievance. The parenting coordinator can have communications with the parties' attorneys **without** the knowledge of the parties. The parenting coordinator can order a parent to undertake "counseling, anger management, psychiatric and/or medical evaluations, etc." The list of areas in which the parenting coordinator can assert control is only limited by one's imagination. Despite the parties' divorce, the proposed agreement provides the parties are jointly and severally liable for the parenting coordinator's fees. In the event of bankruptcy by the parties the parenting coordinator fees are "in the nature of child support payments, and therefore, are not dischargeable in bankruptcy." Under the submitted agreements, the parents become slaves to the arbitrary whim of the parenting coordinator. The provisions in the proposed documents do not create a relationship with a mediator, facilitator or problem solver, but rather a relationship with a person with almost unrestrained authority, who is free to exercise unilateral control in every facet of the parent-child relationship. Kirk never agreed to such terms, nor would he ever agree to such terms.

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The extremeness of the terms demanded by the parenting coordinator serve to highlight the fact that Kirk never agreed to any of these terms because none of them were set forth in Paragraph 4. In fact, none of the terms set forth in this Court's Order Appointing a Parenting Coordinator were set forth in Paragraph 4. It cannot possibly be argued, at least in good fath, that Kirk agreed to terms he never saw. This is especially true when those terms are so far beyond the terms of any reasonable common sense expectation.

**1. No Enforceable Agreement Was Ever Reached Regarding the Appointment of a Parenting Coordinator As There Was No Meeting of The Minds**

In order for a contract to be formed there must be sufficient specificity for the parties to understand to what they are agreeing. There was none here. Agreements to agree are not enforceable. Paragraph 4 is too indefinite in its terms to be enforceable.

Parents have a fundamental right in the care and custody of their children. *Troxell v. Granville*, 530 U.S. 57, 65-66 (2000). Therefore, the highest level of scrutiny is given to any contractual provision whereby it is alleged the parents assigned any part of those fundamental rights to a third party.

If the goal of Vivian's attorneys in drafting the parenting coordinator paragraph was to have Kirk agree to have a third party, who he has never met, make parental determinations concerning his children, as reflected in this Court's subsequent Order appointing a parenting coordinator, then Kirk was entitled to be fully informed in making the decision to agree or not agree to such a provision. Kirk was not.[4]

The tactic of having the parties agree to the appointment of a parenting coordinator and blindly agreeing to terms they have never seen is not a binding agreement. The provision provides, "The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties." Provisions such as this are unenforceable. A provision "which leaves an essential term to future agreement is not enforceable." *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968); *Ablett v. Clauson*, 43 Cal.2d 280, 272 P.2d 752 (1954) In the case at bar, **all**

[4] Similarly, if the goal was to have a provision whereby a parent agrees to empower his 14 year old child to order him on a whim to make changes to the weekly custody schedule without regard to prior plans and arrangements and the parent must obey that child without question or discussion, then the parent is entitled to be fully informed of that fact in making such a decision. Kirk was not.

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essential terms are left to future agreement. The provision is not saved by the clause, "If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment." Parties must know to what they are agreeing with specificity at the time they make the agreement, otherwise the agreement is unenforceable. Without a crystal ball, Kirk would have no way of knowing what terms the Court would later decide were appropriate at the time the stipulation was signed. For example, it was very important to Kirk that Brooke and Rylee not be interviewed and thus brought into the middle of any conflict. The Court's comments quoted previously indicated the Court was of the same view. However, Vivian argues that in the Order of the Court appointing the parenting coordinator, the Court contemplated that the parenting coordinator could interview the children. This is a critically important term to which Kirk never would have agreed had it been fairly presented to him. It was not.

The law is well settled in Nevada. In *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005) the Nevada Supreme Court made it very clear a settlement agreement is governed by principles of contract law and a court cannot compel compliance when material terms remain uncertain:

> Because a **settlement agreement** is a contract, its construction and enforcement are governed by principles of contract law. Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration. . . . **A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. . . . In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain. . .**

P. 3d at 1257 (emphasis added)

Nevada abides by traditional jurisprudence that agreements to agree are generally too indefinite to enforce as final agreements. *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254, 1257 (2005); *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968). When a provision, such as the parenting coordinator paragraph, "is too indefinite and uncertain to be regarded as a binding agreement and it amounts to a nullity and is unenforceable." *City of Reno v. Silver State Flying Service, Inc.*, 84 Nev. 170, 438 P.2d 257, 261 (1968) Under these circumstances, this Court must nullify and strike the parenting coordinator paragraph.

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Put another way, the parenting coordinator paragraph is ambiguous through indefiniteness of expression. *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir. 2009) (quoting *Whiting Stoker Co. V. Chicago Stoker Corp.*, 171 F.2d 248, 251 (7th Cir. 1948). Other than being retained "to resolve conflicts" the provision lacks any other terms whatsoever which define the role of the parenting coordinator. As such the provision must fail for indefiniteness of expression.

**2. Paragraph 4 Was Drafted Entirely By Vivian's Attorneys And Was Presented As An Offer. As Such, It Could Not Be Accepted By Kirk So As To Form A Contract Unless The Terms Of The Contract Are Reasonably Certain – They Were Not**

It is axiomatic that an offer cannot be accepted unless the terms of the offer are reasonably certain when made. "[E]ven though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain." *Rucker v. Taylor*, 828 N.W.2d 595, 602 (2013) quoting the Restatement (Second) of Contracts §33(1) Based upon the language contained in Paragraph 4, it was legally impossible for Kirk to accept the offer contained therein as the terms of the offer were not reasonably certain when the offer was made. Even if Kirk had some idea that a parenting coordinator was generally given judicial authority to make parental custody decisions or recommendations, then it still would have been legally impossible for Kirk to accept the offer as the terms of the offer were not reasonably certain when the offer was made.

This scenario is no different than if a company is in litigation and negotiates a settlement with the opposing party. Part of that settlement is the company agrees to hire a consultant to assist the company, with no discussion whatsoever as to the specific role of the consultant or any other terms of the retention. The only specified term is, "The [Consultant] shall serve pursuant to the terms of an order mutually agreed upon by the parties." There are no terms which provide the expertise of the consultant, the scope of the work for the consultant, the hours the consultant shall work, the duration of the retention, the scope of the consultant's authority, the consultant's duties and responsibilities, the compensation for the consultant, upon what grounds the consultant can be terminated, etc. Under such circumstances, the terms of the contract are not reasonably certain, and therefore the offer cannot be

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accepted so as to form a contract. Similarly, Paragraph 4 absolutely and indisputably fails on the same basis.

### 3. Courts Across The Country Are Recognizing The Granting of Judicial Authority To A Parenting Coordinator Violates the Due Process Rights of the Parties And Is Therefore Unconstitutional

In Pennsylvania, the concern over the unconstitutional granting of judicial authority to parenting coordinators led to a modification of the State's Rules of Civil Procedure:

> Rule 1915.11-1. **Elimination of Parenting Coordination**.
>
> **Only judges may make decisions in child custody cases.** Masters and hearing officers may make recommendations to the court. Courts shall not appoint any other individual to make decisions or recommendations or alter a custody order in child custody cases. **Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective.** Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective.

(**Exhibit "6"** attached hereto) (emphasis added)

In eliminating parenting coordination, the Pennsylvania Supreme Court decided to stop the practice of trial courts assigning judicial authority to **non judicial** persons. It was determined it was improper to allow judges to pass on their authority to somebody outside of the judicial due process walls of the courthouse.

The rationale is straightforward. A parenting coordinator has a financial incentive to make interpretations which will continue conflict and insure continued parenting coordinator fees. Those persons inside the courthouse, do not have such a conflicting motivation. Quite the opposite is true. Because of case load demands, those individuals with quasi-judicial authority within the courthouse are motivated to expeditiously resolve conflict and interpret matters to stop further conflict.

There are numerous states which agree that a court may not delegate its judicial power to determine the visitation or custody arrangements of the parties. In *Marriage of Stephens*, (Iowa Court of Appeals) 810 N.W.2d 523 (2012), at footnote 3, the court set forth the following listing, which, undoubtedly, is only a partial, and somewhat dated, list: *Pratt v. Pratt*, 56 So. 3d 638, 644 (Ala Civ. App. 2010) ("We also reiterate that [t]he trial court is entrusted to balance the rights of the parents with the child's best interests to fashion a visitation award that is tailored to the specific facts and circumstances of the individual case. That judicial function may not be delegated to a third party."

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(internal citations omitted)); *In re Marriage of Matthews*, 101 Cal. App. 3d 811, 161 Cal. Rptr. 879, 882 (1980); (holding as invalid the provision in the court order authorizing a third party to alter the visitation scheduled in any way she deemed reasonable and necessary);*Larocka v. Larocka*, 43 So.3d 911, 912-13 (Fla.Dist.Ct. App. 2010) (holding it is the responsibility of the court to establish the visitation schedule between the mother and child and may not delegate that responsibility to a counselor);*In re Paternity of A.R.R.*, 634 N.E. 2d 786, 789 (Ind. Ct. App. 1994) (finding the court impermissibly endowed an executive agency with the judicial power to control the frequency of the visitation); *Meyr v. Meyr*, 195 Md. App. 524, 7 A. 3d 125, 138 (Md.Ct. Spec.App.2010) ("[A] court may not delegate to other individuals decisions regarding child visitation and custody."); *In re Marriage of Young*, 370 N.W.2d 57, 65-66 (Minn.Ct.App. 1985 (holding that the court can rely on an expert's opinion, but the court must make the ultimate decision on visitation rights); *Walters v. Walters*, 12 Neb. App. 340, 673 N.W.2d 585, 592 (2004) ("[T]he courts have held that the authority to determine the custody and visitation of a minor child cannot be delegated to a third party, because it is a judicial function"); *In re Marriage of Kilpatrick*, 198 P.3d 406, 410 (Okla.Civ.App. 2008) (striking the portion of the court's order that provided the parenting coordinator's recommendations should be observed as orders of the court because it constituted an improper delegation of judicial power and is contrary to the parent's due process rights); *Chiappone v. Chiappone*, 984 A.2d 32, 39 (R.I.2009) ( "The issues of custody and visitation fall squarely within the realm of judicial responsibility and may not be delegated to a therapist, no matter how qualified or well-intentioned the therapist may be.")

There is an undeniable trend for courts not to grant judicial authority to parenting coordinators.

One can argue what judicial authority should or should not be delegated to a parenting coordinator, if any. The bottom line, however, is that Kirk was never given an opportunity to make an informed decision as to what authority would be later given to the parenting coordinator. Under the law, Kirk cannot be compelled to comply with the terms of an agreement to which he never agreed, let alone ever saw. As noted earlier, in Nevada, a court cannot compel compliance to a settlement agreement when material terms were uncertain.

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## IV. CONCLUSION

The teenage discretion provision creates uncertainty and instability for the children and conflict between the parties, within which the children are embroiled. The continued existence of this provision can cause permanent severe emotional damage to Brooke and Rylee. There was no meeting of the minds between the parties regarding its terms. Vivian's material breaches of material and essential terms of this provision, including embedding in Brooke's mind that she has the absolute unfettered right to determine her own custody, has undermined any chance for the provision to be reasonably applied.

The Court is implored, in the best interests of Brooke and Rylee, to revoke this provision in its entirety. In the alternative, the Court is requested to determine that a 14 year old child has the right to request infrequent modifications to the weekly custody schedule, which the parent can, in good faith, either grant or deny, as opposed to Vivian's position that a 14 year old has the absolute right to *order* Kirk, her father, at any time, to take her to Vivian's house during his custody time and he must *obey* his 14 year old daughter without question or discussion and it is irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to Rylee. In the event, this Court decides not to nullify and strike the teenage discretion provision, Vivian will continue to manipulate and embroil the children in conflict.

The Court is also requested to nullify and strike the parenting coordinator provision. Neither Kirk nor his attorneys had any part in drafting this provision. The provision must fail for its failure to provide any of the specific terms necessary for a party to know to what they are agreeing. Therefore, the offer by Vivian could not have been accepted and a contract formed. This is true even if Kirk were to have been told that a parenting coordinator would be granted judicial authority to make parental decisions involving his children.

Kirk desperately wants the adversarial positioning to stop for the benefit of Brooke and Rylee and their entire family, including Vivian. As noted, conflicts between the parties regarding custody of any significance were infrequent between the date of this Court's Order Resolving Parent/Child Issues on July 11, 2012 and Brooke's 14th birthday on June 26, 2013. The continued existence of the teenage discretion provision, as advocated by Vivian, creates and continues the adversarial positioning. The insertion of a parenting coordinator into the process facilitates the continuation of the adversarial

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positioning. The proposed parenting coordinator intends to enmesh Brooke and Rylee further into the conflict by interviewing them. The unnecessary continuation of the adversarial positioning created by the teenage discretion provision poses tremendous risk that Brooke and Rylee will suffer long term emotional harm. The Court is, respectfully, requested, in the best interests of Brooke and Rylee, to nullify Paragraphs 4 and 6 of the Court's Order Resolving Parent/Child Issues. These requests are supported by the Affidavit of Edward L. Kainen, Esq., attached hereto as *Exhibit "1,"* and the Affidavit of Thomas Standish, Esq., attached hereto as *Exhibit "2."*

DATED this 21st day of April, 2014.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
10091 Park Run Drive, Suite 110
Las Vegas, NV 89145
*Attorneys for Plaintiff*

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**AFFIDAVIT OF KIRK R. HARRISON**
**filed in Support of Plaintiff's Motion To Modify Order Resolving Paren/Child Issues and For Other Equitable Relief**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

KIRK R. HARRISON, declares and says:

1. The matters stated in this Affidavit are based upon my personal knowledge or upon information and belief. If called upon to testify, I could and would competently testify to the facts set forth herein.

2. Each of the factual averments contained in Plaintiff's Motion To Modify Order Resolving Paren/Child Issues and For Other Equitable Relief are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK R. HARRISON

SUBSCRIBED and SWORN to before me this 11 day of April, 2014.

NOTARY PUBLIC in and for said County and State

TAMARA PHILLIPS
Notary Public State of Nevada
No. 10-1880-1
My Appt. Exp. April 8, 2018

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# EXHIBIT 1

**AFFIDAVIT OF EDWARD KAINEN, ESQ.**
**IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF**

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

EDWARD KAINEN, ESQ., being first duly sworn, deposes and states:

1. The matters stated in this Affidavit are based upon my personal knowledge or upon information and belief, if so stated. If called upon to testify, I could and would competently testify to the facts set forth herein.

2. I am an attorney duly licensed to practice law in the State of Nevada, and in that capacity, I am co-counsel for Kirk Harrison.

3. I am familiar with the terms of Paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues, filed July 11, 2012. I have read the letters from Radford J. Smith, Esq., setting forth his interpretation of this provision, which are both dated November 6, 2013. As set forth in my letter of November 6, 2013, I strongly disagree with the interpretation made by Mr. Smith and it is directly contrary to my own interpretation. All three letters are attached to the prior motions regarding teenage discretion.

4. I have also read the affidavit of Gary Silverman, Esq., wherein he wrote, "Mr. Harrison must know that the teen exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody." As is evident from the letter I wrote on November 6, 2013, and the prior points and authorities I have submitted on this issue, it was never my interpretation of the teenage discretion provision that it could be utilized so that Vivian will have de facto primary custody.

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5. In all of the years I have practiced, I have never seen a teenage discretion provision interpreted in the manner this provision has been interpreted by Messrs. Smith and Silverman and certainly would never advise a client to agree to such a provision, as interpreted by Messrs. Smith and Silverman.

FURTHER AFFIANT SAYETH NAUGHT.

EDWARD KAINEN, ESQ.

SUBSCRIBED and SWORN to before me
this 21st day of April, 2014.

NOTARY PUBLIC in and for said
County and State

CAROL NAVARRO-BARCLAY
Notary Public State of Nevada
No. 92-4000-1
My Appt. Exp. December 27, 2016

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# EXHIBIT 2

**AFFIDAVIT OF THOMAS J. STANDISH, ESQ.**
**FILED IN SUPPORT OF PLAINTIFF'S MOTION TO MODIFY ORDER RESOLVING PARENT/CHILD ISSUES AND FOR OTHER EQUITABLE RELIEF**

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

Thomas J. Standish, Esq., being first duly sworn, deposes and says:

1. The matters stated in this Affidavit are based upon my personal knowledge or upon information and belief, if so stated. If called upon to testify, I could and would competently testify to the facts set forth herein.

2. I am the attorney for Kirk Harrison (hereinafter "Kirk"), the Plaintiff in case number D-11-443611-D. I am employed by the law firm of Standish Law Group, and am duly licensed to practice law in the State of Nevada. I was retained as co-counsel to Edward Kainen, Esq., for Kirk, in June 2011.

3. On behalf of Kirk Harrison, I negotiated the terms of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, with Radford J. Smith, Esq.

4. In particular, I negotiated with Mr. Smith Paragraph 6 of said stipulation and order, which for purposes of clarity is set forth hereafter:

> 6. Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the time the child desires to spend with each parent. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the time the child desires to spend with each parent once that child reaches 14 years of age.
>
> 6.1. The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties intend to allow the children to feel comfortable in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.
>
> 6.2. Such adjustments **shall not be prompted or suggested by either parent**, but shall originate with the child(ren). The parties shall not allow the children to use this flexibility as a means to avoid spending time with the other parent, and they **shall each encourage the children to follow the regular schedule** to the extent possible. If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court.
>
> 6.3. The Parenting Coordinator will not have the ability to revoke this provision, but may address those concerns within the context of the rights, duties and obligations of the Parenting Coordinator as detailed in the order appointing the Parenting Coordinator. **Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations.**

> 6.4. In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

5. The emboldened language was specific material language that I bargained for on my client's behalf. I advised my client that these emboldened provisions were critical to the teenage discretion provision and to safeguard the children from parental manipulation and abuse.

6. It is evident the bargained-for material provision prohibiting either parent from prompting or suggesting adjustments has been violated by Vivian Harrison. Ms. Harrison's manipulation and prompting of Brooke has undermined the entire Paragraph 6, as it was never intended that a child's wishes to modify the weekly custody schedule would originate with and be prompted by either parent. It also was never intended to empower a 14-year-old child to order her parent as Brooke has done and is continuing to do.

7. The manner in which opposing counsel and Ms. Harrison have chosen to interpret this teenage discretion provision (despite the Court's admonitions to the parties regarding the limited scope thereof) demonstrates that the intent of that provision has been undermined and has been used to prejudice Kirk Harrison. Given that, it is strongly suggested that paragraph 6 of the Stipulation and Order Resolving Parent/Child Issues, entered July 11, 2012, should be stricken by this court..

8. Kirk had never seen a teenage discretion provision before and did not know what it was. When he read it he expressed concern. I assured him with the changes I ultimately had made, it did not provide anything differently than the law otherwise provides. Kirk questioned if that was the case, then why was the provision necessary. I told him it was because Vivian was aware of teenage discretion and Mr. Smith said he had to have it in the agreement to satisfy his client.

9. I have read Mr. Silverman's affidavit wherein he wrote, "Mr. Harrison must know that the 'teen' exception in the custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody."

. . .

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. . .

10. Although I did negotiate the teenage discretion provision with Mr. Smith, I certainly did not expect or anticipate what Mr. Silverman claims Mr. Harrison "must" have known. As written, it was my interpretation of the provision that after the age of 14 years, the child could make a request. It was never my understanding under this provision that a child could order a parent to make a change to the weekly schedule and the parent had to obey without question or discussion, and it would be irrelevant what prior plans have been made or whether, under the circumstances, it would be harmful to the younger sibling.

FURTHER AFFIANT SAYETH NAUGHT.

THOMAS J. STANDISH, ESQ.

SUBSCRIBED and SWORN to before me

this 21st day of April, 2014.

NOTARY PUBLIC in and for said
County and State

ALEX MATTER
Notary Public State of Nevada
No. 11-3960-1
My appt. exp. Dec. 9, 2014