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 12

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ATTORNEYS FOR APPELLANT

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

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[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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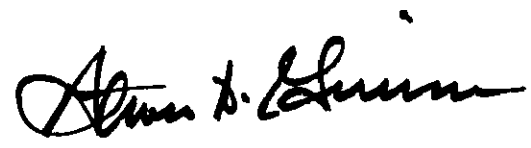

CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: 03/21/17
Time of Hearing: 10:00am

ORAL ARGUMENT REQUESTED:
YES XX NO ___

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'S SUPPLEMENTAL DECLARATION IN OPPOSITION TO PLAINTIFF'S MOTIONS FILED DECEMBER 29, 2016; REPLY TO SUPPLEMENTAL DECLARATION, AND; OPPOSITION TO REQUEST FOR 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 moves this Court to strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions filed December 29, 2016, submits his Reply Affidavit to said Declaration in Opposition, and hereby opposes Defendant's Request for Sanctions

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

DATED this 17th day of February, 2017.

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

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 21 day of March, 2017, at the hour of 10:00am .m., or as soon thereafter as counsel may be heard.

DATED this 17th day of February, 2017.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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A.App. 2565

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Introduction

The Declaration submitted goes well beyond the scope of the affidavit requested by the Court. The affidavit/declaration was supposed to only address those factual issues raised in Plaintiff's "Reply." In addition, the vast majority of the statements in the Declaration contain argument, comment, inadmissible opinion and conclusions, speculation, hearsay, as well as substantial portions that are incompetent where Vivian clearly lacks foundation or lacks personal knowledge. The declaration is replete with factual assertions regarding alleged events and conversations to which Vivian has no personal knowledge whatsoever.

For the benefit of the Court and to facilitate the most expeditious review by the Court, each paragraph in the Declaration shall first be reviewed by identifying what portions should be stricken and then by setting forth the actual facts in response to the allegations contained in the paragraph. Hopefully, with such an approach, the Court will see the vast majority of the allegations contained in the Declaration are argument and baseless false accusations.

B. Those Portions Of The Declaration Must Be Stricken That Contain Argument, Comment, Inadmissible Opinion And Conclusions, Speculation, Hearsay, As Well As Those Portions That Are Incompetent Where The Witness Lacks Foundation Or Lacks Personal Knowledge

The requirements concerning the contents of an affidavit/declaration are mandatory. EDCR 2.21(C) provides:

> Affidavits/declarations **must** contain only factual, evidentiary matter, conform with the requirements of NRCP 56(e), and avoid mere general conclusions or argument. Affidavits substantially defective in these respects may be stricken, wholly or in part.

(Emphasis added).

The Court will readily see that the submitted Declaration is so defective in these respects that it should be stricken in whole.

The proper procedure for challenging those portions of affidavits that do not meet the requirements is a motion to strike. 10A Wright & Miller, § 2738, n.s 55-64.

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Since evidence to which no objection is made may be considered by the trier of fact, objection to the contents of affidavits should be made at the earliest possible time to preclude any possibility of waiver of the objections. *Whalen v. State of* Nevada, 100 Nev. 192, 679 P. 2d 248 (1994); *Exber, Inc. V. Sletten Const. Co.*, 92 Nev. 721, 558 P.2d 517 (1976); *Klingman v. National Indemnity Co.*, 317 E.2d 850, (7th Cir. 1963).

In addition to containing only factual, evidentiary matter, and avoiding mere general conclusions or arguments, an affidavit/declaration must meet the required elements set forth in NRCP 56(e), which provides in relevant part:

> Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(Emphasis added.)

In essence, Rule 56(e) requires that affidavits/declarations establish facts with the same dignity as if presented as evidence at trial. *Janich Bros., Inc. v. American Distilling Co.*, 570 F.2d 848, 859-60 (9th Cir. 1977). Evidence in affidavits is subject to the same requirements as evidence offered at trial. *Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796 (1969); *Catrone v. 105 Casino Corp.*, 414 P.2d 106 (1969). Therefore, those portions of affidavits that fail the same requirements as evidence offered at trial, should be stricken. *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 591 P.2d 1149 (1979); *Saka v. Sahara-Nevada Corp*,, 93 Nev. 703, 558 P.2d 535 (1976).

The Court will see that most of Vivian's Declaration is merely argument and comment. Affidavits/declarations are no place for the argument of a party's case. *Universal Film Exchanges, Inc. V. Walter Reade, Inc.*, 37 F.R.D. 4 (S.D.N.Y. 1965) (criticizing counsel for following "an inherently unsound practice of mingling in his affidavit alleged facts, comment, inference, argument and explanation."); *Inglett & Company, Inc. v. Everglades Fertilizer Company, Inc.*, 255 F.2d 342, 349-350 (5th Cir. 1959); 6 Moore, *Moore's Federal Practice* § 56.22[1] (stating an "affidavit is no place for ultimate facts and conclusions of law, nor for the argument of the party's cause.").

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C. The Specific Mandatory Prohibitions For Affidavits/Declarations

1. **Not Factual** – EDCR 2.21(C)
2. **Not Evidentiary Matter – No Hearsay** – EDCR 2.21(C); NRS 51.065 (Hearsay Rule)
3. **General Conclusions** – EDCR 2.21(C); *Mikulich v. Carner*, 69 Nev. 50, 240 P.2d 873, 875 (1952) (conclusion by witness held inadmissible)
4. **Argument** – EDCR 2.21(C)
5. **Not Based On Personal Knowledge** – NRCP 56(e); NRS 50.025
6. **Alleged Facts Not Admissible** – NRCP 56(e)
7. **Affiant Not Shown Competent to Testify To The Particular Matter** – NRCP 56(e)
8. **Opinion by lay witness** – NRS 50.265
9. **Comment** – *Universal Film Exchanges, Inc. V. Walter Reade, Inc.*, 37 F.R.D. 4 (S.D.N.Y. 1965) (criticizing counsel for following "an inherently unsound practice of mingling in his affidavit alleged facts, comment, inference, argument and explanation.")

D. The Declaration is Replete With Improper Allegations That Must Be Stricken

Paragraph 2 The last sentence of this paragraph must be stricken as it is not factual and merely argument, comment, conclusions, and opinion by a lay witness.

Response: There is no campaign to denigrate Vivian. The violations of the Custody Order were caused by Vivian's wrongful empowerment of Brooke under the teenage discretion provision, which is a matter of record. Despite this Court's orders and the Nevada Supreme Court's opinion to the contrary, Vivian has been telling Brooke since she was 14 years old that under the teenage discretion provision, when she was 16 years old, she could leave her father and live with Vivian full time. This is exactly what happened. Brooke did not leave her father because of a "campaign to denigrate Vivian." Brooke, wrongly empowered, was motivated to

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leave because of, ironically, Vivian's campaign to denigrate Kirk and being incited to hate Kirk over the medical billing issue.

If there was a continuous campaign to denigrate Vivian by Kirk and the adult daughters, the logical consequence would be that Brooke would have alienated Vivian and rejected Vivian. However, as the Court is now well aware, Dr. Paglini concluded "there is no doubt, Brooke has rejected her father. . ."[1] (46)

Paragraph 3 The entire paragraph is argument, comment, and should therefore be stricken.

Response: There is no "Kirk's continued false narrative." Many of the facts previously asserted by Kirk and disavowed by Vivian have now been confirmed by Dr. Paglini's report, Dr. Paglini's testimony, and Dr. Ali's testimony. The facts previously alleged by Kirk regarding Brooke's behavior towards Kirk have been confirmed by this report and testimony.

Paragraph 4 The first sentence is entirely argument. The sentences of the paragraph only contain baseless assertions to which Vivian does not have personal knowledge. Brooke's testimony was outside Vivian's presence. The last sentence is not factual and not based upon Vivian's personal knowledge.

Response: The first sentence, which argues, "Brooke has not been wrongfully empowered in her relationship with Kirk . . ." is contrary to the admitted evidence. Vivian's allegations that Kirk and the adult daughters have continuously denigrated Vivian have no merit whatsoever. Kirk has told all the adult children to not speak about the divorce to Brooke and Rylee. The one incident involving Tahnee and Brooke was very unfortunate for both of them. They were both emotionally upset and crying. However, Kirk did not know prior to it occurring that it was going to occur. Kirk received a telephone call from Brooke when she and Tahnee were only a few freeway exits away from where they were going to meet Kirk and Rylee

[1] This is despite the fact that, "Brooke really does not offer evidence of her father's bad character." (51)

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in Victorville. Brooke wanted Kirk to make Tahnee pull over on the side of the freeway. When Kirk responded that it is illegal to just pull off to the side of the freeway, that he had no way of making Tahnee pull off to the side of the road (Tahnee is 31 years old), and Kirk would get Brooke from Tahnee in just a few minutes, Brooke became very upset with Kirk. As soon as Kirk saw Brooke after the incident, he sat down with her and tried to comfort her. However, Brooke was upset with Kirk because he did not make Tahnee pull off to the side of the freeway and did not want to talk to Kirk. Kirk is not aware of Whitney ever saying anything to Brooke or Rylee which denigrated Vivian. Kirk is not aware of Tahnee ever talking to Brooke about the divorce except for the one time. Kirk is not aware of Tahnee ever saying anything to Rylee which denigrated Vivian.

Kirk's only criticism of Vivian to Brooke and Rylee for years after the divorce was when Vivian had him sitting in a car in front of Vivian's house for up to 50 minutes at a time during his custody time, while Vivian was having Brooke and Rylee eat an after school snack and visit with Vivian while he was waiting in the car. More recently, Kirk told Brooke that the divorce was not his fault. Kirk never told Brooke that Vivian filed for divorce. When Brooke and Kirk were with Dr. Paglini, after Brooke kept saying over and over that the only reason Tahnee and Whitney do not talk to Vivian is because of Kirk's lies to them, Kirk, finally, responded that it might be because Vivian tried to hit Tahnee and did hit Whitney, which Brooke witnessed. When Kirk saw Brooke's emotional reaction to his statement, he apologized again and again, regretting he had said it. However, there is absolutely no campaign to continuously denigrate Vivian.

Paragraph 5 The entire paragraph is not factual, is not based upon personal knowledge , and is merely argument.

Response: Kirk has never lied to Brooke about the nature of the litigation. Kirk never admitted to Brooke in sessions with Dr. Paglini that he lied to Brooke about the nature of the litigation. After years of not defending himself, the only thing Kirk told Brooke was that the divorce was not his fault. (35) In the litigation, Kirk filed for primary custody. Vivian

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counterclaimed for primary custody. Dr. Paglini wrote in his report that Kirk said that Vivian filed for primary custody, which, although correct, is misleading as both Kirk and Vivian filed for primary custody. (29) Kirk did not tell Dr. Paglini that only Vivian filed for primary custody. Kirk has never "admitted in his pleadings that he has told all our children that there is something wrong with [Vivian]." Kirk has more than suggested Vivian has done something to cause his relationship with the children to deteriorate. Kirk has alleged, for example, that Vivian used the medical billing issue to incite Brooke to hate him and, falsely, believe Kirk is a bad and mean person. Vivian wrote in an email, "Kirk just can't quite understand why he should have to pay any part of his daughters medical bills." Kirk responded in an email, "[T]here 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." Vivian's baseless assertion that Kirk is constantly denigrating Vivian is simply not true.

Paragraph 6 The first sentence is not argument, not factual, and not based upon personal knowledge. The second sentence is argument. The third sentence is argument, conclusion, not factual, and the opinion of a lay witness. The fourth sentence is argument.

Response: Kirk has not attacked Brooke or Rylee in any way. According to Vivian, by Kirk asserting Vivian omitted Kirk as Brooke's father and as a person to contact in case of emergency on Brooke's student enrollment form and that Vivian refused to give Brooke's class schedule to Kirk for six months, both of which are established facts, Kirk is "attacking" Vivian.

The quoted statements were all written down during 2010 – approximately seven (7) years ago.[2] None of the five children have ever seen these quotes. Each of the quotes were taken out of context and obviously intended to inflame the Court and are impliedly portrayed as being contained in post-divorce filings and constitute some kind of evidence of a continuing campaign to denigrate Vivian. None of which is true. All but one of the quoted statements are

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[2] Despite the fact that all of the quotes are from 2010 and more than a year prior to the service of the complaint and motion for primary custody, Vivian, later in her Declaration refers to these quotes as "evidence of his unending willingness to disparage me. . ." Declaration, p. 13, l. 16-18

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from Kirk's affidavit, dated June 9, 2011,[3] and were contemporaneous responses to Vivian's outrageous behavior at each point in time during 2010. The one quote that is not from the June 9, 2011 affidavit, which is item "g," is from Kirk's letter to Dr. Roitman, dated January 4, 2010, which was attached as Exhibit "9" to Kirk's Reply in support of the Motion for Primary Custody, filed 1.4.12. The Court may recall the only reason Kirk's letter to Dr. Roitman was submitted was to rebut Vivian's baseless allegations that Kirk had "made up a theory." The following illustrate why Kirk was justifiably upset each time:

a. "I must do everything I can to get full custody of Brooke and Rylee?"

b. "I cannot let Brooke and Rylee continue to be exposed to someone like that nor end up like that"

138. Based upon conversations with Tahnee, Brooke, Rylee and Vivian, the following is my understanding of what happened in Ireland before I arrived: Tahnee, Brooke, and Rylee arrived in Dublin on Monday, August 2, 2010. Several of them were experiencing jet lag and they did not do much the first day or two. Vivian took Brooke and Rylee to the Leprechan museum in Dublin probably on Tuesday, August 3, 2010. Tahnee departed for home on Wednesday, August 4, 2010. That afternoon, August 4, 2010, Vivian, Brooke and Rylee took the train to Cork. David Walsh picked them up at the train station and they stay with him for the next two days. On Friday afternoon/evening, August 6, 2010, David Walsh drives Vivian, Brooke and Rylee to Rosaleen Thomas's house. I am convinced Vivian is having an affair with David Walsh. I am literally sick to my stomach that Brooke and Rylee were unnecessarily exposed to that relationship and environment. It must have been so confusing and disturbing for Brooke to witness the relationship between her mother and another man. How incredibly callous of Vivian to do this to Brooke and Rylee. Vivian then spends the weekend climbing with Irish celebrities that are going to climb to the Mount Everest base camp this fall. Rosaleen Thomas's daughter, Ruth, watches Brooke and Rylee for the weekend. Vivian doesn't see Brooke and Rylee from June 15, 2010 until August 2, 2010, but by August 7, 2010, she is leaving them with someone else and takes off and leaves them for two days so she can practice hiking so she can leave on again in September 30, 2010 for several weeks. **I must do everything I can to get full custody of Brooke and Rylee.** Vivian is ending up just like her mother and her sisters. **I cannot let Brooke and Rylee continue to be exposed to someone like that nor to end up like that.** Vivian has spent most of the six weeks working very little, partying, and sightseeing.

c. "However, I now realize I must get them away from Vivian"

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[3] Kirk's affidavit was attached as Exhibit "1" to the Motion for Primary Custody, which was filed on September 14, 2011.

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139. Vivian has made such a mockery of our marriage. She had multiple plastic surgeries, skin treatments, diet pills, shots to get thin, and bronze butter applications to go to Ireland to meet her 32 year old "soul mate". She is having an affair with a 64 year old married man. Up to this point I have thought that the longer I can put off a divorce the better it is for Brooke and Rylee, because I know for sure I can be there for them all of the time. **However, I now realize I must get them away from Vivian.** Vivian really doesn't care about them. When she is home she spends almost no time with them at all, except for sleeping with them at night and then she gets up in the middle of the night to be on the internet – something that is clearly not in their best interests. Vivian emotionally feeds on Brooke and Rylee at her convenience. I wanted to share the experience of seeing the Riverdance Show with Brooke and Rylee, but I could not be around Vivian any longer that day. I was literally sick to my stomach. I just can't get over Vivian having Brooke and Rylee stay in the home of the married man with whom she is having an affair. David Walsh is married to Mary, although living apart. Yet, Vivian and David Walsh have Brooke and Rylee with them while they have their affair.

d. "If Vivian gets partial custody. . .Brooke and Rylee will emotionally suffer for the rest of their lives"

147. On Saturday morning, September 4, 2010, I had plans to meet Sean and Whitney for breakfast before they drove to North Carolina. I am taking Tahnee, Brooke and Rylee. Vivian walks in this morning and said don't take Brooke to breakfast this morning because she has a private dance lesson with Dar at noon and you screwed up the last one. I asked if she had a number for Dar so I could try to reschedule it. She said Brooke's lesson was at 2:00 p.m. but they called yesterday or the day before and changed it to noon. I told her I was going to try to change it. Vivian got mad and said the dance studio told her I screwed up the last one and I don't know what I am doing and don't try to change it. I told her not to threaten me anymore – those days are behind us. The truth is that when Jim offered the classes with Dar earlier this summer, I signed Brooke up for two classes for the only two days Brooke was then available. However, I had to cancel them because Brooke did not want to go – Brooke's feet hurt so badly she could hardly walk for the first one and Kayla's birthday party was scheduled during the second one. If I tell Vivian this, she will tear into Brooke. There is a practical problem today because Vivian just left for a hike and won't be here when we leave and I can't leave Brooke by herself. I took Brooke to the breakfast. My recollection is that Dar cancelled the lesson because he had an audition.

148. When I got up Tuesday morning, September 7, 2010, at 4:00 a.m., Vivian was "talking" on facebook. I believe she does this probably many, if not most, early morning hours. I am concerned for Brooke and Rylee. **If Vivian gets partial custody** and continues her narcissistic behavior, which she will, **Brooke and Rylee will emotionally suffer for the rest of their lives.**

e. "I am scared that a judge might not fully appreciate the severity of the situation nor the severity of Vivian's condition and give Vivian partial custody of Brooke and Rylee – that would be unbearable."

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117. On Tuesday evening, April 6, 2010, while Vivian, Tahnee and Whitney are driving back from Salt Lake City, I received the following text from Whitney at 6:27 p.m.: "just to warn you. Mom is on a rampage" I texted back at 6:51 p.m.: "over what?" At 6:54 p.m. Whitney responded: "we were talking about Brooke and her dance and I mentioned how she should do sports like we did and mom flew off the handle it got ugly" Later when they got home about 8:25 p.m. Tahnee walked in the door with Vivian some distance behind her and said, "She is crazy. We need to talk later." I am constantly struggling with the knowledge that Vivian is inflicting emotional abuse upon every member of the family that lives here. However, **I am scared that a judge might not fully appreciate the severity of the situation nor the severity of Vivian's condition and give Vivian partial custody of Brooke and Rylee – that would be unbearable.** I just finished talking to Tahnee and Whitney. They were having dinner at a Mexican restaurant in St. George when Vivian shoved her plate at Tahnee and Whitney and stood up pointing her finger at them yelling. After they got in the car, Vivian yelled at them for 45 minutes saying one vulgar word after another. Vivian told Tahnee and Whitney they expect everyone to do everything for them and that they "play dad and I against each other." Vivian accused Tahnee and Whitney of playing word games and that they both needed to grow a backbone. Vivian told Whitney she was a liar and that everything Whitney says is a lie. She accused Whitney of being selfish. Whitney said when they were in the hotel room in Salt Lake City she would not let them watch television. Tahnee and Whitney said that Vivian told Brooke on the telephone that she would have taken Brooke to the Muze concert, but that there was not enough time to get another ticket. The sad truth is that Vivian had four tickets and one went to waste. Vivian had no intention whatsoever of taking Brooke to the concert. However, just like telling Brooke she would have taken her to Ireland, Vivian had no intention of taking Brooke to the concert. While in Salt Lake City, Vivian and Tahnee got in a fight when Vivian said she might have more children. Tahnee said that Vivian was too old to have any more children and talked about how the risk of having a child with downes syndrome was substantially increased at Vivian's age (48 in August, 2010). A fight ensued with Vivian saying she was still young. Whitney said that Jonathan Rhys Myers did not attend the Hope Foundation Ball. According to Vivian, one of the times Jonathan Rhys Myers was said to be in rehabilitation, he was on a golf trip. Vivian suggested to the Hope Foundation that he be the host for a Hope Foundation Golf Charity event. When Vivian got back from Ireland, she gave Brooke and Rylee claddegh rings. Vivian told Brooke that you wear the ring with the heart pointing out when your heart is open to a relationship and toward you when you are in a relationship so your heart is closed. Brooke pointed out that Vivian's claddegh ring was pointed out. Vivian said that is because her heart is open. Vivian told Whitney that she and I have been separated since last September and that she asked me to leave the house, but that I wouldn't. She said that we are waiting until next year to get a divorce (news to me). Vivian said the court will make us sell the house and split the money from the sale. Vivian said that since I am now a primary care giver, we will have joint custody and that Vivian will get 50% of everything I have. Vivian told Whitney that she first met the lawyer when she was living at Lake Las Vegas. She said the lawyer is a "big gun". The lawyer told her to move back into the house. She told Whitney that she has continued to talk to this lawyer. Vivian told her that the reason she is having all of this plastic surgery done now, taking all these trips, and spending all this money is that it will not be counted in the divorce.

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f. "I was concerned I would not get total custody in a divorce, and I was extremely concerned for Brooke and Rylee."

103. Tahnee approached me on Monday, March 1, 2010. Tahnee adamantly said that I must do something about Vivian. She said Vivian is damaging Brooke and Rylee on a daily basis. Tahnee said that yesterday Vivian talked about having the fat injected into her butt in front of Brooke. Tahnee said that when I am not within ear shot in the mornings, she will tell Brooke and Rylee that I will get upset if they do not hurry. Tahnee had me read sections from "Will I ever be good enough – healing the daughters of Narcissistic mothers". Tahnee believes the long term adverse effects upon Brooke and Rylee will be significant. Tahnee also said that Vivian is ruining my life. She said I need to stand up to Vivian and set boundaries in our relationship. I explained to Tahnee that **I was concerned I would not get total custody in a divorce, and I was extremely concerned for Brooke and Rylee** when they would be alone with Vivian. Tahnee thinks we should speak to a family counselor and have a family intervention with Vivian.

g. "Vivian is missing something inside. Some might say she has lost her soul."

This behavior cannot be passed on to the next generation. It must end now. If Vivian does not change, she will probably live her later years alone and die alone. But for Vivian inexplicably reaching out to her mother, she would have died alone – she kicked each of her children out of her house and ostracized herself from her own children.

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.

Vivian has so much potential as a human being, but her insecurities and unbridled desire to get attention, has smothered her personal growth. Her need for attention causes her to irrationally compete with me for our children's love and loyalty and also compete with her own children for my love and affection. I believe that a major cause of her depression is her belief that she can not win either competition that she has irrationally created.

Letter to Dr. Roitman, 1.4.10, p. 11.

h. ". . Vivian is about the lowest form of human existence"

169. For years I struggled in my marriage because I couldn't understand why my relationship with Vivian didn't grow and become more intimate. During the last years I have been frustrated because Vivian has never been willing to articulate why she feels towards me the way she does. The explanation for both is really quite simple. I "was getting all the attention." It is almost irrelevant whether I was seeking any attention, Vivian resented my getting attention, because that meant she wasn't "getting all the attention." I understand now why

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> Vivian has mocked me with my own children over the years. Why any accomplishments and successes in my life had to be belittled to my own children. Why providing for my family all of these years and working real hard was so insignificant to my children. All of it simply took too much attention away from Vivian. If we are ultimately judged as human beings by the compassion we have for others and what we do for others, **Vivian is about the lowest form of human existence**. Vivian does not have the ability to love or care for someone else. It is ironic that Vivian gave Brooke a biography of Mother Teresa, so Brooke could "see what Vivian was going to do for the children in India." There couldn't be any more polar opposites than Mother Teresa and Vivian. Those who have never had to live with or deal with a pathological narcissist on a very personal level, may naively believe that the totally self-absorbed cause no harm to others. So what if they are into themselves. What harm does it do to others? What Vivian has done to our children was unimaginable to me when I married her. What Vivian has done to our children is unforgivable. The callousness, manipulation, lack of empathy and caring, is all just sick. I pray there is no genetic pre-disposition or component to pathological narcissism.

Kirk Aff., dated 6.9.11 (emphasis added).

Paragraph 7 The first sentence is comment and argument. The second sentence is not factual and not based upon personal knowledge.

Response: Vivian asserts, without any personal knowledge whatsoever, that Brooke testified that the teenage discretion provision was not the basis upon which she altered her schedule with Kirk. If Brooke did so testify, it is the opposite of what she told Dr. Paglini, as documented by Dr. Paglini. Brooke told Dr. Paglini she was utilizing the teenage discretion provision when she left to live with her mother full time in the Fall of 2015. (24) Dr. Paglini wrote, "Brooke was asked about the concept of teenage discretion. She was asked where she heard of that concept. She reported she learned it from her mother. . . . She was informed that obviously she had exercised teenage discretion in the fall of 2015, and she agreed." (24) Apparently, according to Vivian, the first day Kirk obtained custody of Rylee after her 14th birthday and told Kirk she had to go to Vivian's to pack was just an unbelievable coincidence.

Paragraph 8 The entire paragraph consists of comment and argument.

Response: Vivian states that Kirk's statements about Brooke turned out to be false. Kirk's statements about Brooke have not turned out to be false.

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Paragraph 9 The first sentence is comment and argument. The second sentence is hearsay and not based upon personal knowledge. The third sentence is hearsay and not based upon personal knowledge.

Response: Kirk has taken Brooke to Vivian's house to get supplies. On other occasions, Kirk either already had the supplies she needed or took her to the store to get what she needed. Kirk has taken Brooke to Target on many occasions to get shampoo, conditioner, shaving cream and feminine supplies. Kirk never refused to take Brooke to Target to get supplies. Sometimes he insisted that they run other errands when they drove into Henderson to the Target store. When Brooke refused to do anything, but what she wanted, they didn't go.

Paragraph 10 The second and third sentences consist entirely of hearsay and is not based upon personal knowledge. The fourth and fifth sentences consist only of comment and argument.

Response: Kirk does not disparage Vivian to all their children. Other than telling Brooke the divorce was not his fault, the only time Brooke discussed the divorce with Brooke was during the joint session with Dr. Paglini. Kirk has never discussed the divorce with Rylee. Vivian falsely claims Kirk "continuously insults Brooke." Kirk does not and has never "continuously insulted Brooke." When Brooke refused to go to Lagoon after traveling to Layton, Utah with Kirk and Rylee, Kirk told Brooke she was being inconsiderate of Rylee as she wanted to go to Lagoon. When Brooke initially agreed to travel to Phoenix to help Whitney and Sean move, but later refused to go, Kirk told Brooke she was being rude and inconsiderate. There were several occasions when Kirk was left sitting in a car, when it was over 90 degrees, for up to 50 minutes, while Brooke and Rylee got their things from Vivian's house, when they normally took 2 to 3 minutes to get the same items from Kirk's house, when Kirk said it was rude and inconsiderate to keep Kirk waiting in a hot car like that. Vivian is not going to let the truth get in the way of her baseless allegations.

Paragraph 11 The second sentence is comment, argument, not factual, and opinion of a lay witness. The second and third sentences are argument as they mischaracterize what

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occurred. The remainder of the paragraph contains more argument and comment. The last sentence is not factual, hearsay, and without any personal knowledge.

Response: Vivian attempts to falsely portray this incident as just a mere coincidence that she happened to be at the back of the dance studio, when Kirk just happened to be dropping off Brooke at the front of the studio. Brooke had asked Kirk to take her to the dance studio to watch a friend's private lesson. By her own admission, Vivian was there for the same purpose. Kirk was simply dropping off the check while he was there. He did not go for that purpose. Brooke told Kirk she hated him as soon as he insisted upon driving around to the back of the studio. This was before he saw Vivian. When Kirk told Brooke that he had seen Vivian walk in the same private lesson she was attending, Brooke again said she hated Kirk. Vivian should not be enmeshing Brooke in deceitful schemes.

The incident described in the last sentence never occurred. Kirk has never had a heated screaming match with Brooke at the dance studio. He has never, at the dance studio or anywhere else, "called her names and accused her of being a liar and an unkind, selfish, piece of shit."

Paragraph 12 The first sentence is comment because the assertion is false. The second sentence is comment, argument, not factual, hearsay, and without any personal knowledge. The third and fourth sentences are not factual, hearsay, and without any personal knowledge.

Response: Vivian incorrectly alleges that Kirk claims that "he calls [Brooke] names." That is simply not true. Kirk has never bullied Brooke. The incident described in the third sentence never occurred. Kirk has never dragged Brooke across the kitchen floor or any other floor at any time. This is a complete fabrication. The incident, as described in the fourth sentence also never occurred. There was a time when Brooke refused to get out of bed and Kirk had to take Tahnee to the airport and everyone else had plans to then drive to the outlet mall in Primm. Kirk simply picked Brooke up and set her on the floor. He then told Brooke to change clothes or she would go with her pajamas, which completely covered her from neck to feet. Brooke refused to change her clothes. Kirk got behind her, put his arms under her arms,

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stood her up and began walking her to the car. After a few steps, Brooke said she would walk on her own. Kirk never dragged her on the floor as Vivian falsely alleged.

Paragraph 13 The first sentence contains comment and argument.

Response: The record before the Court contains numerous instances which evidence the fact that Vivian has convinced Brooke she does not have to do anything she does not want to do when with Kirk. If Brooke does not want to run any other errands when they go to Target for her, she will not go. If Brooke does not want to go to a movie, she will not go. If Brooke does not want to drive to Phoenix, she will not go. If they drive to Layton, Utah to go to Lagoon and wake up the next morning – Brooke talks to Vivian on the telephone – then Brooke decides she does not want to go to Lagoon and refuses to go. This occurred right after Brooke announced she had decided to live with Vivian full time. She had recently turned 14.

Paragraph 14 The first sentence is argument.

Response: Vivian is playing games with the Court. Vivian knows full well that she had Rylee start piling clothes in her bedroom, beginning January 8, 2017, to take them to Vivian's house. This continued just as described on pages 9 through 11 of the "Reply," filed 1.31.17.

Paragraph 15 The second sentence is comment.

Response: Every allegation contained in this paragraph is false. As with the telephone calls with Vivian from Brooke when Kirk was renting the "filler" house, the phone calls do not begin with Brooke or Rylee crying. It is after they talk to Vivian, is when the crying starts – presumably, after Vivian has convinced them how mean Kirk is to them. Vivian's rendition of what occurred is, foreseeably, not accurate. Kirk never refused to take Rylee to Vivian's house to get her bag. In fact, they were driving to Vivian's house to get the bag, when Rylee said she was feeling ill and did not want to go to dance. Kirk was not acting mean. However, during her telephone call with Rylee, Vivian, undoubtedly, convinced Rylee that Kirk was being mean. The reason Rylee feigned illness and did not want to go to dance is because Kirk explained there was not time for Rylee to go to Vivian's house after dance (which ended at 8:30 p.m.) to pack for several hours, as she had homework, had not eaten her birthday dinner, and

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Kirk had already prepared a birthday party, including cake, presents, balloons, party favors, etc. Since Rylee made the choice to miss her first dance class, it makes no sense whatsoever that Rylee would be "frustrated that she missed her class for no good reason."

Paragraph 16 No objection.

Response: In light of the fact that Vivian had just made Rylee cry on the telephone, that Vivian had Rylee sitting in her car for thirty (30) minutes, and when Rylee returned to the house from Vivian's car, she refused to talk to Kirk and was obviously upset with Kirk; Vivian's rendition of what she said to Rylee during the 30 minutes is not plausible. Vivian's claimed brief positive message to Rylee is inconsistent with what actually occurred and Rylee's behavior towards Kirk.

Paragraph 17 The second and third sentences contain argument. The sixth and seventh sentences are argument. The seventh sentence is not factual.

Response: The Court may recall Vivian's Declaration, dated 9.14.15, wherein Vivian represented, "Contrary to Kirk's contention, **I have never told Brooke that she had the right to choose her visitation**." ¶5 of Vivian's Declaration, dated 9.14.15, attached to Defendant's Opposition to Plaintiff's Motion for Oder to Show Caused, filed 9.14.15 (emphasis added). We later learn from Dr. Paglini and Dr. Ali that beginning when Brooke was 14 years old, Vivian told Brooke that when she is 16 years old, she will be empowered to leave Kirk and live with Vivian full time. Well, here we go again. Vivian now states in this Declaration, in bold print, **"I have never discussed or mentioned the teenage discretion provision to Rylee."** However, the first day Kirk has custody of Rylee after her 14th birthday, Wednesday, January 25, 2017, Rylee tells Kirk that she needs to go to Vivian's to pack (which will take several hours) for her trip with Vivian in two days, despite just being with Vivian for two days. When Kirk explains there is not sufficient time to do that, Rylee is immediately upset, feigns illness and says she cannot go to dance, gets on the phone with Vivian and is soon crying uncontrollably and will not talk to Kirk. Within minutes, Vivian drives in front of their house and Rylee goes to Vivian's car and sits for 30 minutes. Upon her return to the house, Rylee is

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visibly upset with Kirk and refuses to talk to him. Based upon these facts, there is no question Vivian had talked to Rylee about teenage discretion.

Paragraph 18 With the exception of the first sentence, the entire paragraph is replete with comment, speculation, lay opinions, argument, not factual, and not based upon personal knowledge. The second sentence is comment, speculation, not factual, and not based upon personal knowledge.

Response: This paragraph is a very good example of the extent to which Vivian will knowingly mislead the Court. Vivian knows full well that she has wrongly empowered Rylee in her relationship with her father, Kirk. In many instances, Vivian gets away with this, because Kirk is relegated to simply asserting the truth. This time, however, Kirk has proof of the truth. Vivian has convinced Brooke and Rylee that they hold the power in the relationship with their father and their father must meet their expectations or be in trouble. Just as Kirk had to incur Rylee's displeasure and ill treatment, after talking to Vivian of course, for having the audacity to tell Rylee that there was insufficient time to go to her mother's to pack, Kirk was in big trouble when he contacted another parent to insure someone was picking up Rylee from school while Kirk was in court on the first day of the evidentiary hearing on Wednesday, January 18, 2017 at 1:30 p.m. Kirk obtained custody that same day after school at 2:11 p.m. Therefore, Kirk had to find someone who would pick Rylee up from school and keep her until Kirk got home. Several days before the 18th, while Rylee was still in Kirk's custody until the 13th, Kirk explained to Rylee that someone else would need to pick her up and asked if she had a preference. Kirk suggested the mom of one of Rylee's friends. The following are the exchange of texts between **K**irk and **R**ylee concerning this, beginning on the 16th while Rylee was in Vivian's custody:

1.16.17 at 8:06 p.m. K	Hope you're having a nice weekend and got a lot of reading done. We need to make arrangements tomorrow for someone to pick you up after school on Wednesday. If you want Joseph to pick you up, I will ask, but don't know if he can. As I mentioned when we talked about it, I can also ask Chloe's mom. Please let me know your preference tonight so I can make the arrangements. Love you!

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1.16.17 at 9:19 p.m.	R	Tomorrow is moms day anyway and Joseph is out of town
1.16.17	K	need to call tomorrow for Wednesday. Will Joseph still be out of town on Wednesday?
1.15.17	R	Dunno
1.16.17	R	Brooke could probably give me a ride
1.16.17	K	I don't think she can
1.16.17	K	You had fun with Chloe didn't you?
1.17.17 at 2:34 p.m.	K	Did you talk to Chloe today about tomorrow?
1.17.17 at 6:33 p.m.	K	Chloe's mom is picking you up after school tomorrow. Love you!
1.17.17	R	**I know u didn't call her did u?**
1.17.17	K	I did
1.17.17	R	Dad **u better not** have asked I already asked her
1.17.17		I was going to hang out with Chloe after school tomorrow
1.17.17		**Don't do that again** I have it handled
1.17.17	K	I sent a text to you at 2:34 this afternoon asking if you talked to Chloe. You still hadn't responded at 6:30. I can't have a situation where I don't know if someone is picking you up. Love you. Look forward to seeing you tomorrow.
1.17.17	R	**I don't care don't do it again**
1.17.17	K	I'm your dad. Don't have that disrespectful tone with me

(Emphasis added)

Just as Vivian did with Brooke, Vivian has made Rylee aware of her power over her father. It is a very untenable situation for a parent. It is an emotionally unhealthy situation for a child. As a consequence of Vivian's wrongful empowerment of Brooke, Brooke believed that Kirk had to do anything she told him to do and if he did not do it, Kirk was misbehaving. For example, if Brooke told Kirk to take her to Target and Kirk either could not take her then or wanted to run other errands as well, based upon what Vivian had convinced Brooke, Brooke believed that Kirk was not only acting improperly, but had severely wronged Brooke. Brooke would then call Vivian, Vivian would reinforce that Kirk was in the wrong and had terribly mistreated Brooke and, as a consequence, Kirk was a bad and mean person. Having been

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convinced by Vivian that she was horribly mistreated by Kirk, Brooke would start crying uncontrollably on the telephone with Vivian. After the phone call, Brooke would come out of her bedroom and emotionally tell Kirk that she hated him and that he is a bad and mean person. Whenever Kirk did not do exactly what Brooke told him to do, this is the scenario that would ensue. There is no question that Vivian's callous manipulation of Brooke in this manner has damaged Brooke and Brooke's relationship with her father. Vivian, clearly, has manipulated Rylee and is taking her down the same path. Absent such manipulation, 14 year old children do not threaten their parents with repeated threats of "don't do it again."[4]

Paragraph 19 The entire paragraph is merely argument.

Response: Kirk's claim of alienation is supported by Brooke's behavior towards Kirk as documented by Dr. Paglini in his report, including his conclusion "there is no doubt, Brooke has rejected her father. . ." (46) In addition, Brooke told Kirk on numerous occasions that she hates him and does not want a relationship with him. Brooke also told Dr. Ali in their sessions that she hates Kirk and does not want a relationship with him. Finally, Brooke moved out of Kirk's home, made no attempt to talk to Kirk for two months, and when she finally saw him at the orthodontist's office, acted as though he was not even there. Given these facts, to claim that Kirk's claim of alienation is "nonsense" is absurd. There is no question Vivian has disparaged Kirk to Brooke and Rylee and continues to do so. The adult daughters are 31 and 30 years old. Tahnee lives in California and Whitney lives in Texas. Tahnee broached the subject of the divorce, without Kirk's prior knowledge, one time with Brooke. It is unfortunate, but it was one time. Tahnee has never broached the subject with Rylee. To the best of Kirk's knowledge, Whitney has never broached the subject with either Brooke or Rylee. Kirk has not acknowledged in his pleadings that "he has said many disparaging and alienating statements." . . .

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[4] In addition, most of these Vivian orchestrated highly emotional and stressful episodes with Brooke were witnessed by Rylee. Brooke, undoubtedly, told Rylee on these occasions that Kirk had seriously wronged and mistreated Brooke by not doing as Brooke wanted.

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Paragraph 20 The second sentence is a general conclusion. The third sentence is hearsay and not based upon personal knowledge. The fourth sentence is general conclusion and lay opinion.

Response: Brooke's deep hatred of Kirk is evidenced by all of her consistent behavior towards him since the medical billing issue. This hatred is also evidenced by the fact she has repeatedly told Kirk she hates him and thinks he is a bad and mean person. Over the course of many months, she told Dr. Ali, on several occasions, that she hates Kirk and does not want a relationship with him. Brooke told both Dr. Ali and Kirk that she hates Kirk, he is a bad and mean person, and she does not want a relationship with him. Rylee still does love Kirk. However, Vivian is starting Rylee down the same path she took Brooke, after talking with Vivian and sitting in Vivian's car with Vivian for 30 minutes, Rylee was visibly upset with Kirk and refused to talk to Kirk.

Paragraph 21 No objection.

Response: Vivian falsely claims, "I don't question the children about what they do with Kirk." Vivian's email at 4:33 a.m. on March 28, 2016 revealed that Vivian was very much involved with what Rylee was doing with Kirk during Spring Break. In her email, Vivian is upset that Rylee spent time with Tahnee and Whitney during Spring Break and makes it fairly obvious she is sending the message to Rylee that joint physical custody is just too much of a burden, writing, "She gets hauled back and forth to [sic] much as it is." *See* Plaintiff's Motion for an Order to Show Cause, filed 8.30.16, p. 19-21.

Paragraph 22 With the exception of the quoted first sentence, the entire paragraph consists of argument, general conclusions, comment, not factual, and not based upon personal knowledge.

Response: Vivian reveals how nonsensical her positions are. When Vivian has Brooke and Rylee for Spring Break and Vivian has made plans for a trip, there is no way Vivian would cancel those plans, including airfare, if one of the girls then told her that she wanted to stay home and spend some time with her friends. However, Vivian has no problem complaining

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to Kirk that he should cancel trips, including airfare, because one of the girls, supposedly, preferred to stay home and spend time with friends. Moreover, most kids want to go somewhere for Spring Break. When school reconvenes, all the kids talk about what they did for Spring Break. The chances are that most of Rylee's friends would not be home for Spring Break. This is yet another illustration where Vivian attempts to portray Kirk as bad and mean because he planned a trip that Rylee should not have been forced to go on. Vivian also continues down this false narrative, which she is obviously planting with Rylee, that Rylee "wouldn't have to transport all her stuff again just to transfer again the next day. . ." First, Rylee isn't transferring hardly anything. Second, whether custody would transfer to Vivian that night at 7:00 p.m. or the next day, Rylee would still need her dance shoes, computer cord, cell phone cord, and her geometry book. Despite Vivian's baseless accusations, Rylee wanted to spend time with Tahnee and with Whitney and her husband Sean. Rylee had a good time with Tahnee in California and Rylee and Kirk had a good time in Texas with Whitney and Sean.

Paragraph 23 The entire paragraph is replete with comment, argument, hearsay, and without any personal knowledge.

Response: This entire paragraph is a total fabrication. Kirk does not and never has gone through Rylee's packed bags. Never. Kirk has never removed any items from Rylee's packed bags. Kirk has never told Rylee what she cannot pack in her bags. Kirk has never taken out one of Rylee's sports bras from her bags and held it up in the air and questioned Rylee as to why she is taking it to Vivian's house. Prior to January 9, 2017, the only items that Kirk would take to Vivian's house for the transfer for Rylee was her dance bag (which only has dance shoes in it because Rylee has lots of tights and leotards at each home), a geometry book, the power cord for her laptop computer, and the phone charging cord for her cell phone. That was it. In taking Rylee's items to Vivian's house, Kirk would gather up the power cord, the cell phone cord, and the geometry book and put them in the dance bag with the dance shoes. After Rylee started taking a bag of clothes, beginning January 11, 2017, Rylee said she wanted Kirk to put the geometry book, power cord, and cell phone cord in the bag of clothes, rather than the dance

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bag. In addition, when Rylee started transferring the bag of packed clothes, Rylee also started transferring two small makeup bags and told Kirk to pack the two make up bags in the bag of packed clothes, which he does. Again, this is another instance, where Vivian's false accusations, which although false, give insight as to how much Vivian is trying to be involved in Rylee's relationship with Kirk. If the teenage discretion provision is nullified, Vivian will lose much of her motivation to negatively impact Rylee's relationship with her father.

Paragraph 24 This entire paragraph consists of comment, argument, general conclusions, lay opinion, not factual, and without any personal knowledge.

Response: Without saying so directly, Vivian is denying that she had Rylee transfer all of the two large piles of clothes and a full orange backpack full of clothes to Vivian's house. Brooke had no problem making custody transfers for years. Vivian then has Brooke take all of her clothes to Vivian's house. Brooke then complains that making custody transfers to Kirk's home are too difficult because she has to pack all of her clothes. On the eve of Rylee's 14th birthday, Vivian has Rylee start transferring piles of clothes from Kirk's home to Vivian's home. When Kirk complains, Vivian writes, "Frankly, it is the type of ludicrously obsessive behavior that I have regularly seen Kirk engage in." Unbelievable. Incredulously, Vivian writes, "Contrary to Kirk's false statements, I have not noticed *any* increase in Rylee's clothes exchanged from either house since the new court order." Since the new court order, and in direct violation of that court order, despite Kirk's full compliance with that order by taking Rylee's items to Vivian's house when custody is transferred to Vivian, Vivian drives to Kirk's home and has Rylee take additional clothes to Vivian's house. On one of these occasions, Vivian had Rylee carry out the large pile of clothes that was on the floor in Rylee's bedroom and put them in Vivian's car. Under these circumstances, it is disingenuous for Vivian to represent to the Court that she has "not noticed *any* increase in Rylee's clothes exchanged. . ." Again, Kirk has never gone through either Brooke's bags or Rylee's bags "to determine what they can take to either home."

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Paragraph 25 The third sentence is comment, argument, rank speculation, not factual, and without any personal knowledge.

Response: The large pile of clothes Vivian hauled off was on Monday, January 9, 2017. The trip to Disneyland was not until Friday, January 29, 2017. The pile of clothes was not for the Disneyland trip. Again, Vivian is just making up "facts" as she goes along.

Paragraph 26 The first sentence consists of comment. The sentence, "Kirk does not do that" is obviously comment, argument, general conclusion, not factual, and without any personal knowledge. The last sentence is also comment, argument, general conclusion, not factual, and without any personal knowledge.

Response: Vivian claims she has "always gone out of her way to make their transitions easier. . ." Vivian views an easier transition when, after custody is transferred to Kirk, she keeps Kirk waiting in a car in front of her house for 30 to 50 minutes while she sits with Brooke and Rylee while they eat an after school snack together. Until Vivian had Brooke move all of her clothes to Vivian's house, the transitions for Brooke were much easier. In light of the established facts, Vivian's assertions are simply nonsensical. Before Brooke started to drive, Kirk, on many occasions, would take stuff to Brooke and Rylee, which they had forgotten. Kirk still takes stuff to Rylee that she has forgotten. Not once has Kirk complained to either Brooke and Rylee when this has occurred.

Paragraph 27 This entire paragraph is replete with argument, comment, lay opinion, general conclusions, hearsay, and without any personal knowledge.

Response: The document entitled, "Comparison of Agreed to and Court Ordered Custody Time Periods with Actual Custody Time Periods from August 12, 2015 through December 12, 2016" was admitted as an exhibit during the evidentiary hearing. Brooke's presence at Kirk's home is detailed on a daily basis, including setting forth the time Brooke arrives at Kirk's house, usually sometime between 11:00 p.m. and midnight and when she leaves the following morning. Vivian's claims to the contrary are totally without merit and without any asserted substantive basis. Vivian's claim that, "[Brooke] has been fully adhering

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to the custody schedule since this school semester began in January" is absurd. On custody transfer days, Brooke is supposed to go to Kirk's house after school. Instead, Brooke goes to Vivian's house where she eats meals, changes clothes for dance, changes clothes after dance, showers, studies, socializes, etc. Not until sometime between 11:00 p.m. and midnight that night she will go to Kirk's home. Brooke gets up the next morning, eats a bowl of cereal, and leaves. Brooke will not return until sometime between 11:00 p.m. that night and midnight. Brooke will continue with this schedule until custody transfers back to Vivian. This is not "fully adhering to the custody schedule." Since the medical billing issue in July of 2015 and through the present, all of Brooke's conduct has been consistent with all of her statements to Dr. Ali and Kirk that she hates Kirk, does not love Kirk, and does not want a relationship with Kirk. Brooke's conduct during this entire time period is directly at odds with Vivian's and Brooke's assertions to Dr. Paglini that Brooke loves Kirk and wants a relationship with him.

Paragraph 28 The entire paragraph is replete with comment, argument, hearsay and is without any personal knowledge.

Response: Vivian continues to make statements which she knows are not true and which she ought to realize others will readily see are not true as well. Vivian asserts that Brooke "enrolled in six College courses in addition to her high school class load, etc." Brooke was going to attend Nevada State High School where she would receive college credit for classes she took while in high school. Brooke did not take six college courses **in addition** to her high school class load. That was her high school class load. Vivian confirms what has been previously established in open court, Vivian has been debriefing Brooke after each session with Dr. Ali. Brooke did not tell Kirk she wanted to change her schedule prior to her departure right after the medical billing issue. Several weeks prior to Brooke's departure, Brooke told Kirk that after she was 18 years old, she wanted to live with Vivian full time. Kirk responded that after she was 18 years old she could certainly make that decision, however, Kirk added that he wished that Brooke would try to spend as much time with Rylee as possible after Brooke turned 18 years old. It has been irrefutably established that Brooke told Dr. Ali, both when she was

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14 years old and when she was 15 years old, that when she was 16 years old she would be empowered under the teenage discretion provision to live with Vivian full time. Whether Brooke told Dr. Ali the same thing after she was 16 years old is pretty much irrelevant. Consistent with what Brooke told Dr. Ali when she was 14 and 15 years old, Brooke confirmed to Dr. Paglini that she was utilizing the teenage discretion provision when left Kirk and began living with Vivian full time when she was 16 years old. (24)

Paragraph 29 The entire paragraph is replete with argument, comment, hearsay, and without any personal knowledge.

Response: Vivian, through argument, is trying to overcome the fact that Brooke told Dr. Ali she was going to utilize the teenage discretion provision when she was 16 years old to leave her Dad and live with Vivian full time and, after the fact, told Dr. Paglini that she did utilize the teenage discretion provision when she left her Dad and began living with Vivian full time. Vivian's arguments assume that a 16 year old child is otherwise empowered to unilaterally modify the Custody Order of the Court. She is not. Sixteen year old children are not empowered to unilaterally change their custody with their parents. As the Court has noted on a number of occasions, when the parents enter into a joint physical custody agreement, there is a presumption that arrangement is in the best interest of the children. Custody orders would mean nothing if the terms could be ignored every time a revengeful parent decided to wrongly empower their children into believing they were empowered to determine their own custody. Brooke made the decision she did because Vivian wrongly empowered Brooke under the teenage discretion provision and had been doing so since Brooke was 14 years old.

Paragraph 30 The entire paragraph is replete with argument and comment.

Response: After obtaining *de facto* custody of Brooke since August of 2015 as a direct consequence of her wrongful empowerment of Brooke under the teenage discretion provision, Vivian now argues that the deletion of the teenage discretion clause "will fundamentally change the parenting agreement. . ." Seriously. As noted by the Court, Vivian, by her wrongful empowerment of Brooke under the teenage discretion provision, has eviscerated the teenage

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discretion provision. Kirk never would have agreed to an agreement for 50/50 joint physical custody, if he thought he would lose that custody. Vivian has wrongfully obtained *de facto* primary custody of Brooke. Kirk has lost his bargained for custody of Brooke. Unable to appreciate the emotional suffering and damage she is inflicting upon her own children, Vivian does not want to lose her ability to obtain *de facto* custody of Rylee by continuing to wrongly empower Rylee under the teenage discretion provision and to put Rylee through the same chamber of horrors she put Brooke through. Vivian has had no qualms whatsoever in knowingly causing Brooke and Rylee to suffer in order for her to obtain *de facto* primary custody the last several years. Vivian has knowingly and needlessly caused Brooke to emotionally suffer, have unnecessary stress, too many emotional and tearful episodes all in Vivian's effort to exact revenge upon Kirk. Vivian now argues for the right to do the same thing to Rylee. If the best interests of the child mean anything at all, the teenage discretion provision will be nullified to prevent this from happening again. Brooke and Rylee have suffered enough.

Paragraph 31 The main paragraph is replete with comment, argument, general conclusions, and lay opinion.

Response: There is no "relentless onslaught of disparagement." There is absolutely no evidence of a "relentless onslaught of disparagement." There is no storm caused by Kirk to be weathered. Brooke left Kirk. Brooke hates Kirk. Brooke does not want a relationship with Kirk. Importantly, as noted by Dr. Paglini, "Brooke really does not offer evidence of her father's bad character." (51) Vivian's baseless assertions are patently untenable. Vivian's wrongful empowerment of Brooke under the teenage discretion provision coupled with her alienation of Kirk, including inciting Brooke with the medical billing issue, is why Brooke is living full time with Vivian. Vivian's overt efforts to alienate Kirk from Brooke have been well chronicled throughout this litigation. *See* Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 6-24. There is a direct logical common sense connection between Vivian's wrongful empowerment of Brooke and Vivian's alienation of Kirk from Brooke and the fact that Vivian obtained *de facto* primary custody of Brooke. There is absolutely no such

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A.App. 2590

nexus or connection between Vivian's conclusory, not fact based, arguments of alleged "continuous" or "relentless onslaught of disparagement" by Kirk and the fact that Vivian has obtained *de facto* custody of Brooke. Respectfully, no one of sound mind would ever believe that Kirk, Tahnee and Whitney are so stupid that they continuously bad mouth Vivian to such an extent that Brooke now hates all three of them and has nothing to do with them. No one of sound mind, who knows Kirk, would believe that he would intentionally cause Brooke and Rylee to emotionally suffer by continuously denigrating Vivian. Kirk would never be willing to throw Brooke and Rylee under the bus to obtain *de facto* primary custody. Kirk has too much love, empathy, and compassion for Brooke and Rylee to intentionally cause them to emotionally suffer. Dr. Paglini noted that Kirk loves Brooke very much and is doing everything he can to have a relationship with Brooke and Rylee. (51,48) Tahnee and Whitney both love Brooke and Rylee very much. It was because Brooke was distancing herself from Tahnee that Tahnee, unfortunately, broached the subject of the divorce with Brooke – not the other way around.

It is ironic that Vivian sets forth the quotations she does. If Vivian would only take them to heart. It would be so much better if Brooke was not so callously manipulated and fully enmeshed in Vivian's agenda of revenge and hate.

Paragraph 32 The entire paragraph is argument, comment, hearsay, and without any personal knowledge.

Response: It should be noted that Vivian claims an inordinate amount of detailed knowledge of Brooke's testimony, which was out of her presence. Again, baseless allegations that Kirk has "continuously denigrated" Vivian are false and have no basis in truth whatsoever.

Paragraph 33 The entire paragraph is replete with argument, comment, general conclusions, hearsay, and without any personal knowledge.

Response: The deterioration in Kirk and Brooke's relationship was caused by Vivian's wrongful empowerment of Brooke under the teenage discretion provision, Vivian's alienation of Kirk from Brooke since soon after the filing of the motion for primary custody in September

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of 2011, including the medical billing issue. Vivian is desperately trying to create a record that does not exist. The record that does exist includes Vivian's wrongful empowerment of Brooke and Vivian's incitement of Brooke with the medical billing issue. There is no evidence whatsoever that Kirk has ever told Brooke and Rylee that Vivian is "an evil sick person." None whatsoever. The only documents Tahnee and Whitney have seen in this case is their own, individual, affidavit. None of the children, including the adult children, have ever seen Kirk's January 4, 2010 letter to Dr. Roitman, Kirk's affidavit, dated June 9, 2011, or any other document filed in this case. Vivian is attempting to take excerpts from entries, which were made in 2010, and have this Court assume that merely because Kirk wrote these things down during 2010, he must have been telling all five children the same thing since that time. This argument is simply not true and is inconsistent with the known facts in the case.

Paragraph 34 The entire paragraph is argument, comment, lay opinion, hearsay, and without any personal knowledge.

Response: Kirk has not undermined the system. Vivian has undermined the system again and again. As the Court is well aware, when Brooke turned 14 years old, Vivian had her convinced she was empowered under the teenage discretion provision to choose to leave Kirk, live with Vivian full time, and leave Rylee for one-half the time. Kirk was forced to file a motion and the Court was unequivocal in telling Vivian that was not how it works – the child is not empowered to modify custody. Undeterred, as confirmed by Dr. Ali's testimony, Vivian, when Brooke was still only 14 years old, told Brooke she would be empowered, under the teenage discretion provision, when she was 16 years old to leave her Dad, live with Vivian full time, and leave Rylee for one-half the time. Dr. Ali testified that Brooke told him the same thing when she was 15 years old. And guess what, soon after Brooke turned 16 years old and motivated to hate Kirk with the medical billing issue, Brooke left her Dad, moved in with Vivian full time, and left Rylee for one-half the time. Under these known facts, Vivian cries that Kirk has "undermined the system." Enough. As a consequence of this outrageous behavior by Vivian, she has enjoyed *defacto* primary custody of Brooke since August of 2015. As a consequence of

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Vivian's violations, Kirk has been deprived of the 50/50 joint physical custody under the terms of the Custody Order. Vivian, through her ruthless manipulation of Brooke and the needless emotional suffering she has caused Brooke and Rylee to incur, has caused Kirk to lose 221 custody days with Brooke. Vivian now has the temerity to argue that something must be done about Kirk's behavior.

Vivian destroyed the relationship between Brooke and her Dad. It is obvious Vivian intends to destroy the relationship between Rylee and her Dad. Vivian has already started Rylee through the same chamber of horrors she took Brooke. Dr. Paglini, in his letter to the Court, dated May 31, 2016, wrote that "**[Brooke's] 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." (Emphasis added). Respectfully, Rylee's relationship with her father is also extremely important. Unless the teenage discretion provision is nullified, there should be no doubt in anyone's mind that Vivian will once again use the teenage discretion provision to destroy the extremely important relationship between Rylee and Kirk. The Court is respectfully urged to nullify the teenage discretion provision to prevent any further suffering. It is, unquestionably, in Rylee's best interest for the Court to do so.

DATED this 17th day of February, 2017.

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
filed in Support of 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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Kirk Harrison, being first duly sworn, deposes and says:

1. That I am the Plaintiff in this action.

2. That the facts set forth in the foregoing 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 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.

Dated this 17th day of February, 2017.

Kirk Harrison

State of Nevada
County of Clark

Subscribed and sworn before me
this 17th day of February, 2017.

A. L. RAY
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-30-2020
Certificate No: 04-92192-1

Notary Public

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROSS 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 2/17/17

Signature of Party or Preparer _____

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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: ~~March 16, 2017~~ 04/04/17
Time of Hearing: ~~10:00 p.m.~~ 10:00am

ORAL ARGUMENT REQUESTED:

YES XX NO ___

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

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 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.

This Opposition 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 6th day of March, 2017.

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. STATEMENT OF FACTS

Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing was filed on December 29, 2016 and served on December 30, 2016. The hearing on the motion was scheduled for February 1, 2017. Pursuant to EDCR 2.20(e), Vivian was required to file her opposition on or before January 20, 2017. Vivian failed to do so.

During the hearing on January 18, 2017, Vivian *informed* the Court that she would file her opposition on January 25, 2017. Aware that Vivian generally files oppositions late in the day and desirous of providing a reply to the Court no later than the morning of January 31, 2017 – just one day prior to the hearing – there were only two judicial days to prepare a reply. Therefore, a draft "reply" was prepared in anticipation of receiving Vivian's opposition on January 25, 2017. However, Vivian failed to file her Opposition on January 25, 2017. Vivian failed to file her Opposition until January 31, 2017, just one day prior to the hearing on the Motion.

As a foreseeable consequence of Vivian's eleventh hour filing, Kirk was relegated to filing a "Reply" within a couple of hours of the filing of Vivian's Opposition, which, understandably, did not address any of the actual points made in Vivian's Opposition, but

only the anticipated arguments. EDCR 2.20((h) provides, "A moving party may file a reply memorandum of points and authorities not later than 5 days before the matter is set for hearing. Obviously, as a consequence of Vivian failing to file her Opposition until 1 day before the matter was set for hearing, Kirk was precluded from filing a his Reply 5 days before the matter was set for a hearing. As a foreseeable consequence of the filing of Vivian's extremely tardy Opposition – the day before the hearing on the matter – in order to respond to the specific points in Vivian's late filed Opposition, Kirk filed a Supplement to the Reply on February 13, 2017.

Kirk would have been able to file a timely Reply, which responded to the specific points contained in Vivian's Opposition, had Vivian filed her Opposition in accordance with EDCR 2.20(e). But for Vivian's violation of EDCR 2.20(e), there would not have been a need to file a Supplement to the Reply. Kirk would have been able to file a reply, which responded to the specific points contained in Vivian's Opposition, on January 31, 2017 – prior to the hearing on February 1, 2017 – if Vivian would have filed her Opposition on January 25, 2017, as Vivian represented to the Court. Despite these undeniable facts, Vivian has moved to strike the Supplement under EDCR 2.20(I).

II. ARGUMENT

A. Vivian is Equitably Estopped from Moving to Strike Kirk's Supplement to His Reply

1. Vivian is Equitably Estopped from Moving to Strike Kirk's Supplement to His Reply As She Failed to File Her Opposition Until the Day Before the Hearing on the Matter

Despite knowing her Opposition had to be filed on or before January 20, 2017, in accordance with EDCR 2.20(e), Vivian failed to file her Opposition until January 31, 2017 – the day before the matter was on for hearing. Vivian, by making such an extremely violative and late filing, knowingly deprived Kirk of his right under the rules to file a Reply in response to the points made in her Opposition, in accordance with EDCR 2.20(h). Vivian is therefore equitably estopped from asserting any violation under EDCR 2.20(I) because of her conduct. *Nevada State Bank v. Jamison Family*

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Partnership, 106 Nev. 792, 801 P.2d 1377, 1382 (1990) ("Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, they should not be allowed to assert because of their conduct.")

Under EDCR 2.20(h), Kirk is entitled to file a Reply to the points made in Vivian's Opposition. Vivian's conduct in failing to file her Opposition until one day before the hearing on the matter is what necessitated the filing of the Supplement to the Reply. Vivian is equitably estopped from complaining the response was filed late or in violation of EDCR 2.20(I).

2. Vivian Has an Undeniable History in this Case of Blatantly Disregarding the Filing Requirements of EDCR 2.20 by Filing Extremely Late Oppositions and Then Arguing that Kirk Should be Deprived of a Right to File a Reply

From the inception of this litigation and continuing through this current motion to strike, Vivian has ignored the filing requirements of EDCR 2.20 and has taken as long as she arbitrarily and cavalierly wishes to file opposing points and authorities and counter motions. Remarkably, after knowingly violating EDCR 2.20 in such manner, Vivian then tries to gain a further unfair advantage over Kirk, by inequitably trying to either void Kirk's right to file a Reply – as she has done in this instance – or unreasonably limit the time within which Kirk has to respond.

For example, Kirk filed and served his motion re temporary custody on September 14, 2011. Vivian took until October 28, 2011 (**44 days later**) to file her 56 page opposition and counter motion, to Kirk's 48 page motion. Yet, Vivian turned right around during the hearing on December 5, 2011, and vehemently argued to this Court that the hearing should go forward without affording Kirk an opportunity to file a Reply regarding his motion for temporary custody or an Opposition to her voluminous counter motion regarding temporary custody. Hearing Transcript 12.5.11, p. 8, l. 13-22.

Vivian's conduct in ignoring the filing requirements of EDCR 2.20 and then trying to prejudice Kirk's right to file a Reply has continued throughout this case. Kirk's Opposition and countermotions regarding attorney's fees was filed and provided to

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Vivian's attorneys on May 28, 2013. However, Vivian failed to file her Reply and Opposition to Kirk's counter motions until September 12, 2013 (**107 days later**). Similar to when Vivian tried to deprive Kirk of an opportunity to file an Opposition and Reply in connection with briefing the temporary physical custody issues, Vivian, after taking 107 days, attempted to limit Kirk to just 8 calendar days to respond to her 77 page memorandum of points and authorities. See Plaintiff's Reply Brief in support of Plaintiff's Counter motions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief, filed 10.21.13, p. 27, l. 13-28; p. 28, l. 1-12.

Vivian's current Motion to Strike is simply the latest inequitable attempt by Vivian to deprive Kirk of his right to reasonably respond to the specific points made in Vivian's Opposition. By failing to file her Opposition until the day before the hearing, Vivian deprived Kirk of his right to file a reply in response to the specific points made in her opposition, in accordance with EDCR 2.20. Vivian's late filing is what necessitated the filing of Kirk's Supplement to his Reply. If Vivian would have filed her Opposition when she was required to file it under EDCR 2.20(e), Kirk would have been able to timely file a reply in response to the specific points made in her Opposition. Under these circumstances, it would be unjustified and inequitable to deprive Kirk of his right to file a response to the actual points made in Vivian's Opposition.

DATED this 6th day of March, 2017.

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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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2017, I caused to be served the ***Plaintiff's Opposition to Defendant's Motion to Strike 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*** 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
KAINEN LAW GROUP, PLLC

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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK HARRISON
Plaintiff/Petitioner

v.

VIVIAN HARRISON
Defendant/Respondent

Case No. D-443611-D

Dept. Q

MOTION/OPPOSITION FEE INFORMATION SHEET

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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-

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- ☐ 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) _____.

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☐ **$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 3/6/17

Signature of Party or Preparer [signature]

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CLERK OF THE COURT

OPP
RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Pkwy – Suite 206
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Attorney for Defendant

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 DIVISION

DEFENDANT'S OPPOSITION TO MOTION TO STRIKE; COUNTERMOTION FOR SANCTIONS

DATE OF HEARING: March 21, 2017
TIME OF HEARING: 10:00 a.m.

COMES NOW Defendant VIVIAN MARIE LEE HARRISON ("Vivian") and submits the following points and authorities in Opposition to Defendant's Motion to Strike.

I.

INTRODUCTION

Kirk's Motion to Strike is a disguised supplemental motion to address his arguments, now brought for the sixth time, to strike portions of the parties' stipulated parenting plan. Ironically, the legal principles upon which he bases his Motion are rules about the form of affidavits that that he repeatedly violates in his own affidavit attached to the Motion. More specifically, his motion is supported by an Affidavit that claims that he attests to the facts contained the Motion to Strike, but it is impossible to ferret out what content he is identifying as fact, and what portion is argument, innuendo, and (as in all his pleadings) insults leveled at Vivian. Because the Motion violates its own premise, the Court should deny it.[1]

II.

PLAINTIFF'S MOTION TO STRIKE FOR INCLUSION OF IMPROPER MATERIAL IN VIVIAN'S AFFIDAVIT IS COMPOSED OF ARGUMENT AND MATERIAL ALL VIOLATIVE OF THE LAW IT CITES

Kirk's Motion includes (by his filing of a blanket affidavit claiming the "facts" contained in the Motion are "true", Motion at page 31) statements that are not facts, not evidentiary matter (hearsay), general conclusions, argument, facts not admissible, affiant

[1] Kirk's Motion relies on technical arguments, but is not even written in the 14 point font required by EDCR 5.503(c)(1) a rule in place (from January 27, 2017) at the time he filed his motion on February 17, 2017.

not competent, opinion by lay witness and comment, all things he claims cannot be in a declaration of or affidavit. *See* EDCR 2.21, NRCP 56(e) and NRS 50.265.

To add even a greater level of hypocrisy, his extensive quotes of his other affidavits in this case (at page 9 -13 of his motion) demonstrate that those too were replete with non-factual argument, conjecture, etc. *Id.*

Vivian submits that Kirk's intent is always to have the last word to the Court, spin the evidence presented to the Court, bankrupt Vivian by filing massive, verbose and repetitive pleadings that cost him no more that his own time, and submit *ad nauseam* his contentions that are belied by the expert and witness testimony presented in this case. Both Dr. Paglini and Brooke have testified to specific instances of Kirk attempting to alienate both Brooke and Rylee. Neither suggested that Vivian had anything to do with Brooke's actions toward her father. Kirk, however, may be right in one regard: This is a case of alienation – he has alienated, and continues to alienate his daughters by his own words and actions.

Vivian respectfully requests that the Court do something to stop the slew of Kirk's repetitive arguments that have inundated this matter. Vivian requests sanctions under NRS 7.60

Dated this 13th day of March, 2017.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
2470 St. Rose Pkwy – Suite 206
Henderson, Nevada 89074
Attorneys 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 OPPOSITION TO MOTION TO STRIKE; COUNTERMOTION FOR SANCTIONS" on this 15th of March, 2017, 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 SERVICE: I transmitted a copy of the foregoing document this date via the Eighth Judicial District Court's electronic filing system

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

Edward L. Kainen, Esq.
THE KAINEN LAW GROUP
3303 Novat Street, Suite 200
Las Vegas NV 89129

An employee of Radford J. Smith, Chartered

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. G

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: Defendant Date 3/23/17

Signature of Party or Preparer _____

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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 matter comes before this Court on Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016) (hereinafter referred to as Plaintiff's "Motion"). This Court also reviewed and considered Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions (Jan. 31, 2017) (hereinafter referred to as Defendant's "Opposition"), and Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Jan. 31, 2017) (hereinafter referred to as Plaintiff's "Reply").

The only remaining issue to be determined by this Court regarding Plaintiff's Motion is Plaintiff's request that this Court strike the "teenage discretion" provision of the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Moreover, this Court took under advisement the issue of attorney's fees associated with Plaintiff's Motion and the underlying evidentiary proceedings that concluded on February 1, 2017. These issues are ancillary to the issues currently on appeal. Specifically, although the teenage discretion provision was the topic of a prior appeal, this provision is not the subject of the current appeal.

Due to specific factual assertions raised in Plaintiff's Reply, this Court expressly authorized and directed Defendant on February 1, 2017 to submit a responsive affidavit to these factual aspects. Specifically, the Court gave the following specific direction:

> Here's what I'm inclined to do. With respect to the Motion in regards to the teenage discretion provision, I am going to take that under advisement and issue a written decision. . . .What I'm looking for, given the fact that there are some very specific factual allegations *about what happened in the past week with respect to Rylee*, I want an affidavit submitted on Defendant's behalf ***with respect to those specific items of this past week*** in regards to the teenage discretion provision.

February 1, 2017 Videotape of hearing at 17:46 – 17:47 (emphasis supplied).

Defendant thereafter filed Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions (Feb. 13, 2017) (hereinafter referred to as Defendant's "Supplemental Declaration"). This Court did not authorize the filing of any additional papers, nor did either party seek leave to file any additional papers associated with the remaining issues before the Court.[1]

---

[1]To say that the filing of papers in this matter has been extreme would be a gross understatement – particularly after the entry of the parties' Decree of Divorce (Oct. 31, 2013). Since the initiation of this matter with the filing of the Complaint for Divorce (Mar. 18, 2011), 30 motions have been filed. This does not include counter-motions

Defendant's Supplemental Declaration exceeded the scope of the Court's direction, which in turn spawned more filings and litigation. Defendant presciently predicted in her Supplemental Declaration that her statements "will only continue to fuel Kirk's campaign to denigrate me, and to engage me and our children in expensive, unproductive, and damaging litigation." Thus, it should not have come as a surprise to Defendant that her Supplemental Declaration that went well beyond what the Court had authorized, created a deluge of more filings. Since the February 1, 2017 proceedings, the following additional fugitive papers have been filed:

(1) Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Feb. 13, 2017) (hereinafter referred to as "Plaintiff's Supplement");

(2) 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 (Feb. 15, 2017) (hereinafter referred to as "Defendant's Motion to Strike");

(3) 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 (Mar. 6, 2017) (hereinafter referred to as "Plaintiff's Opposition to Motion to Strike"); and

---

filed by both parties. 20 of these motions were filed by Plaintiff. Since the entry of the parties' Decree of Divorce (Oct. 31, 2013), 17 motions have been filed, 14 by the Plaintiff. Of the three post-Decree of Divorce (Oct. 31, 2013) motions filed by Defendant, one of the motions was Defendant's Request to File Supplemental Information in Support of Motion for Attorney's Fees; in the Alternative, Supplemental Motion for Attorney's Fees (Jan. 15, 2014). On average, Plaintiff has filed a motion once every three months since the entry of the Decree of Divorce (Oct. 31, 2013).

(4) Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motion Filed December 29, 2016; Reply to Supplemental Declaration, and Opposition to Request for Sanctions (Feb. 17, 2017) (hereinafter referred to as "Plaintiff's Motion to Strike").

Defendant's Motion to Strike is set on this Court's March 16, 2017 Chamber Calendar. Plaintiff's Opposition to Motion to Strike is set for a hearing on this Court's calendar on April 4, 2017, at 10:00 a.m. Plaintiff's Motion to Strike is set for a hearing on this Court's calendar on March 21, 2017, at 10:00 a.m. These four papers are unnecessary and superfluous to the Court's determination and should be stricken from the record. Moreover, the following paragraphs of Defendant's Supplemental Declaration should be stricken as exceeding the scope of the Court's direction: 3 through 13, 19 through 22, 27 through 29, and 31 through 34. The hearings associated with the papers referenced above should be vacated.

The teenage discretion provision at issue is set forth in the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). This detailed provision has been the subject of frequent discussion and debate in this matter, as well as repeated requests by Plaintiff to eliminate the provision entirely. This Court has noted at prior hearings that, absent an agreement, the Court *generally* will not entertain teenage discretion or the appointment of a parenting coordinator. However, this Court also *generally* defers to the stipulated decisions of two fit parents. Because fit parents should be presumed to be acting in the best interest of their children, deference should be afforded to allow parents the ability to parent their children without government interference. In this regard, two fit parents have the decision-making right to stipulate

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

to granting teenage discretion to their children and appointing a parenting coordinator. The Nevada Supreme Court affirmed this Court's refusal to eliminate both the teenage discretion provision and the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). *Harrison v. Harrison*, 132 Nev. Adv. Op. No. 56 (2016).

Given the frequency at which the issue of teenage discretion has been litigated, the temptation exists for this Court to simply eliminate this provision. Indeed, the Court questioned the Defendant at the February 1, 2017 hearing as to whether it might be worth eliminating teenage discretion to minimize the seemingly endless litigation. This Court notes that it does not appear that the similarly challenged Order for Appointment of Parenting Coordinator (Oct. 29, 2013) is being followed by the parties. Although the parenting coordinator order is not the subject of Plaintiff's Motion (presumably because there is no parenting coordinator), this Court is not inclined to entertain a request to eliminate the teenage discretion provision when the parties are not abiding by the terms of the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). The parties' daughter, Rylee, attained the age of 14 on January 24, 2017, thus triggering the teenage discretion provision. At the time Plaintiff filed his Motion, Rylee had not attained the age upon which the teenage discretion provision is triggered. The facts cited by Plaintiff in his papers are not sufficient for this Court to yet again revisit or strike this provision and his request should be denied.

With respect to the issue of attorney's fees, Defendant is entitled to an award of fees pursuant to EDCR 7.60 and NRS 18.010 in regards to Plaintiff's Motion. This issue has been re-litigated and re-litigated. The Nevada Supreme Court has upheld the

teenage discretion provision. Defendant is entitled to an award of attorney's fees for the time spent in responding to Plaintiff's Motion. The amount should be mitigated by her failure to abide by this Court's direction with the filing of her Supplemental Declaration (i.e., the time spent in preparing her Supplemental Declaration should not be considered by the Court).

This Court has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), with the exception of work actually performed. Thus, Defendant should file and serve an appropriate memorandum pursuant to *Brunzell* to enable the Court to ascertain the work actually performed. The Defendant should thereafter submit a proposed Order for fees (leaving a blank therein). The *Brunzell* memorandum should be filed by March 29, 2017. The *Brunzell* memorandum should be limited to the time devoted to responding to Plaintiff's Motion. Plaintiff may file and serve a response to Defendant's memorandum on or before April 12, 2017. Plaintiff's response should be limited to addressing Defendant's assertions regarding the time spent and fees associated with her *Brunzell* memorandum.

With respect to the evidentiary proceedings, this Court is not inclined to award either party with attorney's fees. Although the ultimate relief sought by Plaintiff was not granted, this Court is not inclined to reward Defendant with an award of attorney's fees when Plaintiff has lost custodial time with the parties' daughter, Brooke. The evidence demonstrated that Defendant was not as proactive as she could have been with respect to the scheduling of counseling appointments for Brooke (choosing to leave such scheduling almost entirely up to Brooke). The Court ultimately ordered the

continuation of counseling through Dr. Ali. Each party should bear their own attorney's fees and costs.

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion is DENIED.

It is further ORDERED that Defendant's Motion to Strike, Plaintiff's Motion to Strike, Plaintiff's Opposition to Defendant's Motion to Strike, and Plaintiff's Supplement are STRICKEN.

It is further ORDERED that paragraphs 3 through 13, 19 through 22, 27 through 29, and 31 through 34 are stricken from Defendant's Supplemental Declaration.

It is further ORDERED that Defendant shall submit a memorandum of fees and costs pursuant to *Brunzell v.Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), by March 29, 2017. It is further ORDERED that Defendant's *Brunzell* memorandum shall be limited to the fees associated with her response to Plaintiff's Motion and shall not re-argue the issues addressed herein (including the award of fees). Rather, it shall provide the Court with information pertaining to the amount of time actually spent in responding to Plaintiff's Motion. It is further ORDERED that Plaintiff may submit a response thereto by April 12, 2017. It is further ORDERED that Plaintiff's response shall be limited to the fees identified in Defendant's *Brunzell* memorandum.

. . .

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

A.App. 2615

It is further ORDERED that the hearings scheduled for March 21, 2017 at 10:00 a.m., and April 4, 2017 at 10:00 a.m. are VACATED.

DATED this 15th day of March, 2017.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
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

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 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
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

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The only remaining issue to be determined by this Court regarding Plaintiff's Motion is Plaintiff's request that this Court strike the "teenage discretion" provision of the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Moreover, this Court took under advisement the issue of attorney's fees associated with Plaintiff's Motion and the underlying evidentiary proceedings that concluded on February 1, 2017. These issues are ancillary to the issues currently on appeal. Specifically, although the teenage discretion provision was the topic of a prior appeal, this provision is not the subject of the current appeal.

Due to specific factual assertions raised in Plaintiff's Reply, this Court expressly authorized and directed Defendant on February 1, 2017 to submit a responsive affidavit to these factual aspects. Specifically, the Court gave the following specific direction:

> Here's what I'm inclined to do. With respect to the Motion in regards to the teenage discretion provision, I am going to take that under advisement and issue a written decision. . . .What I'm looking for, given the fact that there are some very specific factual allegations *about what happened in the past week with respect to Rylee*, I want an affidavit submitted on Defendant's behalf ***with respect to those specific items of this past week*** in regards to the teenage discretion provision.

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[1]To say that the filing of papers in this matter has been extreme would be a gross understatement – particularly after the entry of the parties' Decree of Divorce (Oct. 31, 2013). Since the initiation of this matter with the filing of the Complaint for Divorce (Mar. 18, 2011), 30 motions have been filed. This does not include counter-motions

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filed by both parties. 20 of these motions were filed by Plaintiff. Since the entry of the parties' Decree of Divorce (Oct. 31, 2013), 17 motions have been filed, 14 by the Plaintiff. Of the three post-Decree of Divorce (Oct. 31, 2013) motions filed by Defendant, one of the motions was Defendant's Request to File Supplemental Information in Support of Motion for Attorney's Fees; in the Alternative, Supplemental Motion for Attorney's Fees (Jan. 15, 2014). On average, Plaintiff has filed a motion once every three months since the entry of the Decree of Divorce (Oct. 31, 2013).

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The teenage discretion provision at issue is set forth in the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). This detailed provision has been the subject of frequent discussion and debate in this matter, as well as repeated requests by Plaintiff to eliminate the provision entirely. This Court has noted at prior hearings that, absent an agreement, the Court *generally* will not entertain teenage discretion or the appointment of a parenting coordinator. However, this Court also *generally* defers to the stipulated decisions of two fit parents. Because fit parents should be presumed to be acting in the best interest of their children, deference should be afforded to allow parents the ability to parent their children without government interference. In this regard, two fit parents have the decision-making right to stipulate

to granting teenage discretion to their children and appointing a parenting coordinator. The Nevada Supreme Court affirmed this Court's refusal to eliminate both the teenage discretion provision and the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). *Harrison v. Harrison*, 132 Nev. Adv. Op. No. 56 (2016).

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With respect to the issue of attorney's fees, Defendant is entitled to an award of fees pursuant to EDCR 7.60 and NRS 18.010 in regards to Plaintiff's Motion. This issue has been re-litigated and re-litigated. The Nevada Supreme Court has upheld the

teenage discretion provision. Defendant is entitled to an award of attorney's fees for the time spent in responding to Plaintiff's Motion. The amount should be mitigated by her failure to abide by this Court's direction with the filing of her Supplemental Declaration (i.e., the time spent in preparing her Supplemental Declaration should not be considered by the Court).

This Court has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), with the exception of work actually performed. Thus, Defendant should file and serve an appropriate memorandum pursuant to *Brunzell* to enable the Court to ascertain the work actually performed. The Defendant should thereafter submit a proposed Order for fees (leaving a blank therein). The *Brunzell* memorandum should be filed by March 29, 2017. The *Brunzell* memorandum should be limited to the time devoted to responding to Plaintiff's Motion. Plaintiff may file and serve a response to Defendant's memorandum on or before April 12, 2017. Plaintiff's response should be limited to addressing Defendant's assertions regarding the time spent and fees associated with her *Brunzell* memorandum.

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continuation of counseling through Dr. Ali. Each party should bear their own attorney's fees and costs.

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion is DENIED.

It is further ORDERED that Defendant's Motion to Strike, Plaintiff's Motion to Strike, Plaintiff's Opposition to Defendant's Motion to Strike, and Plaintiff's Supplement are STRICKEN.

It is further ORDERED that paragraphs 3 through 13, 19 through 22, 27 through 29, and 31 through 34 are stricken from Defendant's Supplemental Declaration.

It is further ORDERED that Defendant shall submit a memorandum of fees and costs pursuant to *Brunzell v.Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), by March 29, 2017. It is further ORDERED that Defendant's *Brunzell* memorandum shall be limited to the fees associated with her response to Plaintiff's Motion and shall not re-argue the issues addressed herein (including the award of fees). Rather, it shall provide the Court with information pertaining to the amount of time actually spent in responding to Plaintiff's Motion. It is further ORDERED that Plaintiff may submit a response thereto by April 12, 2017. It is further ORDERED that Plaintiff's response shall be limited to the fees identified in Defendant's *Brunzell* memorandum.

. . .

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

It is further ORDERED that the hearings scheduled for March 21, 2017 at 10:00 a.m., and April 4, 2017 at 10:00 a.m. are VACATED.

DATED this 15th day of March, 2017.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

MEMO
RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Pkwy – Suite 206
Henderson, Nevada 89074
T: 702-990-6448
F: 702-990-6456
rsmith@radfordsmith.com
Attorney for Defendant

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 DIVISION

MEMORANDUM OF ATTORNEY'S FEES AND COSTS PURSUANT TO ORDER ENTERED ON MARCH 16, 2017

COMES NOW, Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), by and through her attorneys Radford J. Smith, Esq. and Garima Varshney, Esq. of Radford J. Smith, Chartered, and submits the following Memorandum of Attorney's Fees and Costs Pursuant to the Court's Order entered on March 16, 2017 directing Vivian to submit a *Brunzell* memorandum for attorney's fees sand costs incurred by Vivian to respond to Plaintiff, KIRK ROSS HARRISON's ("Kirk") Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary hearing filed on

A.App. 2628

December 29, 2016, Vivian's Opposition to Kirk's Motion and Countermotion for Sanctions filed on January 31, 2017 and Kirk's Reply to Vivian's Opposition and Countermotion filed on January 31, 2017.

In Order entered on March 16, 2017, the Court stated:

> This Court has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), ***with the exception of the work actually performed***. Thus, Defendant should file and serve an appropriate memorandum pursuant to *Brunzell* to enable the Court to ascertain the ***work actually performed.***
> [Emphasis added]

See Order entered on March 16, 2017, page 6.

Therefore, per the Court's direction, this Memorandum is limited to "work actually performed" factor of *Brunzell*[1] (the skill, time and attention given to the work). Vivian's counsel submits that the work done in this case was performed in a competent and professional matter. The fees incurred were commensurate to the work performed. Attached here to as **Exhibits "A"** are the complete redacted invoices for the above referenced review of Motion, preparing the Opposition and review of Reply. Based on the foregoing, Vivian requests that Vivian be awarded **$2,795** (including 1.5 hours ($250) it took to prepare this Memorandum of Fees and Costs) in attorney's fees and costs incurred by her in this matter.

. . .

---

[1] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31, 33 (1969).

Also included herein is Unsworn Declaration of undersigned counsel, Garima Varshney, Esq.

Dated this 28th day of March, 2017.

RADFORD J. SMITH, CHARTERED

Garima Varshney

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 Plaintiff

DECLARATION GARIMA VARSHNEY, ESQ.

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

GARIMA VARSHNEY, ESQ., states as follows:

1. I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

2. I am an attorney duly licensed to practice law in all courts in the State of Nevada. My firm, Radford J. Smith, Chartered, is counsel for Plaintiff VIVIAN ROUHANI in the within action.

3. I have prepared and reviewed the foregoing Memorandum of Attorney's Fees and Costs. The facts contained therein are true and correct, and within my personal knowledge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Garima Varshney

GARIMA VARSHNEY, ESQ.

A.App. 2631

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

MEMORANDUM OF ATTORNEY'S FEES AND COSTS

on this 28th day of March, 2017, 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: I transmitted a copy of the foregoing document this date via the Eighth Judicial District Court's electronic filing system;

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

Edward L. Kainen, Esq.
THE KAINEN LAW GROUP
3303 Novat Street, Suite 200
Las Vegas NV 89129
Attorney for Plaintiff

An employee of Radford J. Smith, Chartered

EXHIBIT "A"

Date	Staff	Description	Dur/Qty	Amount
Vivian Harrison				
Harrison adv. Harrison				
1/03/2017	RJS	Review Motion for New Expert Recommendation and Ex Parte	0.5	$225
		Motion for an Order Shortening Time		
1/03/2017	RJS	Review Text from client re Brookes Punishment	0.1	$45.00
1/03/2017	RJS	Review Order from 11-7-16 Hearing	0.1	$45.00
1/04/2017	RJS	Email to client; Phone conference with client	0.2	$90.00
1/04/2017	RJS	Prepare draft Opposition to Motion for New Expert Report	1.4	$630.00
1/05/2017	RJS	Phone conference with V. Harrison; Draft of email to E Kainen	0.4	$180.00
		re resolution of motions		
1/09/2017	RJS	Review Minutes from 1-6-17 Hearing	0.1	$45.00
1/09/2017	GV	Review Order filed by the Court	0.1	$25.00
1/10/2017	RJS	Phone conference with client	0.2	$90.00
1/13/2017	RJS	Review letter from E. Kainen	0.1	$45.00
1/13/2017	RJS	Review email from E. Kainen; Email to E. Kainen	0.1	$45.00
1/20/2017	RJS	Review email from client; Email to client	0.2	$90.00
1/26/2017	RJS	Preparation of Opposition to Motion to Modify Teenage Discretion Provision	0.5	$225.00
1/27/2017	RJS	Emails to client	0.2	$90.00
1/29/2017	RJS	Revise draft Opposition to Motion filed 1/3/17	1.5	$675.00
Total				$2,545

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CLERK OF THE COURT

RESP
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Nevada Bar No. 5029
KAINEN LAW GROUP, PLLC
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Nevada Bar No. 1424
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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

PLAINTIFF'S RESPONSE TO DEFENDANT'S MEMORANDUM OF ATTORNEY'S FEES AND COSTS PURSUANT TO ORDER ENTERED ON MARCH 15, 2017

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 responds to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order entered on March 15, 2017.

. . .

. . .

This response is in accordance with the Court's Order, filed March 15, 2017, wherein the Court specifically ordered as follows: "It is further ORDERED that Plaintiff may submit a response thereto by April 12, 2017. It is further ORDERED that Plaintiff's response shall be limited to the fees identified in Defendant's *Brunzell* memorandum.

DATED this 10th day of April, 2017.

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

KAINEN LAW GROUP, PLC
3303 Novat Street, Suite 200
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MEMORANDUM OF POINTS AND AUTHORITIES

The Court's Order, filed March 15, 2017, is unequivocal that only the fees incurred in preparation of Defendant's opposition to Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing ("Plaintiff's Motion") are allowed to be submitted by Defendant. More specifically, the Court ordered, "With respect to the issue of attorney's fees, Defendant is entitled to an award of fees pursuant to EDCR 7.60 and NRS 18.010 **in regards to Plaintiff's Motion**." Order, filed 3.16.17, p. 7, l. 26-27. (Emphasis added.) As there was no oral argument of Plaintiff's Motion, the only fees Defendant incurred "in regards to Plaintiff's Motion" were the fees incurred to prepare the opposition to the motion.

The only billing entries which appear to be incurred in connection with the preparation of the opposition are as follows:

1/03/17	Review Motion for New Expert Recommendation And Ex Parte Motion for an Order Shortening Time	.5	$225
1/04/17	Prepare draft Opposition to Motion for New Expert Report	1.4	$630.00
1/26/17	Preparation of Opposition to Modify Teenage		

		Discretion Provision[1]	.5	$225.00
1/29/17		Revise draft Opposition to Motion filed 1/3/17[2]	1.5	$675.00
				$1,755.00

The other billing entries submitted are clearly not "in regards to Plaintiff's Motion." For example, "Review Text from client re Brookes Punishment," "Review Minutes from 1-6-17 Hearing," "Draft of email to E Kainen re resolution of motions," "Review letter from E. Kainen," etc.

In addition, Defendant is also seeking an additional $250.00 to prepare the memorandum of fees and costs. These fees are clearly beyond the scope of the attorney's fees allowed by the Court's Order.

Based upon the fees identified in Defendant's *Brunzell* memorandum, Defendant should be awarded no more than $1,755.00.

DATED this 10th day of April, 2017.

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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[1] Plaintiff's Motion was for Dr. Paglini to make a new recommendation, including considering recommending nullifying the teenage discretion provision. Therefore, we assumed this time was spent in preparation of the opposition to Plaintiff's Motion.

[2] Plaintiff's Motion was filed December 29, 2016. However, for purposes of this response, we have assumed this entry is in connection with the preparation of the opposition to Plaintiff's Motion.

A.App. 2637

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2017, I caused to be served the ***Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017*** 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
KAINEN LAW GROUP, PLLC

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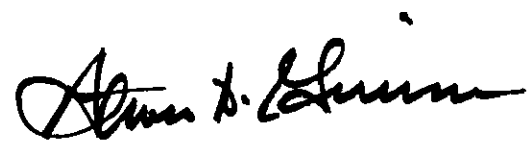

CLERK OF THE COURT

NOAS
EDWARD L. KAINEN, ESQ.
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Co-counsel for Plaintiff

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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: N/A
Time of Hearing: N/A

NOTICE OF APPEAL

Notice is hereby given that Plaintiff appeals to the Nevada Supreme Court from the Order, filed on March 15, 2017 (Notice of Entry of Order was filed on March 16, 2017), a copy of which is attached hereto as **Exhibit "1"**.

. . .

. . .

. . .

. . .

. . .

Plaintiff also appeals from all other rulings and orders made final and appealable by the foregoing.[1]

Dated this 14th day of April, 2017.

KAINEN LAW GROUP, PLLC

By: _____

EDWARD L. KAINEN, ESQ.
Nevada Bar No. 5029
ANDREW L. KYNASTON, ESQ.
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[1] There are other rulings by the District Court which are currently pending and this appeal will be supplemented as soon as a written order is entered.

A.App. 2640

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

ORDER

This matter comes before this Court on Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016) (hereinafter referred to as Plaintiff's "Motion"). This Court also reviewed and considered Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions (Jan. 31, 2017) (hereinafter referred to as Defendant's "Opposition"), and Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Jan. 31, 2017) (hereinafter referred to as Plaintiff's "Reply").

The only remaining issue to be determined by this Court regarding Plaintiff's Motion is Plaintiff's request that this Court strike the "teenage discretion" provision of the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012).

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Moreover, this Court took under advisement the issue of attorney's fees associated with Plaintiff's Motion and the underlying evidentiary proceedings that concluded on February 1, 2017. These issues are ancillary to the issues currently on appeal. Specifically, although the teenage discretion provision was the topic of a prior appeal, this provision is not the subject of the current appeal.

Due to specific factual assertions raised in Plaintiff's Reply, this Court expressly authorized and directed Defendant on February 1, 2017 to submit a responsive affidavit to these factual aspects. Specifically, the Court gave the following specific direction:

> Here's what I'm inclined to do. With respect to the Motion in regards to the teenage discretion provision, I am going to take that under advisement and issue a written decision. . . .What I'm looking for, given the fact that there are some very specific factual allegations *about what happened in the past week with respect to Rylee*, I want an affidavit submitted on Defendant's behalf ***with respect to those specific items of this past week*** in regards to the teenage discretion provision.

February 1, 2017 Videotape of hearing at 17:46 – 17:47 (emphasis supplied).

Defendant thereafter filed Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions (Feb. 13, 2017) (hereinafter referred to as Defendant's "Supplemental Declaration"). This Court did not authorize the filing of any additional papers, nor did either party seek leave to file any additional papers associated with the remaining issues before the Court.[1]

---

[1]To say that the filing of papers in this matter has been extreme would be a gross understatement – particularly after the entry of the parties' Decree of Divorce (Oct. 31, 2013). Since the initiation of this matter with the filing of the Complaint for Divorce (Mar. 18, 2011), 30 motions have been filed. This does not include counter-motions

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

Defendant's Supplemental Declaration exceeded the scope of the Court's direction, which in turn spawned more filings and litigation. Defendant presciently predicted in her Supplemental Declaration that her statements "will only continue to fuel Kirk's campaign to denigrate me, and to engage me and our children in expensive, unproductive, and damaging litigation." Thus, it should not have come as a surprise to Defendant that her Supplemental Declaration that went well beyond what the Court had authorized, created a deluge of more filings. Since the February 1, 2017 proceedings, the following additional fugitive papers have been filed:

(1) Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing (Feb. 13, 2017) (hereinafter referred to as "Plaintiff's Supplement");

(2) 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 (Feb. 15, 2017) (hereinafter referred to as "Defendant's Motion to Strike");

(3) 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 (Mar. 6, 2017) (hereinafter referred to as "Plaintiff's Opposition to Motion to Strike"); and

---

filed by both parties. 20 of these motions were filed by Plaintiff. Since the entry of the parties' Decree of Divorce (Oct. 31, 2013), 17 motions have been filed, 14 by the Plaintiff. Of the three post-Decree of Divorce (Oct. 31, 2013) motions filed by Defendant, one of the motions was Defendant's Request to File Supplemental Information in Support of Motion for Attorney's Fees; in the Alternative, Supplemental Motion for Attorney's Fees (Jan. 15, 2014). On average, Plaintiff has filed a motion once every three months since the entry of the Decree of Divorce (Oct. 31, 2013).

RYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT Q
LAS VEGAS, NEVADA 89101

(4) Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motion Filed December 29, 2016; Reply to Supplemental Declaration, and Opposition to Request for Sanctions (Feb. 17, 2017) (hereinafter referred to as "Plaintiff's Motion to Strike").

Defendant's Motion to Strike is set on this Court's March 16, 2017 Chamber Calendar. Plaintiff's Opposition to Motion to Strike is set for a hearing on this Court's calendar on April 4, 2017, at 10:00 a.m. Plaintiff's Motion to Strike is set for a hearing on this Court's calendar on March 21, 2017, at 10:00 a.m. These four papers are unnecessary and superfluous to the Court's determination and should be stricken from the record. Moreover, the following paragraphs of Defendant's Supplemental Declaration should be stricken as exceeding the scope of the Court's direction: 3 through 13, 19 through 22, 27 through 29, and 31 through 34. The hearings associated with the papers referenced above should be vacated.

The teenage discretion provision at issue is set forth in the parties' Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). This detailed provision has been the subject of frequent discussion and debate in this matter, as well as repeated requests by Plaintiff to eliminate the provision entirely. This Court has noted at prior hearings that, absent an agreement, the Court *generally* will not entertain teenage discretion or the appointment of a parenting coordinator. However, this Court also *generally* defers to the stipulated decisions of two fit parents. Because fit parents should be presumed to be acting in the best interest of their children, deference should be afforded to allow parents the ability to parent their children without government interference. In this regard, two fit parents have the decision-making right to stipulate

to granting teenage discretion to their children and appointing a parenting coordinator. The Nevada Supreme Court affirmed this Court's refusal to eliminate both the teenage discretion provision and the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). *Harrison v. Harrison*, 132 Nev. Adv. Op. No. 56 (2016).

Given the frequency at which the issue of teenage discretion has been litigated, the temptation exists for this Court to simply eliminate this provision. Indeed, the Court questioned the Defendant at the February 1, 2017 hearing as to whether it might be worth eliminating teenage discretion to minimize the seemingly endless litigation. This Court notes that it does not appear that the similarly challenged Order for Appointment of Parenting Coordinator (Oct. 29, 2013) is being followed by the parties. Although the parenting coordinator order is not the subject of Plaintiff's Motion (presumably because there is no parenting coordinator), this Court is not inclined to entertain a request to eliminate the teenage discretion provision when the parties are not abiding by the terms of the Order for Appointment of Parenting Coordinator (Oct. 29, 2013). The parties' daughter, Rylee, attained the age of 14 on January 24, 2017, thus triggering the teenage discretion provision. At the time Plaintiff filed his Motion, Rylee had not attained the age upon which the teenage discretion provision is triggered. The facts cited by Plaintiff in his papers are not sufficient for this Court to yet again revisit or strike this provision and his request should be denied.

With respect to the issue of attorney's fees, Defendant is entitled to an award of fees pursuant to EDCR 7.60 and NRS 18.010 in regards to Plaintiff's Motion. This issue has been re-litigated and re-litigated. The Nevada Supreme Court has upheld the

teenage discretion provision. Defendant is entitled to an award of attorney's fees for the time spent in responding to Plaintiff's Motion. The amount should be mitigated by her failure to abide by this Court's direction with the filing of her Supplemental Declaration (i.e., the time spent in preparing her Supplemental Declaration should not be considered by the Court).

This Court has considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), with the exception of work actually performed. Thus, Defendant should file and serve an appropriate memorandum pursuant to *Brunzell* to enable the Court to ascertain the work actually performed. The Defendant should thereafter submit a proposed Order for fees (leaving a blank therein). The *Brunzell* memorandum should be filed by March 29, 2017. The *Brunzell* memorandum should be limited to the time devoted to responding to Plaintiff's Motion. Plaintiff may file and serve a response to Defendant's memorandum on or before April 12, 2017. Plaintiff's response should be limited to addressing Defendant's assertions regarding the time spent and fees associated with her *Brunzell* memorandum.

With respect to the evidentiary proceedings, this Court is not inclined to award either party with attorney's fees. Although the ultimate relief sought by Plaintiff was not granted, this Court is not inclined to reward Defendant with an award of attorney's fees when Plaintiff has lost custodial time with the parties' daughter, Brooke. The evidence demonstrated that Defendant was not as proactive as she could have been with respect to the scheduling of counseling appointments for Brooke (choosing to leave such scheduling almost entirely up to Brooke). The Court ultimately ordered the

continuation of counseling through Dr. Ali. Each party should bear their own attorney's fees and costs.

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff's Motion is DENIED.

It is further ORDERED that Defendant's Motion to Strike, Plaintiff's Motion to Strike, Plaintiff's Opposition to Defendant's Motion to Strike, and Plaintiff's Supplement are STRICKEN.

It is further ORDERED that paragraphs 3 through 13, 19 through 22, 27 through 29, and 31 through 34 are stricken from Defendant's Supplemental Declaration.

It is further ORDERED that Defendant shall submit a memorandum of fees and costs pursuant to *Brunzell v.Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), by March 29, 2017. It is further ORDERED that Defendant's *Brunzell* memorandum shall be limited to the fees associated with her response to Plaintiff's Motion and shall not re-argue the issues addressed herein (including the award of fees). Rather, it shall provide the Court with information pertaining to the amount of time actually spent in responding to Plaintiff's Motion. It is further ORDERED that Plaintiff may submit a response thereto by April 12, 2017. It is further ORDERED that Plaintiff's response shall be limited to the fees identified in Defendant's *Brunzell* memorandum.

. . .

HYDE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. C
LAS VEGAS, NEVADA 89101

A.App. 2648

It is further ORDERED that the hearings scheduled for March 21, 2017 at 10:00 a.m., and April 4, 2017 at 10:00 a.m. are VACATED.

DATED this 15th day of March, 2017.

BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE
DEPARTMENT Q

BRYCE C. DUCKWORTH
DISTRICT JUDGE
FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

KIRK HARRISON, Plaintiff, vs. VIVIAN HARRISON, Defendant.	CASE NO. D-11-443611-D DEPT. Q **(SEALED)**

BEFORE THE HONORABLE BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, OCTOBER 30, 2013

APPEARANCES:

The Plaintiff:	KIRK HARRISON
For the Plaintiff:	EDWARD KAINEN, ESQ. 10091 Park Run Dr., #110 Las Vegas, Nevada 89145 (702) 823-4900
The Defendant:	VIVIAN HARRISON
For the Defendant:	RADFORD SMITH, ESQ. 64 N. Pecos Rd., #700 Las Vegas, Nevada 89074 (702) 990-6448

LAS VEGAS, NEVADA WEDNESDAY, OCTOBER 30, 2013

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:24:20)

THE COURT: We are on the record in the Harrison matter, case D-11-443611-D. Please confirm your appearances.

MR. KAINEN: Your Honor, Ed Kainen and Tom -- Tom Standish on behalf of Kirk Harrison who is present.

THE COURT: Good morning.

MR. SMITH: Rad --

THE COURT: Bar numbers, please.

MR. KAINEN: 5029 and 1424?

MR. STANDISH: 1424, yes.

MR. KAINEN: There you go.

MR. STANDISH: Thank you.

MR. KAINEN: It's been a long time.

MR. SMITH: Radford Smith, 2791, and --

MR. SILVERMAN: Gary Silverman, 409.

MR. SMITH: On behalf of Vivian Harrison who is to our left here.

THE COURT: Good morning. All right. This is the time set for hearing on a number of motions that -- that still appear on calendar, Defendant's motion -- underlying motion for attorney's fees and sanctions, the Defendant's motion for

an order appointing a parenting coordinator and therapist for the minor children and related relief, the Plaintiff's motion to enter a decree of divorce, Plaintiff's motion to modify, order resolving parent-child issues and for other equitable relief. The Plaintiff's opposition and countermotion for equitable relief and a countermotion for attorney's fees and sanctions and a countermotion for declaratory relief. And also an amended opposition and countermotion to resolve parent-child issues to continue the hearing on custody issues and for an interview of the minor children.

At the outset, I note for the record that as it relates to the motion for the appointment of a parenting coordinator and therapist for the minor children, I did dispose of that and an order was issued. It may be in your boxes as we speak. I don't need any discussion on that. I've issued my -- my orders in that regard. So if you haven't picked those up, they're probably downstairs in your -- your boxes. I think that was filed. It may have been yesterday.

So that issue has been disposed of. I have prepared a decree of divorce. I did have some questions that I wanted to pose today in regards to specific aspects to the -- specific language of the decree. I want to make sure I'm -- I'm clear on what I understand in terms of some of the language both parties have submitted as it relates to the

decree of divorce. I had the opportunity to watch in the entirety and take some notes from the hearing in which -- at which time the -- the terms were placed on the record. And so that's been part of the process.

The issue as it relates to attorney's fees and sanctions in total, understand at the outset I will be issuing a written decision in that regard, so I'm not issuing any findings or orders from the bench today.

The only real issue I'm going to address today in terms of making an oral pronouncement of a decision relates to the motion to modify the order resolving parent-child issues and -- and the opposition and countermotion related thereto. The other issues will be addressed by way of a written -- written findings and -- and orders subsequent to this hearing.

The have been volumes of documents and exhibits submitted to the Court. Probably more so than there were documents filed before this case was settled. And that's somewhat the irony as I look at this case as it's more -- become more combustible as the issue of fees came to a head. Then it wasn't even prior to that.

So there's been a lot to read. I've started preparing my written decision, but there's still a number of exhibits that I haven't examined. I know I've had plenty of time since this started, but I -- there have been a lot of

documents. I've had the chance to scrutinize the -- the billing statements submitted. I've -- I've prepared spreadsheets as to the amounts that have been billed, the amounts that have been paid over time individually by -- the by the attorneys involved. And I did have a few questions in -- in that regard.

I'm showing based upon the billing statements that were supplied that the Defendant through the date that those billing statements were -- were supplied paid a total of $686,341.33. That included fees paid to Mr. Silverman's office, Mr. Smith's office and Mr. Dickerson's office. The Plaintiff paid a total of $448,738.21 based upon my review of the billing statements. That included Mr. Standish's office and Mr. Kainen's office.

The -- this Court had -- had made a -- a distribution of an allocation of $350,000 for attorney's fees to both sides on February 24th, 2012. And I -- and I know there were other occasions in which we talked about distributions, equalizing payments in terms of amounts that have been paid in fees. I want to make sure I understand today and as much as I -- there have been a lot of paperwork -- and a lot of papers filed with the Court, I don't know that I have a -- a true understanding of exactly the source of those payments. Conceptually, I understand that the source

ultimately came from what had been community fund -- community property funds, but I'm more interested in making sure I have the timing in -- as it relates to the source of those payments, understanding the $350,000 was directed to be paid from community funds. I -- and I -- I'm looking forward to the extent that these other fees were paid directly from payments earmarked for attorney's fees as oppose to fees paid after the division of assets and then each party is essentially using their one-half portion of those attorneys -- their -- those one-half portion of those assets to pay their attorney's fees. And I don't know if that makes sense --

MR. KAINEN: That's accurate.

THE COURT: -- if I'm being clear.

MR. KAINEN: What -- just -- and what happened was there was a -- we came in here for the first hearing. At the time, you issued the 350 or at or around that time. Kirk had paid more from community funds.

THE COURT: Right. And so there was equalizing payment.

MR. KAINEN: And so in addition to the 350, there was an equalization payment of --

THE COURT: I think it was 80 --

MR. KAINEN: -- was it one and a quarter or 80 or something like that or --

MR. STANDISH: It was some -- I don't remember.

MR. KAINEN: It was somewhere in the -- I don't remember if it was 85, 84 or one and a quarter. It was somewhere in that range, but -- and that was paid from community funds. And what that did is it brought them equal and community -- community resources that were used for attorney's fees and then provided them each an additional 350.

THE COURT: 350.

MR. KAINEN: I think we're in agreement on that.

MR. SMITH: Yes.

THE COURT: And after the --

MR. SMITH: And the bottom line is through state -- stated simpler, each party has received an equal amount of money from the community for payment of fees to date.

THE COURT: Earmarked for attorney's fees.

MR. KAINEN: Correct.

MR. SMITH: That's right.

THE COURT: Do you happen to know exactly what that amount is?

MR. KAINEN: It -- it would be the 350 plus the -- either the 85 or one and a quarter. Whatever that first quarter was. And Colin (ph) can probably put your -- grab the first order.

MR. SMITH: That's right. It was -- it was --

MR. KAINEN: The equalization order.

MR. SMITH: What had happened in simplest terms is there was an unequal amount. It was equalized --

THE COURT: It was -- and I -- and it was around --

MR. SMITH: And the party's 3 -- 350.

THE COURT: -- 80 some odd thousand dollars.

MR. KAINEN: I think --

THE COURT: And then I -- and I -- and I had that amount previously and I was -- I was searching through paperwork this morning trying to recap -- I -- I know I had written that down, but I don't have that --

MR. SMITH: If there's any additional amount above that figure, it's been paid from their own portions --

THE COURT: Their portion.

MR. SMITH: -- of --

THE COURT: Okay.

MR. SMITH: -- community property. So there's no disparity --

THE COURT: That's what I wanted to make sure I was clear on.

MR. SMITH: There's no disparity in the amount that each has received for payment of fees from the community.

THE COURT: Correct.

MR. KAINEN: That's correct.

THE COURT: Okay. I -- and -- and that's what I believe to be the case, but I wanted to be sure as -- as I'm looking at the issues that are before me.

MR. KAINEN: Yeah, and I can probably put my hands on that number in a little bit, but --

THE COURT: Okay. That's fine. All right. With that being said, I -- I -- just a few questions on some of the assets that have been set forth in the decrees, the competing decrees of divorce that had been offered to the Court. And some of it may just be semantics. Again, I believe I understand what the intent was with the language that's -- that's been included, but just -- just to be crystal clear for me, in -- in there are some reference to -- some language suggests that each party is receiving one-half of particular bank accounts, for example, Boulder Dam Credit Union, account 9005, both the savings account and the DDA -- A account, Bank of America DDA account. It says one-half.

I'm somewhat presuming that those amounts were already divided or have been divided.

MR. KAINEN: Yes.

THE COURT: Is that a --

MR. KAINEN: Yes.

THE COURT: -- fair --

MR. SMITH: Yes.

THE COURT: -- statement?

MR. SMITH: Yes.

THE COURT: And then -- and then there's some suggestion in some of the language I have reviewed that indicating that essentially that account would -- would -- for example, those three accounts were previously in Vivian's name and they would remain in her name as an account, but the amounts had already been divided.

So the account itself would be confirmed to the Defendant. The Plaintiff has already received his community property portion.

MR. SMITH: The Plaintiff did an accounting. As you recall, we withheld a certain amount.

THE COURT: Correct.

MR. SMITH: The Plaintiff did an accounting I think in our submission as I recall. Again, there's been a lot of paperworks and --

THE COURT: Right.

MR. SMITH: In our submission, I think we went through how we thought he got to that accounting, but once I went through it, I seem to get where that accounting was.

The only issue that I understand in regard to the accounts that still remains is an account that was held money that was originally paid towards medical school for the

party's adult daughter. And that money was released or returned to the parties when she decided not to attend medical school. And then question is over the disposition of those funds in sum. And Mr. Kainen can respite -- in sum, they argue that it was a gift. We argue we didn't agree to it to be a gift. And that's -- that is to my knowledge the only issue that remains in regard to the accounts is my understanding. There's some issues in regard to the distribution of funds and so forth, but that was the only issues regarding the accounts.

THE COURT: Okay.

MR. SMITH: Unless Ed can tell me that there are other --

MR. KAINEN: There -- and that wasn't an issue in dispute. That money was already transferred to the children prior to the divorce. It was not an issue in the divorce and my understanding is there was no return of the money, although, the child did not use the money from the account for -- at the time. But the transfer happened and there was never any return per se.

THE COURT: Okay.

MR. SMITH: Well, we weren't aware of any tran -- well, that's the point is that we weren't aware of any transfer of the monies to the daughters. The fact I'm hearing

that now, our understanding was there is an account and was an account that the money was placed into from the monies received back from medical school. It wouldn't have been paid to Tawny (ph). It would have been paid to Kirk and Vivian. And so that money at some point in time was in an account and now Kirk is indicating that it was transferred, but that's -- we're not aware of that fact.

THE COURT: Okay. Well, and -- and I believe that's something that I -- ultimately I address in the decree of divorce. So the accounts that are identified and I think this was part of the language in the Plaintiff's proposed decree of divorce reflected certain accounts that he identified as separate property accounts, the Nevada Bank & Trust account ending 2713 for example and 1275 and Wells Fargo, 8032.

And again, I'm somewhat presuming that those accounts were created from prior distributions and that essentially is the Plaintiff's portion. And that's why it's being labeled as separate property and I just wanted to be clear in that regard that that's --

MR. KAINEN: Those particular accounts are actually accounts from his parents from --

THE COURT: Okay.

MR. KAINEN: -- long prior to the marriage. But yes, the -- I don't think there's any dispute on the account

designation either from premarital, the few -- very few premarital assets or the -- dis -- the accounts they created with their distributions.

THE COURT: Okay. So and is that consistent with your understanding that -- that those accounts are separate property accounts that even if it's --

MR. SMITH: I wish I would have committed that to memory in terms of the numbers --

THE COURT: I -- and I'm know I --

MR. SMITH: -- of the account.

THE COURT: And I know I'm throwing some numbers out at you, but --

MR. SMITH: I -- I know that that was one of the issues that we raised and addressed in our submission as to our position in regard to those accounts and to the extent that it's raised, that would be our position --

THE COURT: Okay.

MR. SMITH: -- on that issue --

THE COURT: I'll take a look at that.

MR. SMITH: -- so --

THE COURT: Okay. All right. Well, like I said, my intent is to issue a decree of divorce to finalize that and -- and I'll take a look at those submissions again just -- just to -- just to confirm my bearings in that regard.

All right. So like I said, the -- the only issue I'm going to resolve orally today relates to the motion to modify the provisions of the stipulated parenting plan. I don't know that I need any further discussion on the underlying motion for attorney's fees. All I would be looking for is something that you have not told me in the paperwork. And I would be shocked if there was something that was missing from that paperwork. So with -- with that being said, is there anything out there that you believe I need to know that you haven't previously shared with the Court?

MR. KAINEN: I think the briefing is covered the issue.

MR. SMITH: I -- I think the briefing has covered everything that I can possibly think of.

THE COURT: Okay.

MR. SMITH: If 400 pages isn't enough --

THE COURT: Yeah.

MR. STANDISH: I have a few prepared remarks Your Honor that I would like to -- oh, it's not --

THE COURT: I -- I -- yeah, I believe Mr. Kainen has to get to another hearing as I -- as I recall, so we'll -- we'll dispense with that at -- at this point.

Here's where I'm at in terms of the motion to modify the terms of the parenting -- the parenting plan. And this

somewhat coincides with my issuance of the order appointing Dr. Linning as the children's counselor. And that's in the order that's again downstairs.

The -- I've read the papers and I know there are issues that have arisen as -- as it relates to the teenage discretion issue. And I've looked at the language that you included in your parenting plan that you had agreed to. And I don't necessarily interpret that language as to giving a 14-year-old child carte blanche voice in determining custody.

To me, I view that term as fluctuations here and there in the schedule recognizing she has some level of teenage discretion, but I'm not inclined to interpret as -- as part of this Court's order as allowing her to dictate where she lives and what the custody arrangement's going to look -- look like.

The terms also specifically refer to -- the terms of your parenting plan refer to the involvement of a counselor. And the involvement of a parenting coordinator as part of this process, both parties recognize the need to have a counselor involved and to have a parenting coordinator involved. There has been a lot of debate and discussion about who the parenting coordinator should be and what the language should look like in terms of the order appointing the parenting coordinator and both sides submitted competing orders in that

regard. And I've had the chance to review those competing orders.

Part of that has entailed also inspecting and -- and really analyzing the form order that was generated for this Court, comparing that form order to statutes of other states that actually specifically reference parenting coordinators which Nevada does not have a specific statute on point, comparing parenting coordinator orders from other states and looking at how they approach the issue and coming up with a form that -- that recognizes your parenting agreement in which you specifically agreed that a parenting coordinator would resolve disputes between the two of you. And I have reviewed -- and I view that process as twofold, resolve disputes by way of mediation and where mediation is not successful to make recommendations.

So the order that I issued regarding the appointment of a parenting coordinator is much different than the form order and it's not necessarily consistent with the -- the proposals that either party submitted in terms of that authority. I view it more as a strict recommendation process with this Court maintaining the -- the ultimate decision regarding those issues with recommendations being issued by the -- the parenting coordinator.

Not even having reports issued by the parenting

coordinator, I'm not really interested in that. This is a process of mediation and then perhaps recommendations may be issued if mediation is not successful.

There was not a lot of debate and discussion regarding the appointment of a counselor. And that is something that -- that was again expressly contemplated in your stipulated parenting agreement. It's something that has -- that we've lost 18 months or so since you agreed that it was in the best interest of your children to have a -- have a counselor. 18 months have slipped by and we're running into problems. And perhaps that shouldn't be surprising given the totality of circumstances that exists that we are confronting issues now with teenage discretion. But we haven't even got -- got off the ground in terms of having a counselor designated.

And so although I understand the debate and discussion about the language of a parenting coordinator order and who the parenting coordinator should be and what qualifications and background and discipline that parenting coordinator should have, the bottom line is a counselor is -- is critical in this situation. And I'm not inclined to make any changes to your parenting plan at this point in time given the fact that it hasn't been fully performed with the involvement of a -- a counselor for the children to get

involved and provide some assistance, most specifically for your children. And that was -- that was the intent.

THE COURT: So both parties have asked for relief by way of the motion filed by the Plaintiff and the countermotion by the Defendant to address custody issues and perhaps set even further proceedings and even have the children interviewed. And I'm not inclined to go down that path on either side. I want the process that the two of you agreed to as in the best interest of your children to unfold the way you intend it. And it's -- we've been at a stalemate for 18 months. And I'm not going to entertain any changes to the underlying custody arrangement or schedule or the terms you agreed to as far as teenage discretion without allowing that process some time to work.

And so I've appointed the counselor. I've appointed the parenting coordinator. It's Margaret Pickard. If you -- again, if you haven't received that order who has some legal background, that was not a name that was included on either party's list. So --

MR. SMITH: So Pickard is the parenting coordinator and Linning is the --

THE COURT: The -- the counselor. So I want to see the process work and I'm not -- so the motion to -- to modify the parenting plan by dealing with the teenage discretion

issue and the countermotion to review custody and to have the children interview both the motion and the countermotion are denied. So with that being said, really the only other issue is relate to the attorney's fees that have been -- the attorney's fees issue that's been extensively briefed for the Court and I'll issue a written order in that regard.

MR. SMITH: Thank you. The only thing we would ask is if there are anything that we can offer to clear anything up that you saw in the -- the briefing of the attorney's fees issue?

THE COURT: No, I -- I -- like I said, the -- the one issue is I -- I wanted to make sure I had a clear understanding of what was paid --

MR. SMITH: All right.

THE COURT: -- that was expressly earmarked for attorney's fees. It was my understanding that it was an equal amount and that anything above that amount was paid from each party's respective portions of the division of community property. So and I -- at -- at some -- at one point and there's a piece of paper in here somewhere where I've written that down, the $80,000 amount.

MR. SMITH: Okay.

THE COURT: And if I have to review a hearing again, I can do that.

MR. KAINEN: And it's actually in excess of that just so you understand, because there was pre --

THE COURT: Right. There was a prior amount.

MR. KAINEN: They were -- they were made -- and monies were paid to Mr. Dickerson. Monies were paid to Mr. Smith. Monies were paid to my firm and I think Mr. Standish. And what happened was is that at the time we came in in addition to that, there was a difference and that's what the 80,000 --

THE COURT: The 80 --

MR. KAINEN: -- represented --

THE COURT: Right.

MR. KAINEN: -- was an equalization to that point.

THE COURT: Right.

MR. SMITH: And Judge, the -- have you included the cost in I think those numbers? I think you have in ours. I'm not sure that they -- they did include the costs in theirs, but I don't know what their costs were.

THE COURT: In terms of what's been paid?

MR. SMITH: Yes.

THE COURT: Well, no. I have separate breakdowns for costs, but here -- what I've done --

MR. SMITH: Expert fees and the like.

THE COURT: I -- I've prepared spreadsheets that

detail on both sides costs and fees that have been incurred -- billing statement by statement for -- for every attorney involved in the case. And that -- that includes Mr. Dickerson's fees, Mr. Smith's fees, Mr. Silverman's fees. And I have a separate column for costs as well.

MR. SMITH: The only reason I -- I ask that is because on our -- in a couple of instances for -- for experts, we actually from the firm would pay the costs and then the client would reimburse those costs. So I just want to make sure that that was caught as costs as opposed to fees, that's all. It's not a tremendous amount, but it's -- there is that issue.

MR. KAINEN: I think that happened on both sides. I mean, there was --

MR. SMITH: Yeah, but I just want to make sure that that distinction was made. In other words, there may be for example, if you just took the bottom line as to what the expenses were paid to the attorneys, that would be -- that would include the --

THE COURT: No, I understand.

MR. SMITH: -- the costs.

THE COURT: Right.

MR. SMITH: We break that down.

THE COURT: No, the -- the amounts that I had

previously read, the -- the 686,000 for the Defendant, that -- that included -- that encompassed both fees and costs.

MR. SMITH: Okay. That's what I thought.

THE COURT: I and I understand that.

MR. SILVERMAN: Okay. Good.

THE COURT: The -- the -- when I -- when I dissected the amount of fees and costs incurred as opposed to the amounts paid --

MR. SMITH: Yes.

THE COURT: -- I had more of a breakdown of what those fees and costs were. And -- and again, I'm -- it -- it's apparent from what you're indicating the total amount that was paid with -- with amounts distributed for fees specifically --

MR. SMITH: Right.

THE COURT: -- was an equal amount.

MR. SMITH: That's right.

THE COURT: Any -- any other amounts paid whether it was for fees or costs that weren't any separate distributions that the two of you agreed to pay experts that's different from the amount that you paid, the -- the equal amount that you represented that was -- was distributed to both sides? Is that accurate? Were there any independent -- independent distributions that you agreed to for the payment of any cost

to experts?

MR. KAINEN: No. No. But there were independent distributions to each of the parties that they bought real estate with or, you know --

THE COURT: No, I --

MR. KAINEN: -- made purchases.

THE COURT: -- I understand.

MR. SMITH: There were -- there were -- I believe that there also additional costs that Ms. Harrison paid directly. For example, I believe that you paid directly certain costs to Ms. Antanasio.

MS. HARRISON: Yes.

MR. SMITH: Antanasio. And also cost to -- I think it was one other --

THE COURT: Well, but again, that would have come out of her portion.

MR. SMITH: That would have been referenced --

THE COURT: No, and -- and that's fine. I -- I just feel -- I -- I just want to make sure I understand the dynamics of what the source of payment --

MR. SMITH: You do.

THE COURT: -- was.

MR. SMITH: You do.

MR. KAINEN: I -- I think you did.

MR. SMITH: It was just everybody got the same -- in other words, everybody ended up with an equal division of -- of all the monies because any -- it was all accounted for in terms of any distributions.

MR. KAINEN: Yes.

THE COURT: What I would like to know then is if -- and -- and I'm not sure if this is going to be evident in the hearing. I know the 80 somewhat thousand dollar was an equalizing payment. I don't recall if there was a specific representation at that time as to the amounts that had been paid up to that point. I -- and maybe it was included in the hearing.

MR. KAINEN: It was. It was in the -- it was in the hearing. We discussed it at the time and it was in the briefing is my recollection. If you want, we can certainly get you those numbers probably within a day or so, say what was paid to that point and how -- and how the equalization claim and fraud would equal and then the additional payment.

THE COURT: Well, that's -- that's the one piece of information that I guess I want to be clear on and --

MR. SMITH: Okay.

THE COURT: -- and if you can provide me with that number, then total amount including the $350,000 that was distributed at that February 24th hearing, I -- I thought it

would have been at that February 24th hearing that we had that discussion.

MR. KAINEN: It would have been. Well, whatever -- whenever we -- the -- the day -- it was the first hearing we really agreed on the distribution of money. It was the day we had the discussion of Rad's bill and there's a debate about that. And we got it all into that and it was at that point we agreed that this much had been paid, this was the difference and this was the amount to be paid and then an additional 350. So that hearing will have the numbers --

MR. SMITH: The only -- the only --

MR. KAINEN: -- and we can find it.

MR. SMITH: The only thing I can't remember is whether or not at one point in time Vivian had prepared an outline of the fees that she had spent on Bob Dickerson and how she had spent that from the money that had been divided. I think that was encompassed in the overall distribution. They'll have to check. I think it was.

MR. KAINEN: I don't think we have numbers from Bob. So I -- I mean, my recollection at the time was that the only numbers that were on the table in play at that point were -- because they're going to pay Bob from community money. They only had community money at that point.

MR. SMITH: Right.

MR. KAINEN: So that money was not factored in as my recollection. It was simply a matter of Kainen and Standish had gotten this amount. Smith and Silverman and -- had gotten this amount and this is what the difference. But the briefing will say and we can reference the briefing. And I don't think this -- I don't think this is a matter that's really to be subject to dispute as to what happened.

MR. SMITH: Again, I -- I don't have a specific --

MR. KAINEN: It's just a little bit of ancient history.

MR. SMITH: -- recollection of that.

MR. KAINEN: That's all.

THE COURT: Well, when you say the briefing, are you talking about these motions that are present --

MR. SMITH: No. No. No. Briefing.

MR. KAINEN: No. No. No.

THE COURT: Because I don't --

MR. KAINEN: The -- the original --

THE COURT: I don't recall -- I --

MR. KAINEN: The original briefing --

THE COURT: Okay.

MR. KAINEN: -- back at the beginning.

THE COURT: Because I was going to say, I don't recall. Seeing a specific discussion of these amounts and

what -- I just -- and the papers filed for this hearing.

MR. SMITH: Right. The -- the -- what I'm referencing is that when we distributed money early on, Mr. Harrison wanted to buy some portion of the ranch and that money was distributed and there was a -- it was -- there was money distributed on three separate occasions. We believe that with the money that -- that Mrs. Harrison received during that period of time she paid some attorney's fees. So those were an individual payment, not from the community. But I -- again, I would have to go back to the --

MR. KAINEN: But that would be irrelevant, because once money was distributed, it filled the -- the hole that was created by that. So --

THE COURT: Well --

MR. SMITH: No, it wouldn't be irrelevant, because it would be the monies that she used -- she had separate property and paid instead of community.

THE COURT: Here -- here's what I'm looking for is I -- I just want the total amount that was paid, earmarked specifically for the payment of fees including the equalizing amount. I've got the $350,000 amount. The equalizing amount I remember was in the $80,000, between 80 and $90,000. But I don't -- I don't recall seeing or hearing a specific number as to what -- what had been paid, specifically earmarked for

attorney's fees up to that point in time.

MR. KAINEN: That's fine.

THE COURT: Okay?

MR. KAINEN: That's fine.

THE COURT: With that, are there any other questions or issues?

MR. KAINEN: A quick one. Just do you have a time frame -- I guess one is the time frame on the decree and the order for attorney's fees. That's one and two.

THE COURT: The decree, hopefully in the next day or two.

MR. KAINEN: Okay.

THE COURT: The order -- the order on attorney's fees, again, it's just a matter of I want to make sure that I have a chance to review all the exhibits and the -- the papers and -- that had been filed.

I -- I will say this. And both sides have filed points and authorities that well exceed the 30 page limit. And -- and I've allowed it. And -- and part of that's my fault and I recognize that. And at the outset of this case, because of the nature of the issues, I -- I felt it was important to allow the parties to provide me with as much information as possible. And I have to put up with reading that information.

But it has been excessive at -- at this point in time and for future reference, any papers filed from this point forward, unless you have specific leave of the Court to file something, appoint some authorities in excess of 30 pages, I will strike the document. I'm not -- I'm allowing it up to this point in time because it would be inequitable for me to start piecemeal striking certain documents. I -- both sides have -- have filed documents in -- in excess of that.

So I am reading it. I'm reading all of the pages that have been filed. I have -- like I said, I've -- I -- I have not reviewed all the exhibits, but not that I'm encouraging you to ever come back to Court again, but I have this sneaking feeling there may be papers filed down the road, who knows, maybe not. I -- I hope not and I --

MR. KAINEN: And the only reason I'm asking on this is that -- on the time frame, I just have this gut feeling that at some point there may be some appellate kind of things that are going to happen in this case. And so I'm trying to see if we're going to be within the -- the appellate time frame on the decree for the attorney's fees award so we're not separating that now is really the -- the question.

THE COURT: Oh, okay. I -- I wish I could commit to a time.

MR. KAINEN: Okay.

THE COURT: I just --

MR. KAINEN: All right.

THE COURT: There's a lot of me to review and I wait -- I want to make sure I cover it all.

MR. KAINEN: The -- the other question I had was just given the Court's order sort of denying all the custody related motions. Is there a method -- in other words, if you give me everything in place, a method for dealing with the sort of -- how to get the enforcement of Paragraph 6 of this teenage discretion order? It talks about talking to the kids and keeping them out of it and doing that kind of stuff like that. And so how does the Court want to deal with?

THE COURT: Well, at -- at the outset, I think the protocol has already been defined somewhat by the parties and inviting the participation of a parenting coordinator and a counselor. And that's why I -- I indicated I -- I'm not here to lay out a protocol as to what needs to happen. The orders are what they are, but I -- I want to see what you agree to put in place. And bef -- you know, we haven't -- we didn't even have a counselor appointed which I didn't see a lot of discussion and debate between the parties --

MR. SMITH: Your Honor, look, we --

THE COURT: -- and --

MR. SMITH: -- we had complied with the terms of the

decree by submitting the names of these people long ago. It just was stonewalled. And --

THE COURT: Well --

MR. SMITH: And in regard to the -- I'm glad we have them now in place, but the underlying problem will probably still exist and that is at this point without the counselor and -- and as you saw from my letter too it describing this process and why we were putting this in the agreement. We indicated that we wanted Kirk to have an opportunity through counselor and through PC to address the problems that existed with the child at that time.

Now we're a year later and those problems have not dated. And so we're -- we're anxious to start this process, but I think it's an -- you know, we're -- we're concerned that the child won't be interviewed and the child wants a voice in this process. She thought she was going to have one.

MR. KAINEN: Well, how would she even think that? How would she know that she would --

MR. SMITH: Because she's stayed --

MR. KAINEN: -- even have a right to do that?

MR. SMITH: Because she's testified or she's made a statement to Dr. Paglini. She thought that statement would be heard. We had requested for this family's sake that Dr. Paglini's findings be given to them without any use in the

court proceeding. We've always proceeded in a manner that was designed to help these parties resolve these disputes. And in this particular problem has existed since the time of the filing of the original motion and the children have stated that they wanted to be with Mrs. Harrison.

So that problem I don't know is going to be ameliorated by the process that now as -- as you pointed out 18 months late. And so I state that just as a matter of -- of our concern is that without an interview and without understanding really the nature of this, and we haven't asked and I think our -- our motion was very carefully about this. We haven't asked for a change of custody. We've only asked that the Court have an interview, allow the children's voices to be heard and address whether or not there is any necessity to change the current hearing plan from those interviews.

Certainly, the -- the process that we described in the parenting plan, the teenage discretion process, was in addition to whatever discretion the Court had in regard to these matters. But this now has come to a head --

THE COURT: No. I -- I --

MR. SMITH: -- and so --

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.

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 that the expressions standing along of a 14-year-old child would be sufficient to overcome that presumption.

MR. SMITH: And -- and that we --

THE COURT: That's why I don't need it.

MR. SMITH: Actually, there's no dispute on that. I think the parties -- neither party disputes that she is now at that point that she desires to be with Vivian. Mr. -- I mean, that's -- that was the nature of the reason of he wants to deny her the teenage discretion. The point is --

MR. KAINEN: And that's just a misrepresentation.

MR. SMITH: -- we need to hear what the child has to say, because we're really concerned. We attached the email

that she sent to Vivian about what was going on with her. She's now being bombarded by the adult children. She's now being told that she's wrong for wanting to spend time with Vivian, because that's an abandonment of Rylee. That wasn't even tried to be masked even in the pleadings that were before the court.

And then there's the -- the you wouldn't care if I die tomorrow and the effect that that had upon Rylee arising from that circumstance. So our concern isn't so much that the child needs to determine where she wants to -- to be with the parties.

Our concern is this behavior needs to be faired out. Mr. Harrison has repeatedly indicated that the child's perception of what's going on is inaccurate and that she doesn't know she's being influenced improperly. To me, that undermines the very process that we're talking about is giving the child some understanding and some voice in this process so that she can avoid the kind of pressure that's being placed on her.

I just see this as -- as an overall bad situation that I think a little knowledge would go a long way. Now the Court I think may get that knowledge through the therapist and through -- and whatever discussions occur at the PC level. But again, Your Honor, that was the purpose for us asking for

an interview and -- and we do think this is a concern. I'm not going to be remiss by not presenting that to the Court on behalf of my client.

THE COURT: Okay. Well, and -- and it's so noted as I indicated before. I'm not -- I'm not inclined to have any child interview conducted at this point. So Mr. Standish, did you want to offer something?

MR. STANDISH: Let me just say that I'm confused by Mr. Smith's remarks. First of all, they're totally inaccurate and they don't state the facts of this case at all. 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 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.

But the point is they don't need a child interview at all. This therapist is going to interview these children every single time she sees them. She is going to get to know them. The therapist will be in control. And the only questions that I have are we may need to supplement whatever order you enter to make sure that it's plain to both parties

that the therapist will be able to call -- I assume Your Honor would want the therapist to be able to call the frequency of sessions and who would attend sessions and maybe even who should bring the children to sessions. I mean, I -- I --

MR. SMITH: It's continuing the agreement, isn't it?

MR. STANDISH: I hope so. I mean --

THE COURT: Yeah, I -- I --

MR. SMITH: I believe it is.

MR. STANDISH: I mean --

THE COURT: -- mean, to -- to be clear and -- and that's not my -- my function or role to -- to create an arbitrary time frame or -- or set appointments. It would be completely up to the therapist to determine the frequency and participation in those sessions.

And also to be clear, the ther -- the -- the children's counsel, Dr. Linning, is intended for therapeutic purposes. She's not an evaluative arm of the Court. I'm not looking to her -- as much as she will be conducting child interviews, her purpose is for therapy and -- and not for evaluative purposes. So I'm not requesting any type of reports from the therapist, just as I indicated, I'm -- that the parenting coordinator order that you're -- that you'll -- you'll see is not intended to invite reporting and -- and to have periodic reports provided to the Court. That's not how I

review the process -- view the process. It's to attempt to mediate and to make recommendations, to make decisions. So it's not just for mediation purposes. There is a recommendation component and that's outlined in the terms of the parenting coordinator order.

MR. SMITH: And that -- and that's -- what you just described is exactly how it was envisioned. This is how Mr. Standish and I negotiated this to be in that the therapist communication would be with the PC so as to avoid having the therapeutic role disintegrate.

THE COURT: Right.

MR. SMITH: And in fact, we were very clear and I think the agreement says this, I don't have it right in front of me, but I think it -- it has very -- and it has those limitations in it about direct contact by the -- the parents and about how the process would occur. In fact, again, I thought it was sort of a model provision that was crafted for that purpose. And the Court has approved that and -- and we're happy about that.

THE COURT: Okay.

MR. KAINEN: This -- I started us down this road. My question was simply to the extent you're not striking this parenting coord -- I'm sorry, this -- the teenage discretion order --

THE COURT: Right.

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.

MR. SMITH: Thank you, Your Honor.

THE COURT: Okay. With that being --

MR. KAINEN: I prepare an order from today's hearing.

THE COURT: Okay.

MR. KAINEN: Send it to Mr. Smith and we'll fight about that for a few months and then we'll come up on your desk.

THE COURT: Okay. And then both sides will be supplementing that -- the -- the --

MR. KAINEN: On the attorney's fees. And I think we --

MR. SMITH: Okay. And here's --

MR. KAINEN: -- maybe we can do it jointly.

MR. SMITH: And here's what I don't want and this is what we run into all the time is this notion that there's going to be a special finding that Paragraph 6 will be enforced in this issue.

MR. KAINEN: No, I was going to just prepare an

order that said that both motions were denied.

MR. SMITH: That would be --

THE COURT: That's fine.

MR. SMITH: -- perfect.

THE COURT: Okay.

MR. SMITH: Thank you.

THE COURT: All right.

MR. SMITH: Your Honor, can I approach on a different matter --

THE COURT: Yes.

MR. SMITH: -- for one second?

(PROCEEDINGS CONCLUDED AT 11:06:16)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

TRANS

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EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

KIRK HARRISON, Plaintiff, vs. VIVIAN HARRISON, Defendant.	CASE NO. D-11-443611-D DEPT. Q **(SEALED)**

BEFORE THE HONORABLE BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, MAY 21, 2014

APPEARANCES:

The Plaintiff:	KIRK HARRISON
For the Plaintiff:	EDWARD KAINEN, ESQ. 10091 Park Run Dr., #110 Las Vegas, Nevada 89145 (702) 823-4900
The Defendant:	NOT PRESENT
For the Defendant:	RADFORD SMITH, ESQ. 64 N. Pecos Rd., #700 Las Vegas, Nevada 89074 (702) 990-6448

LAS VEGAS, NEVADA WEDNESDAY, MAY 21, 2014

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:45:50)

THE COURT: We are on the record in the Harrison matter, case D-11-443611-D. Please confirm your appearances.

MR. KAINEN: Your Honor, Ed Kainen, 5029, on behalf of Kirk Harrison who is present to my right.

THE COURT: Good morning.

MR. SMITH: Radford Smith, 2791, on behalf of Mrs. Harrison. Mrs. Harrison is attending Rylee's presidential award. If you get straight As, straight Es and complete there -- there's another --

THE COURT: Right.

MR. SMITH: -- award sheets. You get a presidential award. And so she's receiving that this morning. So she may come in late.

THE COURT: Okay. No Mr. Standish or Mr. Silverman.

MR. KAINEN: No, we're in the money saving phase of the case.

THE COURT: Okay. All right. Now this is the time set for a hearing on Plaintiff's motion. I've had the chance the review the writ to read the motion, the opposition and countermotion, the Plaintiff's reply and opposition and the

Defendant's reply. Have any issues been resolved at this point in time?

MR. KAINEN: No, Your Honor.

THE COURT: Well, the issues are for the most part have been thoroughly briefed in the papers that have been filed with the Court. I just have a few questions.

MR. KAINEN: May I move to just -- the reply brief that was filed last night was night a reply on the attorney's fees which is the only thing that would been a reply. It was a rebrief of the substantive motion which is not really the purpose of that briefing. So it became a chance to use that brief in a way that it's not intended by the rules and I would move to strike that briefing.

THE COURT: Okay.

MR. SMITH: We disagree. The brief, and I was specific in my focus in that brief on things that I thought were misstated or bad faith. Those are considerations and the consideration of attorney's fees sanctions and the like.

THE COURT: Okay. All right. I -- and I'll address that. I did have some questions I wanted to start off with, because one of the issues as it relates to -- and I emphasize at the outset that I'm dealing with an order that was stipulated to by the parties and -- and I'm going to read portions of that as part of the record today. It was -- the

terms of that order, a parenting agreement order were not created by this Court. It is my order. I signed off on it. So it is my language, it is my order and I have -- I approved it and I generally do not stand in the way of two parents coming up with common terms that they believe are in their children's best interest. So is it a stipulated order and the two provisions that we're talking about today include the teenage discretion provision and references to the parenting coordinator.

My reading of the motion, and we have had other motions dealing with the teenage discretion issue, references a specific incident that occurred with Brooke in February of this year when that provision essentially was invoked by Brooke. Although the reply does reference in a footnote the two other occasions in which that provision was exercised that predate the most recent hearing when we had this issue, that's the only incident that I've read. Have there been other incidents that have not been specifically identified?

MR. KAINEN: Yeah, it's a very grey area and let me try and explain this as articulate as I can. Is there -- the -- we've described through the incidents as when there has been the effect of this is where I'm going, I'm going there, this is the way it's going to be and -- and the -- and some sort of changes effectuated by that provision are the -- the

presence of that provision.

The real problem is that it invades a lot of the -- it's the -- it invades -- the existence of that provision invades the day-to-day dynamic in my client's household, because it shifted the balance. In other words, Brooke has a sense that things will be done her way now or she gets to play her trump card. So it effects my client's planning, my client's traveling. It effects the plans that he makes with the younger -- with Rylee. It effects all of that because there's -- there is this undercurrent and this implied threat -- and the express threat at times that well, this is going to go my way or I'm going to do this.

THE COURT: But the inference in that paperwork is that this is a provision that is -- the term is -- that's used is regularly, that it's regularly invoked, that there is a pattern where Brooke is regularly --

MR. KAINEN: We've --

THE COURT: -- exercising her teenage discretion.

MR. KAINEN: We described for you the incidences when there has been -- where it has risen to the level of an actual exchange in the conflicts attended to that. When the actual -- the regularly -- the reference, in other words, we've given you the incidents over time that have occurred. It comes up on a daily or near daily basis in terms of how the

dynamic in the house happens. I will do X or I will do Y.

That's the concern is that it affects the way this -- in other words, the -- what we have here at least in my client's home and we've never hear anything different in Mrs. Harrison's home is that this is a child who believes because of what she's been told that she's in power to control how this happens. So that sort of like when my client can say to her look, we're -- she says I would like to stop by Mom's house and pick up some stuff after school which is almost a daily basis -- you know, daily kind of thing. It goes in there.

If he says to her, you know, look, you know, when you come to my house to get things or whatever is you're in and out in three or four minutes. When you go in there, you're in there 40 minutes while you leave in the car. That's inconsid -- it's sort of like well, then I'll just stay longer. I won't go at all, you know, or I won't come back or I'm just going to stay there. I mean, it's that kind of stuff.

So he has been -- has his wings clipped in terms of his ability to parent a 14-year-old child because of the fact that the mother has told this child that this child is empowered to control where she goes and when she goes because she has discretion.

THE COURT: Well, let you ask you a question, because the interpretation that the Plaintiff is advocating is that the 14-year-old child, I think the language -- quote, the 14-year-old can make a request of a parent, that that's how he's defining teenage discretion, can make a request of the parent. So let me just ask.

MR. KAINEN: Sure.

THE COURT: If we go back to this incident that appears to be kind of a strike point that occurred because the children are taken to Mom's house. Interestingly, the decree -- or the parenting agreement never calls for exchanges except when school's not in session to take place at either parent's home and for a good reason. It takes place at school which I think is a wise choice because you create -- problems are created when you go to the other parent's house. And I get that and I get that the fact -- that I get the fact that sometimes kids want to go pick something up at the other parent's house.

But say that didn't even occur, because that obviously created an issue. And even an underlying motion suggests that because the girls were in the house for 30 minutes, it created some frustration by Dad. And he -- it appears from what I read that frustration came out in conversation with Brooke and Rylee presumably I believe was in

the car as well.

So then the issue and concern because well, Brooke is acting now retaliatory because she said she wanted to spend the following night with Mom. And she's -- we have this disagreement and now she's using this perversion as a tool of power.

Remove that incident. Say Brooke had come to Dad without any type of prompt and said look, you know, I've got this dental appointment Friday morning and Mom always takes me to the dentist and I just felt -- I felt comfortable going to the dentist with Mom. I'd like to spend the night with Mom Friday -- Thursday night so Friday morning I can go to the dentist. How would that be viewed by Dad in that limited context without this whole episode of waiting 30 minutes and being upset and there being some frustration and anger?

MR. KAINEN: I don't know. It requires creating facts that didn't exist and something that didn't happen.

THE COURT: Right. But they're similar facts. I'm just saying --

MR. KAINEN: No. No. I understand. I think if you had this -- if you had these facts in the abstract, in other words, you didn't have this dynamic shift by this child being empowered by her mother to do what she wants and she controls it and you had just a situation of either two parents who had

custody and this is it and the child says, you know, hey, you know, I like to spend an extra night with Mom, I think Dad picks up the phone and says hey, Vivian, you know, Brooke would like the spend the night with you. Do you have a problem with that or she would like to go with you. And hopefully they work it out themselves or whatever. Or maybe it goes in down the road -- you know what, how about I give you this night and I take this other night because I would like to do something or whatever it is. Or they work out whatever is.

THE COURT: Well --

MR. KAINEN: But that doesn't exist here.

THE COURT: Well, listen. And that is the ultimate in co-parenting right there. That's being co-parents. But then my followup question is okay, that same scenario in that same paradigm where the interpretation is a 14-year-old can make a request, how is it any different if a 12-year-old child did the exact same thing?

MR. KAINEN: It means --

THE COURT: I've got a dentist appointment, Dad, I'm 12.

MR. KAINEN: Yeah.

THE COURT: I would like to spend the night. How is --

MR. KAINEN: In the --

THE COURT: How is it any different?

MR. KAINEN: The difference in this case is the dynamic that's been created by this child being empowered. In other words, you're absolutely right. If this -- envision this if you would if this whole provision wasn't there or if this provision had been interpreted as was initially, in others, as every other line in that provision talks about which is just simply a request. Okay. Then it would be what happens in most places which is sort of what ironically back to sort of the affidavits what Tom had said to Kirk way back in the end well, this is what happens anyway when people work things out and all that. So it really doesn't say anything. You consider what your kids say and all of those kind of things.

I mean, the problem here is no longer the language. I mean, I -- believe me, there should be one interpretation and not this other interpretation. But the problem is is that we can't unring this bell that a 14-year-old has been told and treats her father as if she is the one who makes these decisions and if Dad doesn't agree, then there's a consequence or if there's -- you know, if there's homework or whatever -- and whatever -- and I'm just -- I'm making up the homework part. I mean, I'm just trying to saying -- I'm sort of

drawing on my own house.

You know, if there's -- if Dad imposes parental authority, the consequence is I am the one who holds the strings in this case, because I am 14 years old and I get to decide.

THE COURT: Well, but again any teenage discretion provision, and I will say most if not every teenage discretion provision that I have ever seen woven into any agreement is one sentence long.

THE COURT: And child will have teenage discretion to exercise --

MR. KAINEN: I absolutely agree.

THE COURT: -- visitation. I have never seen a teenage discretion provision that is so detailed as the one that was crafted by the parties that's part of this agreement. So that being said, and teenage discretion requires a degree of flexibility.

MR. KAINEN: And that's the point is that --

THE COURT: It requires some co-parenting.

MR. KAINEN: -- every -- and every time that I've ever had it has been sort of that simple one line and inevitably it's been in cases where parents have a very good working relationship, respect each other and work with each other. And it's sort of like because it doesn't need to be

defined and it's never -- you know, when my client says to me well, how do these things get litigated, you know what, we don't litigate these things, because they're inherently present in cases where people have a working relationship and they have an understanding, they're on the same page in terms of being able to carry that out. This is an unusual case in terms of how it came to pass when everything was on the table and everything was resolved except for this particular issue.

THE COURT: But if I view the teenage discretion provision as just giving Brooke the ability to make a request --

MR. KAINEN: Right.

THE COURT: -- it renders the entire provision meaningless, because a 12-year-old child can make a request. What difference does it make that it's 12, 13, 14, 8? A request is a request. I mean, regardless of age, it still boils back to the same co-parenting.

MR. KAINEN: For starters, every other line with the exception of the or -- with the exception of the use of the or, every other line in that thing talks about the request and the parents being able to make decision -- and those kind of things. I mean, this is the only line that they've relied on that sort of implies that. That was not our understanding. And the fact is if we get down to the brass tax on the law on

this, it's crystal clear in this case. There's clear -- you can't argue there's not an ambiguity. Lord knows we finally found something we can agree on. There's ambiguity.

THE COURT: Well, I don't know that there's an agreement in that regard. Again, I --

MR. KAINEN: I don't think --

THE COURT: What's ironic about that is like I said before, this is the most teenage discretion provision I have seen. So you talk about ambiguities, the ambiguity is in every teenage discretion provision I've ever seen except this one where they state child shall have teenage discretion to exercise visitation with the other parent. That's ambiguous. It's -- and I agree. Any time you reference teenage discretion, it becomes an issue of power for the child. And again, it's an area where I don't typically order teenage discretion. But where parents come to me, they come in with a parenting agreement and they expressly state everything in here is in the best interest of the children, I sign off on it. You agreed to it.

And I still don't get the feeling that this whole process has played out, because there's still -- been no parent coordination at all.

MR. KAINEN: Here's -- well, here's the reality. Honestly, Judge, these parties were entitled to a decision on

-- I mean, there's conflict because of the fact that Ed Kainen and Tom Standish are telling Kirk Harrison this is what this provision means, this is what was involved in this drafting, this is what the language says and this is what it means and this how it should be interpreted. And Radford Smith and Gary Silverman are telling Vivian Harrison that this is what this provision says and this is what it means and this is how it was interpreted and this is how we got here. And they're entirely diametrically opposed views.

So these two parties are in conflict, because their lawyers can't agree. And we've come to the Court to say all right, look, we can't agree. Tell us the way the Court is going to interpret this provision. We're sort of at the point where we're just saying look at this point given the history. That -- and so they make a big deal of the idea that we've gone from interpretation to nullification.

I mean, frankly, it's sort of like, you know, the unconstitutionalize applied. Based on what's happened, this whole provision has -- you can't get the genie back in the bottle no matter what happens at this point, but we were entitled to the -- a decision from the Court to say okay, you know what, I've read this language. You know what, Rad, you are right, or you know what, Ed, you are right. This is the way I'm going to -- or you know what, I don't agree with

either one of you and this is the way I'm going to interpret it because it's ambiguous or because it's not clear and I can't tell.

But you spent an hour and we both walked away. You know, I -- it's exactly where we would be. The last hearing or the -- whatever -- what hearing was where you sort of went on about that, we the inevitable happened. We walked out of it, we both heard things. And Rad was able to point to a couple of lines and some of the things you said that he thought favored him and I was able to point to a couple of lines in what you said that favored me and we both walked away with the exact same interpretation that we walked -- we walked out of the courtroom with the same interpretation that we walked into it and nothing resolved.

We need -- they need some sort of guidance that's judicial, that's not delegated to some third party -- and there's a whole another issue with that, but it's something that they're entitled to the guy from the black road to give them.

THE COURT: All right. Mr. Smith.

MR. SMITH: Well, let me start by saying I think you have. You've given us guidance twice. There was a motion initially to eliminate the provision. There wasn't a motion to interpret. It was a motion to eliminate it there

initially. You denied that motion. I think the words denied are pretty clear. That's an order from the Court that was entered.

The second request was that it being interpreted in the same way they're now again requesting that it be interpreted. You gave a rather clear statement on the record that you then incorporated into your minutes which when Mr. Kainen talks about the difference between our opinion, the only difference is I think those statements that you carefully placed on the record is to your interpretation. The agreement should be included in the court order.

So I believe you have ordered on two separate occasions that the agreement is to be read as it's -- as it's written. There is no real ambiguity in the language. I mean, the fact that there is an and/or provision as we pointed out, it's used in many, many contacts. It's used in drafting of -- of agreements wherever the and/or provision will eliminate verbiage. In other words, you could say the thing twice, but instead you use and/or. It's a shorter sentence and it's clear.

The supreme court has used it -- I didn't choose two random decisions. These were the two most recent. If you look at the dates of these, the supreme court uses that verbiage all the time. And again, the way that we use it is

to eliminate provisions.

I also disagree with the characterization that every other line in this provision address the right of the child to make choices about discretion. The other lines as I've pointed out had very clear genesis in the negotiation between me and Mr. Standish in the reply that we filed that Mr. Kainen sought to eliminate. The genesis of the negotiations show the bad faith in taking the position that somehow we didn't know the effect of this agreement.

We from the very beginning included something more than one line. Our initial pleading contained a very clear right of the child to make a determination at 14 without any of the other protective provisions that were contained in the ultimate draft that was -- it was June 15th.

The -- you're looking for something. Shall I allow you to look for that, Judge?

THE COURT: No. No, that's fine.

MR. SMITH: Okay. And then the -- so Mr. Standish when I first proposed the 14-year-old discretionary choice to change custody which essentially what it said, the response back initially in the May 31st letter was that Kirk doesn't like this provision for the very reasons he stated today. He doesn't like it because he believes it will place too much power in the child that could effect Rylee, et cetera.

So we continued to negotiate at that point, Mr. Standish, to where I wrote on June 1st, 2012 the letter that's quoted and that this isn't anything new. It's not only in the reply. These arguments were made in the previous time that we filed the exact same motion.

But in that letter, I was very clear that this specific case required this type of provision. And I think Judge, you're right. This is an unusual provision. It's crafted very carefully. It was designed for this case. This case like no other has had first for our firm, for Mr. Silverman. And I would suspect for Mr. Kainen and Mr. Standish's firm as well in terms of the level of animosity that's expressed in the volumes of pleadings that proceeded the ultimate entry of this agreement.

And so we were very conscious and have been since this notion of this construct had been first described by Mr. Standish and I in a conversation in a mediation in November. As you recall from the pleadings associated with attorney's fees, Your Honor, that was followed by a letter from my office to Mr. Standish. Mr. Standish discussed the concept at that time. That all led up to months of negotiations that are reflected in these pleadings.

The notion from Vivian was that she waned Dr. Paglini's report to be concluded because there would never be

any resolution of the issues that Brooke was relating to Vivian even at that time in regard to problems with the control, the criticism of her father.

We crafted an order that was designed to say that based upon all of this previous vitriol that had been directed at my client, we weren't going to have decisions, the type of decisions that Ed describes and you describe that are made by normal parents that co-parent together, like yeah, you can go stay there that night.

We didn't want those decisions fueled by what we believed were absolute hatred between Mr. Harrison toward Mrs. Harrison. So Mrs. Harrison wanted a provision that said look, in circumstances, we want as they get older for the child to be able to exercise discretion without getting criticism, without getting heat, without getting her mother criticized and so forth.

So that was the intent of the provision and that's not a secret, because that's precisely what I told Mr. Standish in my June 1st letter that's quoted not only in this proceeding pleadings but in the pleadings before. In that letter, I explained to him that because of the animosity we felt it was necessary to have this guarantee in this provision so that the child could exercise this choice.

There was no confusion. Mr. Standish's response was

not that we object wholeheartedly. It was only that we should change this provision to the age of 16 and that I've -- he provided me highlighted provisions of changes including the Court retaining the power to enter custodial awards including the right --

MR. KAINEN: I'm sorry, I got to object here. And the problem is is that the discussion that Rad's referring to was several months before the actual language that we're talking about --

MR. SMITH: That's not an objection.

MR. KAINEN: -- that we're talking of interpreting.

MR. SMITH: It's an argument.

MR. KAINEN: No. No. No. It's inappropriate --

THE COURT: Listen.

MR. KAINEN: -- to suggest that this is --

MR. SMITH: You have the right to make an argument --

THE COURT: Listen. Yeah, this is -- look, this is all argument. And understand, I've read all the papers, so I don't want to -- I don't need any of that rehash --

MR. SMITH: Okay.

THE COURT: -- or regurgitated.

MR. SMITH: Well, let me just get to the point then. And first of all, in regard to that statement, these exchanges

of information that are contained in the letters were 15 days before the final draft of this language was prepared, not months it was just represented to you.

The response by Mr. Standish was on the 7th. That response had nothing to do with other than the specific language. I actually changed the provisions very carefully that granted, for example, the right of the child to -- or the right of the parent to extend -- communicate to the child that the child was eroding the visitation, that there was an attempt to change custody, et cetera, et cetera. None of that happened.

So let's go to what you asked first. You said why is -- this is the only issue and this is the only issue. We don't have any way to rebut Mr. Harrison's representation that Brooke is doing something in his home. We don't know. We've asked the Court on two separate occasions to interview Brooke to find out whether her opinion as to whether or not that's occurring.

But here's what we know objectively. She has only used this provision, only used this provisions at times where there was absolutely predictable and only for short periods of time. The longest period of time being a two day period. But this period specifically, the one that's before the Court today, was an overnight before she had dental surgery.

So Mr. Harrison has given it this spin of it was in retaliation. How do we rebut that other than to ask you to interview the child? I don't think it's enough. I think there's -- the more logical explanation is that she wanted to be with her mother who constantly takes her to the dentist. But that isn't sufficient for Mr. Harrison. This is just a rouse and this goes into the argument as to why I think this Court should enter sanctions in both the amount -- in a significant amount and the notion that if we have to keep filing responses to this motion it's preposterous.

We should now -- the Court should let us know whether we have to respond to these kind of motions. And the reason is is because this is a rouse. This is the only incident -- and first of all, it happened in February before the filing. And this is the only incident that he can come up with to explain that this thing is being undermined.

And he only does it after he rejects the notion of the parenting coordinator interviewing the child. That's no coincidence, Judge. It doesn't take much brain power to figure out that he will do anything to avoid having his story challenged by any interview of the children. The ironic part about this is we have never asked for an interview. I just pointed out that the very provisions that underlie the agreement allow the parenting coordinator to interview whoever

she sees fit. And this is a parenting coordinator that was chosen by Your Honor. We have faith in Ms. Pickard. We agreed to her.

And so we've signed the agreement. We're ready to proceed to address any problems that Mr. Harrison is having in regard to his care or visitation including for example that the children are spending too much time at her home picking up her things. It seems to me that that's an extremely easy issue to address. I mean, one is you just have whatever stuff they have at your house or you say to them we're not going back to Mom's house, so you suffer the consequences of not having your stuff. That would be the easiest thing to do.

But instead, we have this sort of perpetuation to again file these type of motions that are the third motion in regard to the teenage discretion and the second regarding parenting coordination. I don't know whether you want us to address parenting coordination. There was no discussion of it.

THE COURT: I -- again, unless there's something you have to add that has not been included in the papers -- because I've read the papers and I don't want to get back into that.

MR. KAINEN: I read a couple -- I respond to a couple of questions. I just have a couple of points I can

probably make in less than three minutes.

THE COURT: Okay.

MR. KAINEN: Number one, and perhaps this was in the pleadings, they drafted. There's no question. Brad's made it very clear. He was the drafter of these pleadings. The rules of instruction indicate that these interpretations are drafted against the -- I'm sorry, are interpreted against the drafter. So legally they've got that.

Factually, they have no ability to dispute frankly what I told you as an officer of the court in my affidavit, what Tom has told you as an officer of the court as to what our client understood and was told and what he understood when he entered this agreement. Okay.

So there are all sorts of problems with the ambiguities in this case in terms of what it says. The fundamental rules of construction require that it be interpreted in a reasonable consistent matter. And it can't be reasonable and consistent to say that in a family court where we deal with making decisions on the best interest of the children that we interpret an order in a way that gives the child the power to make decisions without regard to other plans, other children to direct their parents to do whatever it is.

That's not a reasonable interpretation and it's

contrary to what Tom and I have both told you in our affidavits is what was discussed or told to our client as to what this meant.

With respect to Dr. Roitman's opinions, she fails to even address the problems to the risk of the children as related to their interpretation. It's clearly contrary to the children's best interest in terms of shifting the family dynamic. We've talked about -- she's failed to assert anything that's inconsistent with that or even contrary to it. His opinions are unopposed. And frankly, their consistent with common sense.

I would tell you that, you know, we've went through the nullification interpretation. One of the things that's pretty clear that this is the -- this problem is the empowerment is the problem is look to the -- you know, the period of time in this case before we actually proved it up, we had a -- remember we had a custody agreement for -- in place for a year before we actually settled this case? I mean, when this wasn't an issue, there were no problems.

It was on the eve of the 14th birthday when Mom said these are your new superpowers. Use them, go forth. And all of a sudden that's what happened. Well, Rad's says well, she's only used it for today days at a time. You remember two days to deprive my client of I think it was 15 days of contact

without seeing the child. That was what you were upset about list time we were here, that it wasn't just two days, it was the two days that fell between the period of time that he wouldn't otherwise have seen her and those kind of things. So that goes on.

The letters -- you know, we talk about the -- first of all the letters from counsel don't say everything or -- Rad's sort of laid it out. The letters include -- by the way, the provision does not place to a responsibility of choosing on Brooke according to Mr. Smith which is entirely contrary to the position he takes in November when we say by God, Kirk can't even respond if -- if Brooke says this is what I would like to do, Kirk's in contempt if he even tries to discuss it with her. He's violating the order if he says to you you know what, Brooke, I don't think that's a great idea. Or you know what, I'd rather you didn't. That's contemptuous conduct according to Rad. In these letters, he says that this is not putting the responsibility on Brooke.

The bottom line is there is all sorts of problems with this. The parenting coordinator, we can deal with that separately if the Court wants. There's -- there is some significant issues there that we've dealt with. But on the law on this one, this is black and white. I mean, we've cited the case law. They haven't cited anything. They cited one

case in their reply brief and they abandoned it -- I'm sorry, in their opposition and they abandoned it in their reply frankly, when it was read, it favored exactly what we have been saying. It's --

MR. SMITH: No wait. You can't argue that I can't deal with substantive issues and then claim we abandoned it. I specifically didn't address it because it didn't go to the issue of the good faith of the filing of the motions.

THE COURT: All right. That's argument.

MR. KAINEN: That's what I've presented, Your Honor.

THE COURT: All right. Here's where I'm at. And before I make my findings and orders, I did intend to ask at the beginning of the hearing actually, I believe there are a number of outstanding orders that have not been submitted from various prior hearings. Were two -- are there two that I'm missing? Where do we stand?

MR. KAINEN: Well, on the motion from the 6 -- or the 60B -- or I'm sorry, the -- 60B motion. Thank you. I sat on that a little long. I thought it gone to Rad about the time that I was writing a letter saying hey, Rad, you know, you've had like three weeks with this thing or, you know, two months or whatever it was. I realize that I hadn't ever sent it. So I -- but that was months ago and I haven't heard back from Rad since that time. Is that a fair --

MR. SMITH: No, I sent you a letter saying that I think that there should be modifications of the order consistent with the --

MR. KAINEN: And you were going to get back to me after --

MR. SMITH: Well, but no. I sent you a subsequent letter but you said well, you would need a certain amount of time to get back to me. That's what I understood is the status of what's going on. Let me suggest this that you direct us to meet, which is what I always do in these things, direct us to meet and see if we can confer and come to an agreement in regard to these orders.

I can assure you that the disagree on the order arising from the hearing relating to the second time this motion was filed is just I wanted the minutes to be reflected.

MR. KAINEN: And --

MR. SMITH: So I would be happy with the Court on that instance just ordering its minutes.

MR. KAINEN: Well, here's the issue. And with the breakdown there is whether or not -- when you went on and talked for probably 45 minutes and said well, you make some good points and you make some good points and this is that, you know, this whole thing, and Rad's interpretation is those were all findings and my interpretation is at the end of day

you denied a motion and so I reflected that the motion was denied. That's the big difference, in other words, whether this order is going to be 25 pages that we're going to fight over every line --

MR. SMITH: No. No. No.

MR. KAINEN: -- or whether --

MR. SMITH: Just want it fair.

THE COURT: Well, here --

MR. SMITH: There's only a few paragraphs. If you put three paragraphs in your minutes about the denial of the motion, I have been told numerous times by the supreme court that they appreciate when there are orders that are going to be subject to appeal, and I certainly think this one will be, that you give some basis for the findings particularly when there's been the type of argument that Mr. Kainen described, because it's impossible for the Court to fair it out those things from a long argument with parties are making different positions in the context.

THE COURT: Well, here's what I'm going to do. And I think there's an order from the evidentiary hearing as well --

MR. SMITH: Yes. Those are the two orders.

THE COURT: -- that's outstanding. I'm going to direct that if you cannot agree and stipulate to language by

June 9th, then you each submit your proposed orders and I'll make a determination at that point.

All right. This matter comes before the Court on the underlying papers that I've indicated previously that have been filed. It emanates from the controlling order which is the stipulation and order resolving parent/child issues filed on July 11, 2012.

As part of that, there are certain parts that are relevant to our proceedings today including Paragraph 1 that specifically offers and represents to the Court that 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. The provision 2.11 also provides the need of 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.

Section 3 on Page 5 provides for any instance where the therapist believes that the behavior of either parents should be addressed and the child provides consent to the therapist to address the issue of the psychologist shall direct any discussions, suggestions or questions to the party's parenting coordinator a point of pursuant to Paragraph 4 below.

The parenting coordinator provision is set forth in Paragraph 4. It states 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 30 days of the date of file -- of the filing of this stipulate and order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment.

Paragraph 5 discusses the equal division of time. And as I indicated earlier, the exchanges at least when the children are in school are to take place in school contemplating that there's not to be any exchanges at either parent's home.

I do agree that I think to the extent that parties that children returning to the home to pick up items on either side, that's precisely the type of issue that can easily be dealt with with the assistance of a parenting coordinator. It's a minor issue, but it's obviously caused a great degree of angst, frustration and anger as it relates to the exchange

of items that can easily be dealt with.

Section 6 is the teenage discretion provision. I'm not going to read the entire provision. It consists of a Paragraph 6, 6.1, 6.2, 6.3 and 6.4. So there are five paragraphs that specifically deal with the teenage discretion provision.

I've noted earlier, I have not seen a teenage discretion provision that -- as specific in this provision. The typical teenage discretion provision is one sentence. The child shall have teenage discretion at -- in exercising visitation.

I've also noted earlier, it's typically not my approach when I'm issuing orders absent an agreement of the parties to include a teenage discretion provision. Particularly at any age below the age of 17, quite frankly. But I don't know that I've ever done that. But where parents agree that that's in a child's best interest or children's best interest, I sign off on it. That's what the parents agreed to.

I'm -- my approach is similar with a parenting coordinator. I do not appoint parenting coordinators without both parties stipulating to the appointments of a parenting coordinator, because I do strongly believe that both parents must buy into that process. I think it's a helpful and a

useful process, but I do not order the appointment of a parenting coordinator unless the parties bring that to me themselves and stipulate to it and ask me by stipulation to appoint a parenting coordinator.

The remainder of the parenting agreement talks about holidays. There's Section 8.1 deals with -- it's a provision that relates to the exchanges and picking up and who's responsible for transportation. And again, the transportation issue is -- seems to become a striking point.

Those provisions are directly relevant to my discussion today because it -- they -- all of those provisions deal with issues that revolve around the parenting coordinator and the teenage discretion issue where both of you did specifically agree that it was in the best interest of the minor children to appoint a parenting coordinator and to allow the children to have teenage discretion limited by the express language of the parenting agreement that's defined in Section 6.

There has been some discussion about the powers of the parenting coordinator. And what was intended and what was understood and what was meant, the record is clear that throughout this process both parties have had the involvement not only of highly skilled and trained counsel, the -- some of the highly -- most highly reputed family law attorneys in the

state, but also involvement of other professionals that have been perhaps issuing advice along the way. That's clear from the papers that have been filed throughout this case that Dr. Roitman has been involved intimately in providing guidance and counsel to the Plaintiff.

I think it -- what I find noteworthy about that and one thing that's raised directly in the motion that I quote from is a statement quote 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. I read that and that struck me as I read that sentence. Did not, never would have agreed to allow a third party whom he had never met to make parental determinations involving his children.

Now obviously that was done in the context of a parenting coordinator and obviously a parenting coordinator is not going to make any recommendations presumably unless both parties meet with the parenting coordinator, but it drips with irony because throughout this case I have been provided with reams of information from Dr. Roitman who up to this point in time has never interviewed the children, has never had any contact with the Defendant, yet repeatedly makes custody determinations that the Plaintiff seeks to have this Court rely upon.

The -- dealing with the teenage discretion issue, I

ask questions at the outset, because it is a very detailed provision and I do go back to the prior hearings because we have had previous discussions in regards to this specific issue, specifically from the hearing on December 18, 2013. I noted the Court does not view this language as giving the minor child authority to make decisions or to change custody. I denied the request to remove the teenage discretion provision and stated to be clear the minor child does not control and the Court expects the counselor to be involved in the 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, then the Court will be concerned. Teenage discretion should be implemented from time to time and there should not be any issues should Brooke wish to make a modification of a few hours and the Court would expect communication in this regard.

As I interpret that provision, I don't view it simply as the ability of a child at 14 years of age to make a request. To do so would render the entire provision meaningless. And it makes no sense to me that a child at any age can make a request that could be denied by a parent at any time, but the parties specifically agreed that at Age 14 -- and there was correspondence that suggested there may -- there

was some dialogue perhaps about using the age of 16 as a more appropriate age that there was some discussion about allowing the child to have that type of input, have some degree of teenage discretion which implicitly allows the child to have some degree of control.

I made it clear in prior hearings that it's not a tool or an issue to be used to undermine the underlying custody arrangement. I've made that abundantly clear at I believe at prior hearings. And I've also indicated at prior hearings I don't view this as a tool. I've stated and it was not done with the intent to nullify the parenting coordinator's ability to interview the children. Defendant has offered that she's never asked for such an interview and to my knowledge the parenting coordinator process hasn't even started yet.

But that being said, I've said before that I do not view the expression of a preference of a child standing alone as a sufficient basis to modify custody. So even if Brooke had reached the point where that was -- she simply stated that I want to live with Mom, well, I want to live with Dad for that matter. Either way, if she came forward and made that statement, that standing alone is not going to be a sufficient basis to overcome the presumption of joint physical custody that you agreed to.

I didn't say that as a nullification per se of the provision of the stipulated parenting agreement that you agreed to that specifically contemplates the fact that the parenting coordinator could interview the children. My comments about me not interviewing the children remain the same. I have no reason to interview Brooke or Rylee at this point. And I'm not aware of any reason right now at this moment that the parenting coordinator has any basis to interview the children. But it doesn't nullify that ability or that provision.

The -- in reviewing the issues as it relates to teenage discretion, I also emphasize that I wanted to see the process work. I wanted to see in action what the two of you had agreed to almost two years ago now. If not, longer. The parenting agreement order was entered 2012. So two years ago. I ultimately entered the order for appointment of parenting coordinator on October 29, 2013. And no -- and at no point in time has there been a motion to reconsider that order or to set aside the provisions pursuant to 60B, the set aside provisions related to -- or a request related to a different order.

The instances in which teenage discretion appears to have been exercised which include incident since we were last here in court, I don't construe to be abusive of the teenage

discretion order. The two day provision did cause me some concern because it seemed to create a block of time that Dad didn't have any time.

However, beyond that, the most recent incident that really gave rise to this motion I don't find change, the dynamics of the underlying custody arrangement. I don't find that it was necessarily abusive. Obviously, that becomes a concern if the child is exercising in an abusive manner. But I'm basically looking at one request. I understand from the argument that's been made that it wasn't really presented by way of the motion that it changes the dynamics in the home, but the instances in which it has been exercised are not frequent enough to cause me concern that it is an issue of abuse that's been exercised by Brooke.

I cannot construe that provision to simply be a -- the ability of a 14-year-old child as opposed to a 13-year-old child to make a request to perhaps have a few additional hours or some time with the other parent. With respect to the -- so I don't find that it violates public policy. I -- it doesn't appear that it's happening frequently. It doesn't appear that there's any regular modification to the schedule.

And certainly the appointment of a parenting coordinator and the use of a parenting coordinator might assist in bringing that to light if that's occurring. If

there are problems with retrieving items at the home which I go back to what I said earlier, those are the type of issues that can be addressed through a parenting coordinator.

And I don't view that as an abdication of authority. There's been a lot of discussion and debate that in the papers and there's a lot of national discussion. And turning to the parenting coordinator order, the parties specifically agreed to the appointment of a parenting coordinator and specifically agreed that if they couldn't agree to who it would be or what the language would be, that it would be left in my hands.

What's interesting about that is there is a form parenting coordinator order that was generated in collaboration with both the bench and the bar. And there's some involvement of counsel involved in this case in the drafting of that very order, the standard form order that many courts here rely upon without even taking a second look at the language.

So the suggestion that the parenting coordination process was not understood I just cannot find as believable, because a parenting coordinator if the specific language in the stipulation was that the parenting coordinator would resolve disputes, if the intent was to simply appoint a mediator, then the order would have stipulation would have said the parties will mediate any issue. IT would have said

mediate issues. The connotation of a parenting coordinator arises above a mere mediator in any context that I have ever seen.

Notwithstanding that, I took the forum order given the fact that both parties object -- both parties had different orders that they were proposing, I took a look at some orders that had been generated in other jurisdictions. Again, recognizing it was not me who went out of my way to say the two of you need a parenting coordinator. It was not my initiation of that process. The two of you agreed we should have a parenting coordinator and that is in Brooke and Rylee's best interest.

I took the language that both parties had proposed and I created an order that is not the same as the forum order that is floating out here in family court. It's a lot more narrow than that order. It's more expansive than the mediation proposition submitted by the Plaintiff. But even the language of the stipulated stipulation order resolving parent/child issues includes references to a parenting coordinator that goes beyond service as a mediator.

Had again mediation been the sole role of the parenting coordinator, the language would have read that the parenting coordinator would have mediated disputed disputes, not resolve disputes. I get that fact that mediators do

resolve disputes. But the connotation of what a parenting coordinator has been since that term was -- came on the scene here in family court, is beyond just a mediator.

The limitation of the parenting coordinator also does not defer substantive decisions to the parenting coordinator from the Court. It's not an abdication of judicial power as it relates to substantive issues. Again, it was very narrow. There's no basis for a parenting coordinator to ever make any changes that would modify the underlying custody arrangement. They're prohibited from doing so.

Again, we're talking about minor issues. And those minor issues are identified and specified in the order appointing parenting coordinator. And it includes some of the very issues I have discussed here in Court today.

The -- overall in looking at the issues that are before the Court and understanding that any of this language could have been discussed with not only counsel but also presumably had been discussed with outside individuals including experts, the parties nevertheless agrees to the initiation of a process that including a parent -- included a parenting coordinator.

I'm not inclined to nullify those provisions particularly given the fact that there's never been any parenting coordination, despite the fact that the parties

agreed that it was in their children's best interest. 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, but I still believe under the circumstances that it can be a valuable tool for both parties to deal with these issues, to deal with the headaches that are caused by waiting for 30 minutes. That can be a source of frustration, but I -- again, I -- as I said at a prior hearing, I want to see the process that the two parents envisioned. I want to see it take place.

And thus far it still hasn't even been implemented. Perhaps the parent -- the counseling has taken place. And to that extent, I hope it has and there's been some value derived from by Brooke and Rylee perhaps as far as the counseling is concerned.

But I deny the motion for order resolving parent/child issues that -- and other equitable relief that asks for ultimately a nullification of the teenage discretion provision. I don't find that there has been any abuse of that provision and also the nullification of the parenting coordination order.

Also there's a request made by Plaintiff to strike the reply as -- the suggestion that it went beyond what was -- what's contemplated in a reply because it truly was a reply to the countermotion for an award of attorney's fees.

Here's what I'm inclined to do. I don't know that I needed the information that's set forth in the reply. Although it does touch on the issue of sanctions and request for fees, I'm going to strike certain portions of both the motion and the reply. I'm striking the reply that was filed by the Defendant.

I'm also striking that -- I'm striking Dr. Roitman's report that's attached to the motion and the references that were -- have been made in the motion to his report. And that includes Pages 8, Lines 10 through 16, Page 9, Lines 3 through 24, Page 10 and Page 11, Lines 1 through 2.

It is very problematic for me, and I go back to what I said earlier, that I've said in prior cases. Parental conflict is not healthy for your children. I don't need an expert to tell me that parental conflict isn't healthy. But to continually rely on expert evidence if you will from an expert who has never met the children, has never interviewed the Defendant as part of this process, I'm just not inclined to make that part of the record.

The -- and I read parts of -- as far as what was

contained in the motion and what was quoted by Dr. Roitman. And I get -- there's a lot to be said for that. And I'm not necessarily here to minimize that, but it's problematic when we're relying on something that is unilateral and it's basically requesting that this individual make a custody determination when the other part hasn't even met that individual. And I'm just simply not going to rely on that.

MR. KAINEN: Your Honor, there's a difference between not relying on it and striking it from the record. In other words, he's not made a recommendation for these specific kids. He said this is bad policy. In other words, when you have a bad dynamic or something like that or when this kind of power goes to children. I think taking that out of --

MR. SMITH: He's done more than that. He's incorporated --

THE COURT: Well, no. Listen. I don't need anymore. Listen. I --

MR. KAINEN: But you've made findings that are specifically related to Dr. Roitman throughout this case and to then take out the underlying -- in other words, you made findings that you accept and don't accept in all of these areas either and then you take away from the record the actual things on which you made --

THE COURT: Well, listen. I go back to what I said

earlier. It's clear to me that Dr. Roitman has been consulted by the Plaintiff throughout these proceedings. In fact, even though motions the papers related to attorney's fees talked about the -- his advice to resolve this issue in the debate, don't leave it up --

MR. KAINEN: But --

THE COURT: The family court is the worst place to go to have these issues resolved.

MR. KAINEN: You didn't strike Dr. Appelbaum's (ph) opinions. You didn't strike -- all about Dr. Roitman by the way, Dr. Ronningstam's (ph) opinions. Those are all part of the record. They have never met Kirk. They never talked to the children. They never even reviewed the --

THE COURT: No, I'm talking --

MR. KAINEN: -- abject record.

THE COURT: No, I'm talking about the specific attachments to this motion. I'm not saying Dr. Roitman's prior reports that were attached. I'm -- and I'm not talking about prior experts. But here's my point. In negotiating this parenting plan, you're saying this expert came forward and said you know what, teenage discretion provisions are problematic. They're issues. And in many respects, I get that. I'm not here to disagree with that aspect in general that there are issues and concerns. But when you negotiate --

and to be clear, the record also reflects that there wasn't heavy involvement on both sides in crafting these provisions. I -- and I understand the argument about the craft -- the drafter of the provision, but the correspondence certainly suggests that there was heavy involvement.

The notion that you have this expert involved in this process coaching and saying look, you need to get this resolved. Don't fight this out in family court. That's the worst place to be. And then at the same time you agree that is in Brooke and Rylee's best interest to include a provision that allows for teenage discretion with a series of limitations that are still in place. I'm not striking any of that. I'm not nullifying any of that.

And now to rely on that same expert who has been providing that advice throughout these proceedings based on the record and to basically say that provision from inception was insane. How is that provision even in there? Why did the Court even include a teenage discretion provision? Well, because the parties agreed that that was in their children's best interest.

MR. KAINEN: And that's fine. But my point is that Your Honor, every expert in this case was -- besides from the beginning, the Court has not struck anybody's opinion except Dr. Roitman, the report twice. And the fact is that Dr.

Ronningstam filed letters and filed a report that involved an attached to pleadings. Never did anything but meet with Vivian. Dr. Appelbaum never did anything -- never looked at the pleadings. Said it was out there and those kind of things.

MR. SMITH: That's not true.

MR. KAINEN: Never did anything but -- and but yet, Dr. Roitman --

MR. SMITH: That's not true.

MR. KAINEN: -- suddenly -- excuse me. Dr. Roitman suddenly -- and he's provided a report on which my client on relied to make his argument -- as a good part of it, the Court has referenced it at various points in terms of what it accepts and what it rejects, what it needs and what it doesn't need. He's entitled to that as part of this record. And the basis that well, he didn't interview these parties, neither did Dr. Ronningstam, neither did Dr. Appelbaum. They didn't even look at the paperwork in this case which Dr. Roitman has done.

THE COURT: Well, listen.

MR. SMITH: They did. That's -- I just don't want these things kind of thrown out there on the record.

THE COURT: Let --

MR. KAINEN: Their own reports --

MR. SMITH: Dr. Appelbaum specifically in his report said he read it. You criticize that in your subsequent filings if you recall.

THE COURT: Okay. Listen. All of these reports that you're talking about, all of them ultimately -- because there was never an evidentiary hearing, none of them were relied upon.

MR. KAINEN: But those are part of the appellate record now and this report now no longer is.

THE COURT: This current report --

MR. KAINEN: Yes.

THE COURT: -- I'm striking.

MR. KAINEN: You striked it twice now. You struck it in the underlying thing when attached it to a prior motion, the one that you never --

THE COURT: Well, okay.

MR. KAINEN: -- had a hearing on and then we filed our motion -- because it wasn't done properly before the Court.

THE COURT: You see, I thought you were suggesting I had --

MR. KAINEN: No, you struck the same report twice before I filed it --

THE COURT: Okay.

MR. KAINEN: -- as a supplemental pleadings --

THE COURT: But the initial reports that were filed at the outset of this litigation.

MR. KAINEN: No, what I'm talking about is the present report --

THE COURT: this report.

MR. KAINEN: -- I filed --

THE COURT: Yeah.

MR. KAINEN: -- as a supplement before. You struck it --

THE COURT: Yeah.

MR. KAINEN: -- sua sponte and never had a hearing and then we had -- now it's part of the record. It's attached as the basis for my client's belief or his request. It offers expert opinion in an area which Dr. Roitman is qualified to opine. And the basis is that he hasn't met somebody.

THE COURT: Okay. But --

MR. SMITH: Judge, if I may.

THE COURT: But let me --

MR. SMITH: I don't care if you don't strike either. As long as you don't strike his report, don't strike the reply, because I think there was several arguments that were made in the reply that were first made. For example, I was precluded from being part of the negotiation which we now know

was absolutely and utterly a false statement by Mr. Harrison into this record. That should be -- I should be permitted to respond to that.

So Your Honor, if we want to have a complete record --

THE COURT: Well, do you want to both -- do you both want it as part of the record, the reply and the report?

MR. SMITH: Yeah.

MR. KAINEN: Sure.

THE COURT: Okay.

MR. SMITH: Okay. Very good.

THE COURT: So based on the stipulation notwithstanding this Court's findings that it should be stricken, the parties have stipulated to allowing the reply to remain as part of the record and Dr. Roitman's report to remain part of the record.

I do find pursuant to NRS 18.010 and EDCR 7.60 that the Defendant is entitled to award of fees based on the fact that some of these issues have been discussed at prior hearings. I recognize there are new issues. I'll simply direct Defendant to submit. I'm not -- and I don't want a full blown memorandum submitted. I just want billings sheets. Basically a -- I mean, it's in the nature of a Brunzell memorandum, but certainly I can make findings in court as to

those factors, the qualities of the advocate, the character and difficulty of the work performed. I have evaluated that in reviewing the paperwork, the work actually performed and the result obtained.

I'm just looking for the time -- and I'll evaluate it and make a determination that blank should be left in the order for the fees. I'll direct that the memorandum of fees be filed by --

MR. SMITH: June 9th.

THE COURT: June 9th. That'll be the same date as the orders. And the reason I do that and I allow the other party to comment strictly on -- not that the merits of the fees, but the amount of time that was specifically billed that Plaintiff is entitled to file something, submit a responsible paper by June 23rd.

MR. SMITH: And if I may, Your Honor, let's -- if we could use the June 23rd date to have the same type of order which I would ask to be allowed to prepare arising from this hearing that if we can't agree on the text of that order, that we simply submit proposed orders to you by the 23rd.

THE COURT: Well --

MR. SMITH: I just don't want this process to continuously be delayed by the non-filing of orders.

THE COURT: Well, we need to get some closure on

this. I'm going to -- I'll direct that the order is to be submitted by June 30th. If it can't be stipulated to, then each party submits their own.

MR. KAINEN: Well, then how about --

MR. SMITH: Very good.

MR. KAINEN: If it's going to be submitted to the Court by June 30th, how about like can I have it in a week or 10 days? I mean --

MR. SMITH: I'm going to order a transcript and my intent is to simply restate the things that the Court has made in its findings today. So however soon I get that transcript will be how soon I can prepare the order.

THE COURT: Well, let me put it this way. It needs to be supplied to Plaintiff's counsel. I'm looking at a 30 day -- basically a 30 day window. So it needs to be provided by May 30th to Plaintiff's counsel and then assuming it is provided by that date, then I expect the order to be submitted by June 30th, if not a stipulated order, then each party submits their orders.

If it's provided after that date, then it just bumps out the 30 days.

MR. KAINEN: Okay.

THE COURT: Okay.

MR. KAINEN: I assume these are related to this

particular motion?

THE COURT: Just this particular motion, yes.

MR. SMITH: Judge, just some --

THE COURT: No, May 30th to June 30th.

MR. SMITH: -- clarification so that --

THE COURT: It would just be 30 days out.

MR. SMITH: -- no confusion in the record, nothing in what you've ordered today has changed or modified in any manner either the text of the parenting plan or the Court's order of October 29th, 2013 appointing a parenting coordinator.

THE COURT: Correct. Correct.

MR. SMITH: Okay.

THE COURT: And I've -- I have restated things that came up at prior hearings.

MR. SMITH: Yes.

MR. KAINEN: So for purposes of --

MR. SMITH: I just didn't want there to be any argument that somehow you modified the previous orders.

THE COURT: No.

MR. KAINEN: For purposes of the contract with the parenting coordinator, it's simply that the parties will abide by the terms of the order that you entered.

THE COURT: Correct. I -- it should be --

MR. SMITH: Other than fees.

THE COURT: -- confined. I --

MR. SMITH: Other than fees.

MR. KAINEN: Well, the problem -- I'll give you an example. There's a problem out of an issue with fees. For example, one of the things in Ms. Pickard's parenting coordinator order is that if anybody challenges the order and she finds the need to hire a lawyer, that party has to front a hundred percent of her fees until it's resolved. Those kind of things are, you know, if you have a party being compelled to use somebody.

THE COURT: And you're in that regard. I --

MR. SMITH: I don't -- yeah, I don't have a dispute with the notion. I think we're in accord that we shouldn't go beyond the bounds of the order itself.

THE COURT: It should be confined --

MR. SMITH: Right.

THE COURT: -- to the terms of my order. And I agree to the extent it goes beyond that. I'm not going to compel someone to sign a contract that goes beyond that. Now if ultimately the parenting coordinator doesn't feel comfortable, then we've got to pick another parenting coordinator.

MR. KAINEN: That's the idea that there's going to

be an hourly rate for what's going on.

THE COURT: Right.

MR. KAINEN: It's just some --

THE COURT: No, and I expect that.

MR. KAINEN: There is some owner -- look the criticism of the uniform order --

THE COURT: Order.

MR. KAINEN: -- has been that it's the parenting coordinator protection document. I mean, it's --

THE COURT: Yeah.

MR. KAINEN: -- about half a page on substance and about --

THE COURT: Yeah.

MR. KAINEN: -- four pages on --

MR. SMITH: Well, again, this is an argument for another time and another context, but --

THE COURT: Well, I -- we could have a very long discussion about parenting coordinators. And again, that's -- I don't typically appoint them unless parents agree to it. And if they agree to -- I can -- listen. That being said I'm not here to criticize the program. I think it can be a very helpful process in this case.

MR. SMITH: Well, it's very helpful that you have advised us of these things because I'm sure Mr. Kainen and I

will go back to our Judge Duckworth file and note that don't appoint parenting coordinators --

THE COURT: I -- you can type that in your file. Unless you both agree to it --

MR. SMITH: I understood.

THE COURT: -- and rights of first refusal.

MR. SMITH: Rights of first refusal. That was earlier with you.

THE COURT: Thank you.

(PROCEEDINGS CONCLUDED AT 11:52:23)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

completed enough college courses to receive a college associates degree by the time she graduates from high school with nearly straight A's. She has acted in plays, continued her rigorous dance schedule, continued her significant involvement in DECA (an international organization of marketing students), and successfully completed her college entrance examinations and her college applications. She has indicated to Vivian that because of her lighter school schedule in her final semester, she intends to spend more time with Kirk at his home, consistent with the parenting plan.

Because of her age and maturity, Brooke's right of confidentiality, and her right to be heard regarding her psychological care and treatment, should be fully protected by her own counsel. Only then will Brooke be able to competently address the grounds upon which those rights are affected. Other Courts have approved such a course. *See, e.g., Nagle v. Hooks*, 296 Md. 123, 460 A.2d 49 (Md. 1983) (parents involved in a custody dispute cannot agree or refuse to waive the privilege on a minor child's behalf, and the court must appoint a guardian to act, guided by the best interests of the child). The branding of Brooke with a psychological disorder or as the victim of mistreatment, or the revelation of statements she has made with the understanding that her therapy was confidential, could have long ranging effects on her education, her employment, her family relationships, and her psychological health. Vivian's counsel, that the Court has restricted from having any contact with Brooke outside questioning at hearing, cannot fully express the concerns or positions of Brooke. The Court should permit Brooke to consult with and hire outside counsel through the appointment of counsel as a Guardian ad Litem before being required to testify or participate in an evidentiary hearing that addresses those subjects.

V.

CONCLUSION

All the above can be avoided by restricting the hearing to relevant and admissible evidence. The subject matter should be limited to why Brooke did not attend additional appointments in 2016, and what

each party did to hinder or aid those appointments from occurring. Further, the Court should review the process of that counseling to determine whether it will successfully continue, and determine what schedule Brooke will keep in the last five months of her minority.

The evidence presented at trial will demonstrate that Vivian has continuously encouraged Brooke to abide by the Parenting Plan, go to the court ordered therapy sessions and have a good relationship with her father. Vivian believes that if Kirk is allowed to brand Brooke as a liar, or as psychologically damaged, or demands that she spend no time with Vivian in the months leading to her 18th birthday, it will not only be against her best interests, but harmful to her. To Vivian's knowledge Brooke has acted in good faith, has been truthful to Dr. Paglini, has complied (to the extent possible), with the Court's order regarding counseling, will continue to do so and will abide with the schedule in the Parenting plan in her second semester of this school year. More importantly, Vivian believes that Brooke does love her father, but that Kirk has done the very thing that Dr. Paglini has warned him of, and that it has, as Dr. Paglini predicted in January 26, 2016, harmed his relationship with Brooke.

Submitted this 17th day of January, 2017.

RADFORD J. SMITH, CHARTERED

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Radford J. Smith Chartered ("the Firm"). I am over the age of 18 and not a party to the within action. I served the foregoing document described as PREHEARING MEMORANDUM on this 17 day of January, 2017, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

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EXHIBIT "A"

In re Berg, 152 N.H. 658

Document: In re Berg, 152 N.H. 658 Actions

Supreme Court of New Hampshire

July 13, 2005, Argued ; October 18, 2005, Opinion Issued

No. 2005-002

Reporter
152 N.H. 658 * | 886 A.2d 980 ** | 2005 N.H. LEXIS 152 ***

IN THE MATTER OF KATHLEEN QUIGLEY BERG AND EUGENE E. BERG

Subsequent History: [***1] Released for Publication October 18, 2005.

Prior History: Hillsborough - northern judicial district.

Disposition: Reversed and remanded.

Core Terms

records, waive, therapist-client, custody, therapy, guardian ad litem, privacy, disclosure, best interests of the child, therapists, trial court, minor child, guardian, custody dispute, argues, healthcare, recipient, maturity, patient, healthcare provider, visitation, appoint, divorce, rights, superior court, recommendation, circumstances, confidential, seal

Case Summary

Procedural Posture
In a custody proceeding between petitioner mother and respondent father regarding the father's visitation, the Superior Court, Hillsborough-northern judicial district (New Hampshire), transferred questions for an interlocutory appeal by the children's guardian ad litem of the trial court's denial of a motion to seal records of the children's treatment by psychotherapists, focused on the children's privacy rights and applicability of a privilege.

Overview
The parents had joint legal custody, but the children lived with the mother. The father claimed that the mother was interfering with visitation, but there was also evidence that he made the children uncomfortable so that they dreaded visitation. The father sought to discover records of the children's sessions with therapists as he prepared for trial of the dispute, but the mother and the guardian ad litem opposed their release, as did the therapists. The court held, first, that the father's rights under the New Hampshire and United States Constitutions to raise his children were tempered by the State's duty to protect the welfare of children. Therefore, if the children's best interests demanded it, their right to privacy was protected despite his conflicting rights. Furthermore, the plain language of N.H. Rev. Stat. Ann. § 330:-A:32 (2004), as well as its interpretation in light of the attorney-client privilege, indicated that it protected children as well as adults. Although normally a parent could invoke or waive the privilege on a child's behalf, this was not always the case in contested family proceedings, so a trial court was also empowered to invoke it on a child's behalf.

Outcome
The court reversed the lower court's order and remanded the matter for further proceedings.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review
Constitutional Law > General Overview
Governments > Legislation > Interpretation

HN1 Where an issue poses a question of constitutional law, the Supreme Court of New Hampshire reviews it de novo. Shepardize - Narrow by this Headnote (1)

Constitutional Law > Substantive Due Process > Privacy > General Overview
Family Law > Family Protection & Welfare > Children > General Overview

HN2 The right of biological parents to raise and care for their children is a fundamental liberty interest protected by N.H. Const. pt. I, art. 2. Similarly, the United States Supreme Court has recognized that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. The State, however, does have a competing interest in the welfare of children within its jurisdiction, and may, as parens patriae, intervene in the family milieu if a child's welfare is at stake. Shepardize - Narrow by this Headnote (3)

Constitutional Law > Substantive Due Process > Privacy > General Overview
Family Law > Child Custody > General Overview
Family Law > Child Custody > Child Custody Procedures

Document: In re Berg, 152 N.H. 658 Actions

divorce and custody litigation, the superior court often must weigh the rights of parents against the best interests of the children. (VI); (VI) (2004), repealed and replaced by N.H. Rev. Stat. Ann. § 461-A:6 (Supp. 2005). Thus, the superior court has the authority to determine whether it is in the best interests of a child involved in a custody dispute to have confidential and privileged therapy records revealed to his or her parents. U.S. Const. amend. XIV offers a parent no greater protection than does N.H. Const. pt. I, art 2 under such circumstances. Shepardize - Narrow by this Headnote (1)

Governments > Legislation > Interpretation

HN4 In matters of statutory interpretation, the Supreme Court of New Hampshire is the final arbiter of legislative intent as expressed in the words of the statute considered as a whole. That court construes a statute's language according to its plain and ordinary meaning. Shepardize - Narrow by this Headnote

Evidence > Privileges > Psychotherapist-Patient Privilege

HN5 See N.H. Rev. Stat. Ann. § 330-A:32 (2004). Shepardize - Narrow by this Headnote

Evidence > Privileges > Psychotherapist-Patient Privilege > Scope

HN6 For purposes of the therapist-client privilege codified at N.H. Rev. Stat. Ann. § 330-A:32 (2004), "client" is defined as a person who seeks or obtains psychotherapy. N.H. Rev. Stat. Ann. § 330-A:2(III) (2004). This statute does not define the term "person." However, the plain meaning of "person" does not exclude minors. The statute also does not use the word "adult." Shepardize - Narrow by this Headnote

Evidence > Privileges > Attorney-Client Privilege
Evidence > Privileges > Psychotherapist-Patient Privilege

HN7 N.H. Rev. Stat. Ann. § 330-A:32 (2004) does not identify who may claim the therapist-client privilege on behalf of a client. However, the statute places the therapist-client privilege upon the same basis as the lawyer-client privilege. Shepardize - Narrow by this Headnote

Evidence > Privileges > Attorney-Client Privilege > Scope
Evidence > Privileges > Psychotherapist-Patient Privilege > Scope

HN8 N.H. R. Evid. 502, which governs the lawyer-client privilege, specifically identifies who may claim the privilege. Rule 502(c) states that the lawyer-client privilege may be claimed on behalf of the client by, among others, the client himself, the client's guardian or conservator, or the client's lawyer. Similarly, the Supreme Court of New Hampshire concludes that the therapist-client privilege may be claimed by, among others, the client, the client's guardian or the client's therapist. Shepardize - Narrow by this Headnote

Civil Procedure > ... > Discovery > Privileged Communications > General Overview
Evidence > Privileges > Psychotherapist-Patient Privilege
Evidence > Privileges > Psychotherapist-Patient Privilege > Waiver
Family Law > ... > Custody Awards > Standards > Best Interests of Child
Family Law > Child Custody > Child Custody Procedures

HN9 In the context of a custody dispute, it is patent that a custodial parent has a conflict of interest in acting on behalf of the child in asserting or waiving the privilege of nondisclosure of therapist-client communications. Where a parent is waiving or claiming the privilege on behalf of his or her child in the context of a child custody dispute, there is a distinct possibility that one, or even both, of the parents will exercise the power to waive or assert the child's privilege for reasons unconnected to the polestar rule of the best interests of the child. Where the privilege is claimed on behalf of the parent rather than that of the child, or where the welfare and interest of the minor will not be protected, a parent should not be permitted to either claim the privilege or, for that matter, to waive it. Allowing parents unfettered access to their children's therapy records under all circumstances may inhibit the child from seeking or succeeding in treatment, or, even worse, result in substantial emotional harm to the child from a forced disclosure. Furthermore, denying a minor the opportunity to at least object to the involuntary disclosure of his or her therapy records in the context of a child custody dispute can only have a negative effect on the minor's relationship with the therapist and can taint the minor's perception of the fairness of the legal process. Shepardize - Narrow by this Headnote (5)

Evidence > Privileges > Psychotherapist-Patient Privilege
Family Law > Child Custody > Child Custody Procedures

HN10 The public policy behind the psychologist-patient privilege is in some respects even more compelling than the policy behind the attorney-client privilege. The psychologist-patient privilege serves to protect an individual's privacy interest in communications that will frequently be even more personal, potentially embarrassing, and more often readily misconstrued than those between attorney and client. Made public and taken out of context, the disclosure of notes from therapy sessions could have devastating personal consequences for the patient and his or her family. Especially in the context of matrimonial litigation, the value of the therapist-patient relationship and of the patient's privacy is intertwined with one of the most important concerns of the courts--the safety and well-being of the children and families. Indeed, the public policy behind the therapist-client privilege may be even more compelling than that behind the usual physician-patient privilege. Treatment by a physician for physical ailments can often proceed successfully on the basis of a physical examination, objective information supplied by the patient, and the results of diagnostic tests. Effective psychotherapy, by contrast, depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears. *Shepardize* - Narrow by this Headnote (5)

HN11 The weight of authority supports protection for the therapy records of children who are at the center of a custody dispute or whose interests may be in conflict with those of their natural guardians. The Supreme Court of New Hampshire concludes that parents do not have the exclusive right to assert or waive the privilege on their child's behalf. The trial court has the authority and discretion to determine whether assertion or waiver of the privilege is in the child's best interests. That court refrains from establishing a detailed procedure through which the privilege should be waived or asserted, and instead leave that determination to the sound discretion of the trial court. However, when a privilege issue arises, the trial court must engage in fact-finding to determine whether waiver or assertion of the privilege is in the best interests of the child, with particular emphasis on preservation of the child's ability to engage in open and productive therapeutic treatment. The attempted assertion or waiver of the child's privilege by anyone, including the child, the child's parent or guardian, the child's guardian ad litem, or the child's therapist, will not be determinative. *Shepardize* - Narrow by this Headnote (5)

HN12 In the context of custody litigation, a New Hampshire trial court may, within its sound discretion, find that a child is of sufficient maturity to make a sound judgment about the assertion or waiver of his therapist-client privilege. Age alone is not determinative of this ability. In finding that the child is sufficiently mature to make a sound judgment, the trial judge must consider the following factors: (1) the child's age, intelligence, and maturity; (2) the intensity with which the child advances his preference; and (3) whether the preference is based upon undesirable or improper influences. Based on this finding, the judge may then give substantial weight to the preference of the mature minor to either waive or assert his privilege. Even if the parents and the guardian ad litem agree that a child's privilege should be waived, the child has a separate interest that the court must consider, and if the minor is mature enough to assert the privilege personally, that assertion may be given substantial weight. The trial court may also, within its sound discretion, appoint a guardian ad litem, regardless of the child's maturity, for the purpose of determining whether the privilege should be asserted. To that end, the court may rely upon the existing guardian ad litem, or appoint an independent guardian ad litem to address only the privilege issue. *Shepardize* - Narrow by this Headnote (2)

HN13 To the extent that a guardian ad litem may assist the court solely regarding the waiver or assertion of a child's therapist-client privilege, as opposed to broader questions of custody and visitation, a trial court concerned that viewing the therapy records may taint a previously appointed guardian ad litem's ultimate recommendation regarding custody or visitation may choose to appoint an independent guardian ad litem solely for the purpose of representing the child's best interests with regard to the therapist-client privilege. N.H. Rev. Stat. Ann. §§ 461-A:16 (Supp. 2005), 464-A:41 (Supp. 2005). *Shepardize* - Narrow by this Headnote (2)

HN14 Section 164.502(a)(2) (45 C.F.R. § 164.502(a)(2)) of the Health Insurance Portability and Accountability Act Privacy Rules, 45 C.F.R. §§ 164.500-.534, requires a health care provider to disclose protected health information to the health care recipient at the health care recipient's request. In certain circumstances, the health care provider is also required to disclose such information to the personal representative of the health care recipient at the personal representative's request. 45 C.F.R. § 164.502(g)(1). For an unemancipated minor, a parent, among others, must be treated as the minor's personal representative, so long as the parent, under applicable law, has the authority to act on behalf of the minor in making decisions related to health care. 45 C.F.R. § 164.502(g)(3)(i). However, the health care provider may not disclose or provide access to protected health information about an unemancipated minor to a parent if doing so is prohibited by an applicable provision of state or other law, including applicable case law. 45 C.F.R. § 164.502(g)(3)(ii)(B). *Shepardize* - Narrow by this Headnote (1)

HN15 Where a trial court has made no findings on an issue and it is not one of the questions transferred from the trial court in an interlocutory appeal, the Supreme Court of New Hampshire will not address it. *Shepardize* - Narrow by this Headnote (2)

Counsel: Harvey & Mahoney, P.A., of Manchester (J. Campbell Harvey on the brief and orally), for the petitioner.

Wiggin & Nourie, P.A., of Manchester (L. Jonathan Ross and Elizabeth M. Leonard on the brief, and Ms. Leonard orally), for the respondent.

Judith A. Roman, of Concord, by brief, as guardian ad litem for the minor children.

Judges: Duggan, J. BRODERICK, C.J., and NADEAU, DALIANIS and GALWAY, JJ., concurred.

Opinion by: Duggan

Opinion

We accept the facts as presented in this interlocutory transfer and additional facts that are undisputed by the parties. The petitioner-mother, Kathleen Quigley Berg, and the respondent-father, Eugene E. Berg, are divorced. [***2] Pursuant to the final divorce decree, they have joint legal custody of their four children, whose ages range from eleven to seventeen. The mother has primary physical custody, while the father has specific custodial time with the children.

After entry of the final divorce decree, the children at times did not visit the father as scheduled, because either they refused to do so or they were not made available for visitation by the mother. The children reported to the mother instances of alleged inappropriate conduct by the father and **[*660]** their reasons for not wanting to visit. As a result, the mother arranged for individual counseling to address each child's resistance to visitation and his relationship with the father. Three children remain in regular individual counseling. [**983] Each child's therapist has invited the parents to participate in the counseling.

The father filed a contempt motion, alleging that the mother has interfered with his relationship with the children and has alienated them from him. The mother filed a cross-motion to modify the visitation schedule. A GAL was appointed to represent the children's interests. In connection with the contempt motion, the father requested [***3] that the children's therapists produce their records and notes for his inspection, arguing that he would find evidence of the mother's alleged interference with visitation. The children's therapists refused, contending that disclosure of the records is not in the best interests of the children.

The GAL moved to seal the children's records. The mother assented, but the father objected. The superior court denied the motion, ruling that the legal right of a custodial parent to access his children's medical records overrides the children's privacy rights, even if the father's assertion of his rights "might objectively be looked upon as harmful to the children." The GAL's motion for reconsideration was also denied. This interlocutory appeal followed. The superior court transferred the following questions:

> 1. Do children have a right to privacy for their medical records and communications?
>
> 2. Does the court have the authority to seal the therapy records of the parties' minor children when one parent demands access to the records for purposes of litigation?
>
> 3. Should the court have the authority to seal the therapy records of minor children when the parents are in [***4] conflict about the release and access to such records?

The father urges us to answer all questions presented in the negative, arguing that: (1) a parent's fundamental right to raise his or her children is paramount to the privacy rights minor children may have in their medical records; (2) minor children are not protected by the therapist-client privilege or, if they are, the privilege is conferred exclusively upon their parents; (3) the mother waived her right to object to disclosure of the records when she raised the matter of the importance of the therapists' testimony; (4) the father's constitutionally protected right to confront and cross-examine adverse witnesses compels disclosure of the records; and (5) federal regulations regarding the privacy of individually identifiable health information prohibit denying a parent access to his or her children's **[*661]** personal health information. We answer all three questions in the affirmative.

I. The Rights of the Parent

The trial court denied the motion to seal without specifically deciding whether the records were protected by the therapist-client privilege. Instead, the trial court denied the motion based solely upon [***5] the father's constitutional right as a parent to have access to the records. ***HN1*** Because this issue poses a question of constitutional law, we review it *de novo*. *State v. McLellan*, 149 N.H. 237, 240, 817 A.2d 309 (2003).

The father argues that his fundamental right to raise his children, as provided by the State and Federal Constitutions, overrides any rights his children may have in the privacy of their own therapy records. We first address the father's claim under the State Constitution, and cite federal opinions for guidance only. *State v. Ball*, 124 N.H. 226, 251-33, 471 A.2d 347 (1983).

HN2 The right of biological parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution. [**984] *In the Matter of Nelson & Horsley*, 149 N.H. 545, 547, 825 A.2d 501 (2003). Similarly, the United States Supreme Court has recognized that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000) [***6] (plurality opinion).

The State, however, does have "a competing interest in the welfare of children within its jurisdiction, and may, as *parens patriae*, intervene in the family milieu if a child's welfare is at stake." *Preston v. Mercieri*, 133 N.H. 36, 40, 573 A.2d 128 (1990). ***HN3*** "Parental rights are not absolute, but are subordinate to the State's *parens patriae* power, and must yield to the welfare of the child." *Id.* Particularly in the context of divorce and custody litigation, the superior court often must weigh the rights of parents against the best interests of the children. *See* RSA 458:17, II, V, VI (2004), *repealed and replaced by* RSA 464-A:6 (Supp. 2005). Thus, the superior court has the authority to determine whether it is in the best interests of a child involved in a custody dispute to have confidential and privileged therapy records revealed to his or her parents.

Accordingly, we reject the father's argument that the child's privacy interests automatically yield to a parent's right to raise and care for his or her children.

The Federal Constitution offers the father no greater protection than does [***7] the State Constitution under these circumstances. *See Preston*, 133 N.H. at 40; *Parham v. J. R.*, 442 U.S. 584, 602-04, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979). Accordingly, we **[*662]** reach the same result under the Federal Constitution as we do under the State Constitution.

II. The Rights of the Children

The father argues that minor children are not protected by the therapist-client privilege, as codified in RSA 330-A:32 (2004), because the statute does not expressly confer the privilege upon them. **HN4** "In matters of statutory interpretation, we are the final arbiter of legislative intent as expressed in the words of the statute considered as a whole." *State v. Kidder*, 150 N.H. 600, 602, 843 A.2d 312 (2004). We construe the statute's language according to its plain and ordinary meaning. *Remington Invs. v. Howard*, 150 N.H. 653, 654, 843 A.2d 334 (2004).

RSA 330-A:32 provides, in pertinent part: **HN5** "The confidential relations and communications between any [licensed mental health practitioner] and such licensee's client are placed on the same basis as those provided by law [***8] between attorney and client . . . ." **HN6** "Client" is defined as "a person who seeks or obtains psychotherapy." RSA 330-A:2, III (2004). The statute does not define the term "person." *See* RSA 330-A:2. However, the plain meaning of "person" does not exclude minors. *See Webster's Third New International Dictionary* 1686 (unabridged ed. 2002). We also note that the statute does not use the word "adult." *See* RSA 330-A:2, :32. "Adult" is defined in RSA 21:44 (2000) as "those persons who have attained the age of 18 years." We therefore reject the father's argument that, on its face, the statute excludes minors from its

Document: In re Berg, 152 N.H. 658 Actions

The father next argues that, absent language expressly conferring the therapist-client privilege upon minor children, we must conclude that the privilege is conferred exclusively upon the minor child's parents based upon their status as natural guardians, and thus only a parent may [**985] assert or waive the privilege on the child's behalf.

HN7 The statute does not identify who may claim the privilege on behalf of the client. *See* RSA 330-A:32 [***9] . However, the statute places the therapist-client privilege upon the same basis as the lawyer-client privilege. *Id.*; *see also N.H. R. Ev.* 503(b). **HN8** New Hampshire Rule of Evidence 502, which governs the lawyer-client privilege, specifically identifies who may claim the privilege. Rule 502(c) states that the lawyer-client privilege may be claimed on behalf of the client by, among others, the client himself, the client's guardian or conservator, or the client's lawyer. Similarly, we conclude that the therapist-client privilege may be claimed by, among others, the client, the client's guardian or the client's therapist.

We agree that a natural parent or parent who has legal custody of a child would qualify as the child's guardian, and thus could claim or waive **[*663]** the privilege on behalf of the child. However, the father's argument that the parents have the exclusive right to assert or waive the privilege assumes that a parent will act solely with the child's best interests in mind. Unfortunately, this assumption may not always be warranted in the context of divorce and custody proceedings.

> Society expects that a mother and father are the ones most likely to be concerned [***10] with the best interests and well-being of their child and, under normal circumstances, this is true. However, when custody of the child becomes the subject of a bitter contest between mother and father, the personal interests of the contestants in almost all cases obliterate that which is in the best interests of the child. It is at this point that it can be said the interests of both parents become potentially, if not actually, adverse to the child's interests.

Bond v. Bond, 887 S.W.2d 558, 560 (Ky. Ct. App. 1994). **HN9** In the context of a custody dispute, "it is patent that [a] custodial parent has a conflict of interest in acting on behalf of the child in asserting or waiving the privilege of nondisclosure." *Nagle v. Hooks*, 296 Md. 123, 460 A.2d 49, 51 (Md. 1983); *see also Attorney ad Litem v. Parents of D.K.*, 780 So. 2d 301, 306 (Fla. Dist. Ct. App. 2001). Where, as here, a parent is waiving or claiming the privilege on behalf of his or her child in the context of a child custody dispute, there is a distinct possibility that one, or even both, of the parents will exercise the power to waive or assert the child's privilege [***11] "for reasons unconnected to the polestar rule of 'the best interests of the child.'" *Nagle*, 460 A.2d at 51. "Where the privilege is claimed on behalf of the parent rather than that of the child, or where the welfare and interest of the minor will not be protected, a parent should not be permitted to either claim the privilege or, for that matter, to waive it." *In re M.P.S.*, 342 S.W.2d 277, 283 (Mo. Ct. App. 1961) (citation omitted), *quoted in State ex rel. Wilfong v. Schaeperkoetter*, 933 S.W.2d 407, 409 (Mo. 1996).

We recognize the tension in these cases between the rights and responsibilities of parents and the rights of children. Parents are often involved in nearly every aspect of their children's lives. However, there are situations in which the parents are the source of a child's distress, particularly in the divorce and custody context. Allowing parents unfettered access to their children's therapy records under all circumstances "may inhibit the child from seeking or succeeding in treatment," *Parents of D.K.*, 780 So. 2d at 310, or, even worse, result in "substantial emotional harm to the child from a forced [***12] disclosure," *In re Daniel C.H.*, 220 Cal. App. 3d 814, 269 Cal.Rptr. 624, 631 (Ct. App. 1990). Furthermore, denying a minor the opportunity [**986] to at least object to the involuntary **[*664]** disclosure of his or her therapy records in the context of a child custody dispute "can only have a negative effect on the minor's relationship with . . . the therapist . . . and would often taint the minor's perception of the fairness of the legal process." *S.C. v. Guardian ad Litem*, 845 So. 2d 953, 960 (Fla. Dist. Ct. App. 2003).

Although New Hampshire's therapist-client privilege statute is modeled on the attorney-client privilege, there are separate and distinct policy considerations underpinning the therapist-client privilege. The New Jersey Supreme Court highlighted these differences in analyzing its own psychologist-patient privilege statute, also modeled on the attorney-client privilege.

> **HN10** The public policy behind the psychologist-patient privilege is in some respects even more compelling. . . . The psychologist-patient privilege . . . serves to protect an individual's privacy interest in communications that will frequently be even more personal, potentially [***13] embarrassing, and more often readily misconstrued than those between attorney and client. Made public and taken out of context, the disclosure of notes from therapy sessions could have devastating personal consequences for the patient and his or her family . . . . Especially in the context of matrimonial litigation, the value of the therapist-patient relationship and of the patient's privacy is intertwined with one of the most important concerns of the courts - the safety and well-being of the children and families.

Kinsella v. Kinsella, 150 N.J. 276, 696 A.2d 556, 584 (N.J. 1997).

Indeed, the public policy behind the therapist-client privilege may be even more compelling than that behind the usual physician-patient privilege.

> Treatment by a physician for physical ailments can often proceed successfully on the basis of a physical examination, objective information supplied by the patient, and the results of diagnostic tests. Effective psychotherapy, by contrast, depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears.

Jaffee v. Redmond, 518 U.S. 1, 10, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996). [***14] "Many physical ailments might be treated with some degree of effectiveness by a doctor whom the patient did not trust, but a psychiatrist must have his patient's confidence or he cannot help him." *In re Brenda H.*, 119 N.H. 382, 386, 402 A.2d 169 (1979) (quotation **[*665]** omitted), *superseded on other grounds as recognized by In re Tracy M.*, 137 N.H. 119, 123-24, 624 A.2d 963 (1993).

By fostering productive relationships between therapists and their clients, the therapist-client privilege "[advances] the public good accomplished when individuals are able to seek effective mental health counseling and treatment." *Kinsella*, 696 A.2d at 566. There is a serious risk that permitting parents unconditional access to the therapy records of their children would have a chilling effect on the therapist-client relationship, thus denying the children access to productive and effective therapeutic treatment. "The mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment. . . . [It is] difficult if not impossible for [a psychotherapist] to function without being able to assure . . . patients of [***15] confidentiality and, indeed, privileged communication." *Jaffee*, 518 U.S. at 10 (quotation omitted).

HN11 The weight of authority in other jurisdictions supports protection for the therapy records of children who are at the [**987] center of a custody dispute or whose interests may be in conflict with those of their natural guardians. *See, e.g., Attorney ad Litem v. Parents of D.K.*, 780 So. 2d 301 (Fla. Dist. Ct. App. 2001) (seventeen-year-old child could assert **privilege** over her parents' **joint waiver** in child **custody** dispute); *Bond v. Bond*, 887 S.W.2d 558, 560-61 (Ky. Ct. App. 1994) (in child **custody**

dispute, neither parent may assert the **privilege** on the child's behalf, and the court may interview the therapist or appoint a guardian ad litem for the sole purpose of recommending whether and to what extent the privilege should be waived); *Nagle v. Hooks*, 296 Md. 123, 460 A.2d 49 (Md. 1983) (parents involved in a custody dispute cannot agree or refuse to waive the privilege on a minor child's behalf, and the court must appoint a guardian to act, guided by the best interests of the child); *cf. In re Da C.H.*, 220 Cal. App. 3d 814, 269 Cal.Rptr. 624, 629-33 (Ct. App. 1990) [***16] (in dependency proceeding, where parent was accused of molesting his minor child, policy considerations regarding parental conflict of interest and potential harm to the child as a result of disclosure prevented parent from waiving the privilege on behalf of the minor child); *S.C. v. Guardian ad Litem*, 845 So. 2d 953, 956-60 (Fla. Dist. Ct. App. 2003) (in dependency proceeding, minor child could assert the privilege against guardian ad litem); *In re Adoption of Diane*, 400 Mass. 196, 508 N.E.2d 837, 840 (Mass. 1987) (in adoption proceeding, where the parent and child had potentially conflicting interests and there was uncertainty concerning the parent's ability to further the child's best interests, parent was not allowed to exercise the privilege on the child's behalf, although a neutral guardian could assert or waive it); *In re M.P.S.*, 342 S.W.2d 277, 283 (Mo. Ct. App. 1961) (in neglect proceeding, accused parent could not claim child's **[*666]** physician-patient privilege to prevent child's doctor from testifying regarding child's injuries).

determine whether assertion or waiver of the privilege is in the child's best interests. We refrain from establishing a detailed procedure through which the privilege should be waived or asserted, and instead leave that determination to the sound discretion of the trial court. However, when a privilege issue arises, the trial court must engage in fact-finding to determine whether waiver or assertion of the privilege is in the best interests of the child, with particular emphasis on preservation of the child's ability to engage in open and productive therapeutic treatment. The attempted assertion or waiver of the child's privilege by anyone, including the child, the child's parent or guardian, the child's guardian ad litem, or the child's therapist, will not be determinative.

HN12 The trial court may, within its sound discretion, find that a child is of sufficient maturity to make a sound judgment about the assertion or waiver of his therapist-client privilege. *See Attorney ad Litem v. Parents of D.K.*, 780 So. 2d 301, 308 (Fla. Dist. Ct. App. 2001); *cf. Butterick v. Butterick*, 127 N.H. 731, 735, 506 A.2d 335 (1986) [***18] (regarding maturity of a minor to make a sound judgment about his proper custody). Age alone is not determinative of this ability. *Cf. Butterick*, 127 N.H. at 735. In finding that the child is sufficiently mature to make a sound judgment, the trial judge must consider the following factors: (1) the child's age, intelligence, and maturity; (2) the intensity with which the child advances his preference; and (3) whether the preference is based upon undesirable or improper influences. *Cf. id.* at 734-35. [**988] Based on this finding, the judge may then give substantial weight to the preference of the mature minor to either waive or assert his privilege. *Cf. id.* at 735.

This is consistent with the legislative recognition that there are circumstances in which a minor may make decisions without the involvement of his or her parents. *See, e.g.*, RSA 318-B:12-a (2004) (authorizing any minor twelve years of age or older to enter drug rehabilitation without the consent of a parent). "Minors do have rights which they can assert themselves in their own best interest" without the involvement of their parents. [***19] *Parents of D.K.*, 780 So. 2d at 305. Even if the parents and the guardian ad litem agree that the child's privilege should be waived, the child has a separate interest that the court must consider, and if the minor is mature enough to assert the privilege personally, that assertion may be given substantial weight. *Cf. Butterick*, 127 N.H. at 735.

[*667] The trial court may also, within its sound discretion, appoint a guardian ad litem, regardless of the child's maturity, for the purpose of determining whether the privilege should be asserted. To that end, the court may rely upon the existing guardian ad litem, or appoint an independent guardian ad litem to address only the privilege issue.

In the case at hand, the GAL has asserted the children's therapist-client privilege on their behalf. The GAL has done so without having had access to the actual records. We recognize that in some cases, a guardian ad litem may be unable to make an informed decision regarding assertion or waiver of the therapist-client privilege without viewing the child's therapy records. In such a case, it is within the trial court's discretion to grant a guardian ad litem [***20] access to the records solely for the purpose of determining whether waiver or assertion of the therapist-client privilege is in the best interests of the child. It is also within the discretion of the trial court to conduct an *ex parte, in camera* review of the records for the same purpose.

The father argues that, if the GAL obtains access to the children's therapy records for any reason, those records would then be open to discovery by both parties pursuant to *Ross v. Gadwah*, 131 N.H. 391, 554 A.2d 1284 (1988). However, our decision in *Ross* was limited to the guardian ad litem's role in custody determinations and the parent's right to confront the guardian ad litem regarding the basis for his or her custodial recommendations. ***HN13*** To the extent that a guardian ad litem may assist the court solely regarding the waiver or assertion of a child's therapist-client privilege, as opposed to broader questions of custody and visitation, *Ross* is inapplicable. If the trial court is concerned that viewing the therapy records may taint a previously-appointed guardian ad litem's ultimate recommendation regarding custody or visitation, it may choose to appoint an [***21] independent guardian ad litem solely for the purpose of representing the child's best interests with regard to the therapist-client privilege. *See* RSA 464-A:16 (Supp. 2005); RSA 464-A:41 (Supp. 2005).

III. Waiver

The father argues that the mother waived her right to object to disclosure of the records because she initially raised the importance of the testimony of the children's therapists in her motion for modification. As explained above, neither parent is in a position to assert or waive the children's right to confidentiality of their records. Therefore, even if the mother has waived her own right, as a litigant, to object to disclosure, she has not effected a [**989] waiver of the GAL's right to object on behalf of the children.

[*668] *IV. Right of Confrontation*

The father argues that he has a constitutionally protected right to confront and cross-examine adverse witnesses in the pending proceedings, specifically the therapists and the GAL. However, unless and until any of the therapists testifies in this case or the GAL obtains access to the records at issue and relies upon them in making recommendations regarding custody and visitation, [***22] the issue of confrontation and cross-examination is not ripe for review. *See Petition of State of N.H. (State v. Fischer)*, 152 N.H. 205, 210, 876 A.2d 232, 237 (2005).

V. The HIPAA Privacy Rules

The United States Department of Health and Human Services has promulgated rules regarding the privacy of individually identifiable health information, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996). 45 C.F.R. §§ 164.500-.534 (HIPAA Privacy Rules). The father argues in his brief that section 164.502(g) of the HIPAA Privacy Rules prohibits denying a parent access to his children's personal health information. We disagree.

HN14 Section 164.502(a)(2) of the HIPAA Privacy Rules requires a health care provider to disclose protected health information to the health care recipient at the health care recipient's request. In certain circumstances, the health care provider is also required to disclose such information to the personal representative of the health care recipient at the personal representative's request. *See id.* § 164.502(g)(1) (requiring the [***23] health care provider to treat the personal representative of a health care recipient as the recipient for the purpose of obtaining information and records).

For an unemancipated minor, a parent, among others, must be treated as the minor's personal representative, so long as the parent, under applicable law, has the authority to act on behalf of the minor in making decisions related to health care. *Id.* § 164.502(g)(3)(i). However, the health care provider may not disclose or provide access to protected health information about an unemancipated minor to a parent if doing so is "prohibited by an applicable provision of State or other law, including applicable case law." *Id.* § 164.502(g)(3)(ii)(B). In the context of this case, the therapist-client privilege statute prohibits the father from obtaining access to his children's therapy records absent court order.

Furthermore, section 164.502(g) permits the health care provider to withhold information from a parent, even where the disclosure of such information is not prohibited by state law, if the health care provider, "in the exercise of professional judgment, decides that it is not in the best **[*669]** interest of the [health [***24] care recipient] to treat the [parent] as the [health care recipient's] personal representative." *Id.* § 164.502(g)(5)(i). Therefore, section 164.502(g) of the HIPAA Privacy Rules does not create an absolute right in the father to access his children's therapy records.

VI. Need for Disclosure

The father argues that even if we hold that the children's therapy records are not discoverable, we must articulate a standard to protect his constitutional interests. However, ***HN15*** the trial court made no findings on this point and it was not one of the questions transferred from the trial court [**990] in the interlocutory appeal. Therefore, we do not address it.

Reversed and remanded.

BRODERICK, C.J., and NADEAU, DALIANIS and GALWAY, JJ., concurred.


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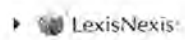
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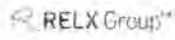
RELX Group

D-11-443611-D

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** January 18, 2017

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

January 18, 2017 **1:30 PM** **Evidentiary Hearing**

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

- Discussion regarding having the minor child, Brooke, testify today. Testimony and exhibits presented (see worksheets). The time having expired, COURT ORDERED, as follows:

1. Day 2 of the EVIDENTIARY HEARING set for 3/13/17 at 1:30 PM is hereby RESCHEDULED for 2/1/17 at 1:30 PM.

2. The Motion set for 1/31/17 at 9:00 AM is hereby RESCHEDULED for 2/1/17 at 1:30 PM. The Opposition shall be due by the close of business on 1/24/17.

3. Counseling with Dr. Ali shall continue. Defendant is to be proactive in her participation.

4. Dr. Paglini may communicate with Brooke.

5. Dr. Paglini may share his report with Dr. Ali.

6. Per STIPULATION, Plaintiff, Defendant, Brooke, Dr. Ali and Dr. Paglini shall communicate in an attempt to formulate a plan to build Plaintiff and Brooke's relationship. This communication shall be confidential; however, the Court expects good faith communication.

INTERIM CONDITIONS:

FUTURE HEARINGS: *Canceled: January 31, 2017 9:00 AM Motion*

February 01, 2017 1:30 PM Evidentiary Hearing
Duckworth, Bryce C.
Courtroom 01

February 01, 2017 1:30 PM Motion
Duckworth, Bryce C.
Courtroom 01

Canceled: March 07, 2017 1:30 PM Evidentiary Hearing

Canceled: March 07, 2017 1:30 PM Order to Show Cause
Reason: Canceled as the result of a hearing cancel. Hearing Canceled Reason: Vacated - per Judge
Duckworth, Bryce C.
Courtroom 01

Canceled: March 13, 2017 1:30 PM Evidentiary Hearing

Canceled: March 13, 2017 1:30 PM Order to Show Cause
Reason: Canceled as the result of a hearing cancel. Hearing Canceled Reason: Vacated - per Judge
Duckworth, Bryce C.
Courtroom 01

OPP

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Attorney for Defendant

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 DIVISION

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTIONS FILED DECEMBER 29, 2016; REQUEST FOR SANCTIONS

DATE OF HEARING: February 1, 2017
TIME OF HEARING: 1:30 p.m.

COMES NOW Defendant Vivian Marie Lee Harrison ("Vivivan") and submits the following points and authorities in Opposition to Defendant's Motion.

I. INTRODUCTION

Kirk's present Motion, filed December 29, 2016, is a recognition that his multiple motions to hold Vivian in contempt lacked merit. The Court so found in its January 3, 2017 Order. The second part of his motion, to avoid an evidentiary hearing is moot. The evidentiary hearing that he originally requested has commenced and will continue on February 1, 2017. [1]

Vivian agrees, however, with the premise of his motion: there is not now and has there ever been any need for a hearing on Brooke's relationship with Kirk. The evidence has and will continue to show that Brooke, a demonstrated overachiever, made a choice that allowed her to accomplish a rigorous schedule of academic success, success in the arts, and success in life. Instead of celebrating that achievement, Kirk has branded her as in need of psychological "readjustment" because he cannot control her in the same way that he has manipulated the parties' two older daughters.

He has not, and will not demonstrate that Vivian did anything to harm his relationship with Brooke or Rylee. His relationship with them has been adversely affected for years because he has impliedly, and now directly, denigrated Vivian to all the children. His constant criticism of Vivian, Brooke and Rylee, and everyone else who does not agree with him has had a toll on the children. The evidence will show that he has enlisted the

[1] The need for this Opposition is in large part moot. Vivian previously addressed nearly all of these issue in her Prehearing Memorandum.

two oldest daughters in the campaign of denigration. Kirk's actions are designed to control and manipulate the parties' children, not help them.

Kirk's latest motions want remedies that are designed to convince the children (including the older daughters) that Vivian has done something wrong, and that they need reprogramming by being wrested away from her. The only qualified expert to testify on this issue, Dr. Paglini, has unequivocally indicated that the children would be harmed by such a course.

There is no purpose for any of this. Brooke is now spending time at Kirk's home, she is going to family therapy ordered by the Court, and she continues to have success in school and everywhere else. Vivian submits that Kirk's constant filings and unsubstantiated allegations against Vivian have caused her to spend hundreds of thousands of dollars on fees for no other than to satisfy Kirk's desire to convince the children and this Court that she and they have done something wrong. His thin-skinned approach to everything that has occurred in the case has now caused it to again spiral into a massive amount of attorney's fees.

The difference, of course, between the parties is that Kirk writes all his massive pleadings (hence the simple errors like a failure to provide an appropriate affidavit), while Vivian has been faced with multiple motions for contempt, sanctions and threats to reprogram her children. The Court must cause this to stop – Vivian should not be required to pay for issues that arise from Kirk's behavior toward the children, no hers.

II. OPPOSITION TO MOTION TO ELIMINATE TEENAGE DISCRETION

Kirk requests for now the fourth time in this court, after losing this issue in the Supreme Court, that the Court revisit paragraph 6 of the parties' parenting plan. The history of the provision, its intent is found in the following pleadings Vivian filed in this action.

October 17, 2013 – 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

October 29, 2013 - 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] 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

December 6, 2013 - Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees

May 9, 2014 - Defendant's Opposition to Plaintiff's motion to Modify Order Resolving Parent/ Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions

May 20, 2014 - Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions

September 14, 2015 - 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")

September 23, 2016 - 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

These pleadings, and attached affidavits, are in addition to the briefs Vivian filed with the Nevada Supreme in response to Kirk's appeal of the teenage discretion provision. All of those pleadings are incorporated herein as if stated in full.

Kirk chilled Brooke's use of the provision by leveling complaints to Brooke every time she did. Vivian has no recollection of her spending additional time with Vivian under the provision for a significant time before Brooke's decision to stop going as much to Kirk's home. Vivian believes that Brooke's decision to modify her timeshare was in part because Kirk showed her no flexibility. Her decision regarding temporarily spending less time at her father's home had nothing to do with the teenage discretion provision. Brooke can address that issue at the time of the February 1, 2017 hearing.

At the sake of restating what has now been said many, many times, the teenage discretion provision does not allow changes of custody in any form, and provides a mechanism for review and sanctions if either party suggests to the child that it does. Kirk, as he wont to do, has indicated that Vivian suggested to Brooke that she could simply change custody at 14. Vivian did not do that, nor ever advise Brooke that she could change custody without court order.

What the teenage provision does is create a system of counseling and parenting coordination that would allow the daughters to explore any desire they may have to revise their schedule. Under the parenting plan, Brooke's desire to modify the timeshare could have been addressed to a counselor and a parenting coordinator to propose alternative schedules, plans and balance of activities to better coordinate the children's schedule without Court intervention. Kirk has never allowed that to occur. Even when Brooke stopped going to Kirk's home, Vivian proposed through counsel that the parties resolve the issue through negotiation. Kirk ignored those pleas, and instead filed the first of four motions to hold her in contempt.

Kirk's motion continues to center around the preposterous narrative that Brooke was influenced by an insurance issue, and continues to ignore his behavior and actions upon Brooke. He has regularly tried to enlist her in the "team approach" against Vivian that he regularly engages in with the adult daughters. He, not Vivian, is trying to alienate Brooke.

A. Rather than Vacating the Agreement of the Parties Regarding Teenage Discretion, the Court should Require Kirk to Follow It

Vivian agreed to the teenage discretion provision to allow the children an alternative to address their issues with either parent without going to Court.[2] Kirk has not allowed that to happen. He has appealed the order regarding the provision and the use of a

[1] Ironically, when Kirk thought it would benefit him, he suggested through counsel that the provision include the absolute right for the children to determine their custody at **16 years old**. *See,* Letter from Thomas Standish, Esq. to Radford J. Smith, Esq.

Parenting Coordinator, and his stance on Parenting Coordination suggests he would not give any weight to the recommendations of the PC.[3] He has undermined the process of therapy by enlisting Dr. Ali as an advocate. Even Dr. Ali had to admit that it was Brooke who reached out to him in August, 2016, before Kirk's current round of motions to try to receive counseling, and recommence the counseling with Kirk. Instead of counseling her consistent with the therapy portion of the teenage discretion provision, Dr. Ali called Kirk to receive his instruction.

Kirk has apparently related to Dr. Ali that there is no confidentiality associated with the current family counseling though the Court has never modified the parties' parenting. Kirk has managed to corrupt the very system designed to grant the girls an outlet to address his not so subtle attempts at manipulation. He has ignored Dr. Paglini's prescient advice that he would continue harm his relationship with the children by falsely insisting that Vivian is alienating them. He now wants to be able to say to Rylee, "I am in control. You see your mother outside of her designated days only when I want you to." Is there anything in the record of this Court that suggests Kirk will be reasonable with even basic requests by Rylee to spend additional time with Vivian? No. Does the record support that Vivian will allow Rylee to spend time with Kirk if she requests it? Yes. This is a control issue for Kirk, not something designed to foster and preserve the relationship of the parties.

[3] Kirk's appeal was a request that Nevada District Court's be prevented from using Parenting Coordinators at all.

If the Court again denies his continued attempts to manipulate the system that the parties agreed upon, and that the Supreme Court has already held is not in violation of public policy, and issues a significant award of sanctions, only then will Kirk learn that he cannot bully Vivian, the Court, and his children by filing a never ending series of massive motions. This has already spun out of control; only the Court has the power to cause it to stop.

III. ATTORNEY'S FEES

This is the fourth motion, and an appeal, on the same subject. Kirk has continuously and repeatedly multiplied the proceedings in this case. The fees for his other motions, now before the Court, will be addressed as a part of the hearing on those motions. The Court can award sanctions under NRCP 7.60 and its continuing jurisdiction under NRS 125.150 to award fees in post-trial custody matters. The Court should direct Kirk to pay sanctions to Vivian for the fees she has been required to incur on this issue.

Dated this 30 day of January, 2017.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
2470 St. Rose Pkwy – Suite 206
Henderson, Nevada 89074
Attorneys 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 described as DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTIONS FILED DECEMBER 29, 2016; REQUEST FOR SANCTIONS on this 31st day of January, 2017, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Edward Kainen, Esq.
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129

Attorneys for Plaintiff

An Employee of Radford J. Smith, Chartered

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. G

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: Defendant Date 1/31/17

Signature of Party or Preparer _____

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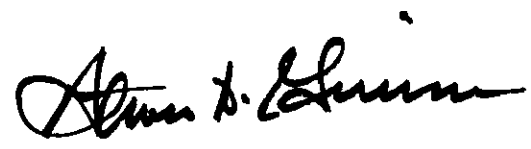

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing:
Time of Hearing:

ORAL ARGUMENT REQUESTED:

YES XX NO ____

PLAINTIFF'S REPLY REGARDING PLAINTIFF'S MOTION FOR NEW EXPERT RECOMMENDATION IN LIEU OF DISCOVERY AND EVIDENTIARY 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 NAIMI LAW GROUP, and hereby files this

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Reply regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing.

DATED this 31st day of January, 2017.

KAINEN LAW GROUP, PLC

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court will recall that when the hearing was adjourned on January 18, 2017, that Defendant represented that she would file an opposition to Plaintiff's motion on Wednesday, January 25, 2017. However, Vivian failed to file the opposition until the morning of January 31, 2017.

II. ARGUMENT

A. As the Evidentiary Hearing is Now Well Underway, Plaintiff's Motion for New Expert Report In Lieu Of Discovery and Evidentiary Hearing Is, For the Most Part, Now Moot

Plaintiff's Motion for New Expert Report in Lieu of Discovery and Evidentiary Hearing

is, in large part, now moot. Defendant has completed the discovery she propounded prior to the evidentiary hearing. Although it has yet to be completed, the evidentiary hearing is well underway as Amanda Thorpe, Dr. Ali, and Dr. Paglini have all testified.

There were four stated purposes for the motion. First, it was an alternative to avoid further adversarial conflict between the parties in the form of an adversarial evidentiary hearing. That purpose is now moot.

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The second purpose was to avoid having a minor child testify in Court. Respectfully, we continue to maintain that the risk of potential harm to Brooke is too great and the probative value of Brooke's testimony does not substantially outweigh the potential harm to Brooke. *See* EDCR 5.06. We are hopeful this Court will decide to not allow Brooke to testify.

The third purpose was that we believed it would be more efficient and cost effective for the parties for Dr. Paglini, with input from Dr. Ali, to simply make new recommendations regarding the optimal reunification therapy and what proactive measures should be taken to prevent Rylee being taken down the same path. This purpose, at this point, is also moot. Although subject to being recalled, Dr. Ali has completed his testimony. We believe Dr. Ali's testimony was of tremendous benefit to the Court. Although Dr. Paglini's testimony has just begun, we are also confident that Dr. Paglini's testimony will also be a benefit to the Court. We also believe the Court will benefit from Kirk's testimony.

The fourth purpose was to convey to the Court the urgent need for the Court to take immediate and effective steps to insure that Rylee does not go down the same path as Brooke by being wrongfully empowered in her relationship with Kirk, manipulated into believing Kirk is a bad and mean person (who does not deserve her respect), manipulated into believing Vivian's house is her only "home" and that going to Kirk's home for custody exchanges is too much of a burden, and ultimately inciting Rylee to knowingly violate the Custody Order just as Brooke was so incited.

Vivian's actions, to a large extent, deprived Brooke of many of the peaceful pleasures of childhood and the comfort and security of the knowing she has a father who loves and cares for her completely. Vivian caused Brooke to shed too many tears and experience too much emotional pain as a consequence of Vivian's concerted and calculated effort to separate Brooke from Kirk. At this point, there is no question that Vivian wrongly empowered Brooke under the teenage discretion provision. Having seen this, the Court should not allow the same thing to happen to Rylee.

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Based upon all of the foregoing, we respectfully submit that it makes sense to complete the evidentiary hearing. Ultimately, the decisions regarding what is in the best interests of Brooke and Rylee, the optimal reunification therapy alternative to successfully reunify Brooke with Kirk, the compensation to Kirk for the now 221 days of lost custodial time with Brooke, and what proactive protective measures must be taken to insure that Rylee is not taken down the same path as Brooke, all rest with the Court.

B. There is No Question that the Same Seeds of Wrongful Empowerment Have Been Planted with Rylee

Just as Vivian did with Brooke, Vivian is now wrongfully empowering Rylee in her relationship with Kirk. Vivian, through her manipulation of Brooke, has obtained *de facto* primary custody of Brooke since August 12, 2015 – more than a year and a half! Vivian does not see herself being penalized in any way for what she has done to Brooke, is unable to see the harm she has done to Brooke, and is now taking Rylee down the same path.

Just since the hearing on January 18, 2017, Vivian has caused Rylee to start taking large piles of clothes from Kirk's home to Vivian's house, which reinforces with Rylee that her only "home" is Vivian's home and will cause Rylee to be frustrated whenever custody is transferred to Kirk, as Rylee will now have to "pack" for each transfer to Kirk.

Vivian has also wrongly empowered Rylee to threaten Kirk as though Rylee is the parent in their relationship and Kirk is the misbehaving child.

After spending two days with Vivian, Vivian convinced Rylee that she should spend several hours at Vivian's house during Kirk's custody time to "pack" for a trip with Vivian, when Kirk only had Rylee for two days, which were already jam packed with school, dance classes, a math tutoring session in Las Vegas, and a planned and prepared birthday dinner and party for Rylee. Soon after being on the telephone with Vivian, Rylee was crying, tears were falling, and Rylee was visibly upset with Kirk and refused to talk to Kirk.

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Because of Vivian's manipulation of Brooke, this is a scenario too often experienced with Brooke. On several occasions, Brooke insisted that Kirk drive her to Target in Henderson and buy her something. Sometimes, Kirk did just as Brooke wanted. However, there were times when Kirk agreed to do so, but said they also had to get a few things at Costco, or Rylee also wanted to go to a movie (there is no movie theater in Boulder City), or Rylee also wanted to go to dinner while in town. Each time when that was Kirk's response, Brooke would go into her bedroom and get on the telephone with Vivian. There was no insulation in the interior walls of the "filler" house, so Kirk could soon hear Brooke crying uncontrollably. Each time, after the phone call with Vivian, Brooke, with tears still rolling down her cheeks, would tell Kirk how much she hated him and that he is a bad and mean person. This type of disproportionate highly emotional reaction to something so insignificant is a direct consequence of Vivian being motivated under the teenage discretion provision to separate Brooke and, now, Rylee from Kirk. *See* Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 15.

The same thing occurred when Brooke asked Kirk to take her to the dance studio so she could see a friend's private lesson. Brooke insisted that Kirk drop her off at the front of the studio. However, Kirk said he needed to go in the studio to give them a check for a video of one of Brooke's and Rylee's performances. The front door was locked. When Kirk insisted that he would drive around to the back, Brooke told Kirk, "I hate you." When Kirk drove around to the back, he saw Vivian sitting in a car with Utah plates. When Kirk was in the dance studio handing the check to the person at the desk, he saw Vivian slipping into the lesson Brooke was there to attend. When Kirk noted to Brooke that he just saw her mother going into the lesson, Brooke again responded, "I hate you." *See* Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 20, l. 22-28; p. 21, l. 1-19.

The same thing occurred when Brooke agreed to go to Phoenix to help Whitney and Sean move. Sean had received transfer orders and time was short. After talking to

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Vivian, Brooke refused to go on the trip. When Kirk explained the arrangements had been made, there was really no choice, and Brooke was acting selfishly as Whitney and Sean really needed their help, Brooke went into her bedroom, called Vivian and was soon crying uncontrollably. Brooke then came out of the bedroom, with tears still rolling down her cheeks, told Kirk she hated him, he was a bully, and he called her names. *See* Plaintiff's Reply re Motion for Order to Show Cause, filed 9.18.15, p. 12, l. 4-16; Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 14, l. 12-28.

This is not how life is supposed to be lived. Too many tears have been shed already because of Vivian being motivated under the teenage discretion provision. This has to stop. Maintaining the continued existence of a provision, which motivates a mother to harm her children in such a way makes no sense whatsoever. Judges, lawyers, and psychologists are human beings first. They are also parents. As human beings and as parents, all that can be done to stop Rylee from further suffering, emotional pain, and tears must be done. The best interests of the child must trump "gotcha" arguments and "winning" each and every time.

1. Vivian Has Wrongly Empowered Rylee in Rylee's Relationship with Kirk

The Court will recall that Vivian has convinced Brooke and Rylee that they do not have to do anything they do not want to do when they are with Kirk. *See* Plaintiff's Reply re Motion for Order to Show Cause, filed 9.18.15, p. 18, l. 13-24; Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 12, l. 15-28; p. 13, l. 1-7. Integrally intertwined in this wrongful empowerment is also the indisputably established fact that Vivian wrongfully empowered Brooke under the teenage discretion provision. This, foreseeably, has caused problems in the parent/child relationship between Kirk and their daughters. It is now very apparent that Vivian has also wrongfully empowered Rylee under the teenage discretion provision.

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The first day of the evidentiary hearing in this matter was on Wednesday, January 18, 2017 at 1:30 p.m. Kirk obtained custody that same day after school at 2:11 p.m. Therefore, Kirk had to find someone who would pick Rylee up from school and keep her until Kirk got home. Several days before the 18th, while Rylee was still in Kirk's custody until the 13th , Kirk explained to Rylee that someone else would need to pick her up and asked if she had a preference. Kirk suggested the mom of one of Rylee's friends.

Kirk initiated a number of texts between he and Rylee on January 16th and 17th, in an effort to identify and contact a person to pick up Rylee from school on the day of the hearing. However, as of 6:30 p.m., the evening before the hearing, Rylee had not responded to his text regarding whether she had spoken to a friend of hers regarding her mother picking up Rylee from school. Kirk telephoned the mother and made the arrangements. When Kirk contacted Rylee to let her know the arrangements had been made, Rylee 's response was to stridently scold Kirk and threaten him to never do such a thing again.

Just as Vivian did with Brooke, Vivian has made Rylee aware of her power over her father. Rylee now believes that she has the ability to order Kirk to take her to Vivian's house at any time upon command. This power also empowers and emboldens children in their entire relationship with the parent, who is placed in a precarious position regarding custody:

> More prevalent than popularly believed, many single-parent families are being run by tyrannical children who take advantage of a loving parent's precarious position in terms of custody.
>
> They are customarily between the ages of eleven and eighteen. They usually work in collusion with a programming parent who has given them permission to reject the target parent's disciplinary measures. . . . .
>
> Children who tyrannize parents through the use of social-emotional blackmail do not ordinarily feel good about themselves but obtain rewards from the programming parent. Concomitantly, they also enjoy their power in disarming a parent's authority.

Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage,* 2nd Ed. *(*ABA 2nd 2013),

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p. 149.

As we have previously noted to the Court, Kirk is placed in a horrible predicament. If Kirk fails to notify the Court of what is alarming and the real harm that is being done to their children, then Vivian will continue to callously manipulate Rylee by wrongly empowering her in her relationship with Kirk, wrongly empowering her under the teenage discretion provision, and alienating Kirk from Rylee. However, if Kirk notifies the Court with sufficient detail to persuade the Court of the existence of the problem in the hope the Court will take action to rectify the problem, then Vivian will, undoubtedly, tell Rylee that Kirk cannot be trusted because he will tell the Court what Rylee has said to Kirk.

This Court is respectfully urged to take away Vivian's incentive for wrongfully empowering Rylee and alienating Kirk from Rylee by nullifying the teenage discretion provision. Despite Vivian's adamant denials to this Court, it has been clearly established that Vivian wrongly empowered Brooke under the teenage discretion provision beginning when Brooke was 14 years old. The result has been that Kirk has lost custody of Brooke for about one and one-half years.

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Clearly, Vivian has so violated the provision, the provision has been eviscerated and should be nullified. There is no reason to sit by and watch Kirk's relationship with Rylee be destroyed, Rylee develop a deep hatred of Kirk just like Brooke did, and Rylee knowingly violate the custody order when she is 16, just like Brooke has done. More importantly, there is also no reason to allow Vivian to cause Rylee to unnecessarily emotionally suffer again and again. It makes no sense whatsoever that Rylee should continue to be exposed to the substantial risk she will be permanently emotionally harmed.[1] There is no question it is in Rylee's best interest that the teenage discretion provision be nullified immediately.

2. Vivian Is Having Rylee Rylee Take Large Piles of Clothes From Kirk's House to Vivian's House, Which Will Ultimately Necessitate Rylee Packing Clothes Each Time She Goes To Kirk's Home

The Court will recall that one of the reasons Vivian claimed Brooke moved to Vivian's house full time was because Brooke no longer wanted to pack clothes every time custody transferred from Vivian to Kirk. For years, this was never an issue as Brooke had ample clothes at both homes and there was no need to "pack." The only items that would be transferred were Brooke's dance bag (containing just her dance shoes), her laptop computer, and a cosmetic bag. However, at one point, Vivian convinced Brooke to move the bulk of her clothes to Vivian's house, which, thereafter, necessitated Brooke "packing" clothes each time custody changed to Kirk.

Sadly, Vivian is not waiting as long to have Rylee start transferring her clothes to Vivian's house. Until recently, Rylee had a closet full of clothes at Kirk's home. Prior to January 9, 2017, the only items that Kirk would take to Vivian's house for the transfer for Rylee was her dance bag (which only has dance shoes in it because Rylee has lots of

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[1] Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage,* 2nd Ed. (ABA 2nd 2013), p. 392-394; Demosthenes Lorandos et al, *Parental Alienation – The Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013), p. 18-20.

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tights and leotards at each home), a geometry book, the power cord for her laptop computer, and the phone charging cord for her cell phone. That was it. Once in a while, but infrequently, if Rylee was going to spend five days with Vivian and they had something special planned , Rylee might also put a dress or a pair of shoes in an orange backpack. The fact that Rylee was not normally packing clothes was confirmed each week when Kirk did her laundry. He was sorting, washing, drying, folding, hanging, and putting away the same clothes every week.

However, when Kirk was doing the laundry on Sunday, January 8, 2017, Rylee had a very large pile of clothes on the floor of her bedroom. Kirk asked Rylee if it was laundry or it simply needed to be hung up and put away. Rylee said she had to go through it.

After school on Monday, January 9, 2017, Kirk gathered Rylee's normal things together and took them to Vivian's house pursuant to the recent Court order. In doing so, he noticed that the large pile of clothes was still in the middle fo the floor in Rylee's bedroom. When Kirk got to Vivian's house, no one was answering the door and Rylee was not responding to Kirk's texts. Kirk left the bag on the front porch against the front door, sent Rylee a text, and drove home.

When Kirk got home, contrary to the Court order, Vivian was parked in front of his house. When Kirk went into the house , Rylee was leaving with a small thermos container used to contain soup for her lunch. Kirk asked Rylee why she was there. Rylee just shrugged her shoulders. Later, that day when Kirk walked by Rylee's bedroom, he noticed the large pile of clothes was gone.

When Kirk got custody of Rylee after school on Wednesday, January 11, 2017, he asked her what happened to the large pile of clothes. Rylee said that she had taken them to her mother's house. Later that day, Kirk noticed a large soft bag full of a lot of folded clothes in Rylee's room, similar to the large soft bag Brooke began using after she took most of her clothes to Vivian's house. Kirk asked Rylee what that large bag of clothes

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was for. Rylee said Kirk needed to take it to Vivian's house the next day with her dance bag, geometry book and power cords.

On Thursday, January 26, 2017, Kirk drove Rylee home from dance class at about 8:45 p.m. Rylee went directly to her bedroom and closed the door. About an hour later, Kirk knocked on her door and opened the door to ask her if she wanted anything to eat. Rylee had a second large pile of clothes on the floor of her bedroom. Kirk asked Rylee if the clothes were dirty. Rylee said no they are clean. Kirk asked why the large pile of clothes were on her floor. Rylee said she was taking them to her mom's house the next day. When Kirk asked Rylee why she was taking so many clothes to her mother's house, Rylee said she did not want to talk about it.

The next day, in accordance with this Court's recent order, Kirk gathered what he normally takes to Vivian's house each custody transfer. In addition, he gathered the clothes in the pile and put them in a large soft black bag that Rylee had next to the clothes. He took all of this to Vivian's house. As usual Rylee did not respond to his text and no one answered the door, so he put everything on the front porch and next to the door.

Kirk then drove home. When he arrived at his home, Vivian was again parked in front of his home. Inside, Rylee was in her closet filling her orange back pack with more clothes. Kirk asked Rylee why she is taking so many clothes to her mother's house. She did not respond.

Just as Vivian did with Brooke, she is having Rylee move most of her clothes to Vivian's house. This will reinforce with Rylee that Vivian's house is Rylee's only "home." When custody is transferred to Kirk, Rylee have to pack her clothes for the "visit" to Kirk's house. Vivian will, over time, cause Rylee to resent having to "pack" every time she must visit Kirk's house. And, as we have recently seen, Vivian has already convinced Rylee that she "gets hauled back and forth too much as it is."

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3. The Court Will Recall Emails From Vivian Planting the Seed that the Agreed to Weekly Custody Transfers Are Requiring Rylee to Be Hauled Back And Forth Too Much

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 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

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> 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.?

Vivian is well aware of the fact that each Spring Break that Kirk has custody of the 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.

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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.[2] 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." *See* Plaintiff's Motion for an Order to Show Cause, filed 8.30.16, p. 19-21.

4. Despite Having Custody of Rylee for the Previous Two Days and Kirk Only Having Custody of Rylee for a Very Busy Two Days, Vivian Convinces Rylee that She Needs to Spend Several Hours at Vivian's House During Kirk's Custody Time to "Pack" for Their Trip

Vivian had custody for two days beginning after school on Monday, January 23, 2017 through after school on January 25, 2017. Rylee has no dance classes or math tutoring on Mondays. Therefore, Rylee would have been home with Vivian on Monday from after school at 2:11 p.m. until she went to bed, which was probably around midnight – almost ten hours. Rylee's birthday was on Tuesday, January 24, 2017.

The first day Kirk obtained Rylee, which was the day after her 14th birthday, Vivian had Rylee convinced she had to go to Vivian's house during Kirk's custody time in order to pack for a trip Rylee is taking with Vivian on the weekend.

Kirk obtained custody after school the next day on Wednesday, January 25, 2017

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[2] Dr. Paglini's testified that the two older daughters have no relationship with their mother and it looks like the two younger daughters will not have a relationship with their father, with the implication that this is somehow equitable, Tahnee and Whitney were 26 and 24 years old at the time fo the divorce. Their relationship with Vivian was determined by Vivian's direct interactions with them, as well as their personal observations of what Vivian was doing to Brooke and Rylee. In sharp contrast, with Brooke and Rylee, Vivian has been overtly wrongfully empowering them, knowingly causing them emotional pain, causing them to cry and suffer, all in an effort to separate them from Kirk.

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and would only have custody until after school on Friday, January 27, 2017. Kirk, therefore, had bought presents, a birthday cake, balloons, party favors, etc. for Rylee, he, and, hopefully, Brooke, to have a birthday dinner and party after dance classes later that day. Rylee was supposed to have dance that night from 6:00 p.m. to 8:30 p.m. Rylee had already told Kirk she wanted pizza for her birthday dinner. Rylee always showers after dance, so the plan was to have the birthday dinner after her shower and to have the birthday party as soon as Brooke arrived.[3]

The only other day Rylee was to be with Kirk was Thursday, January 26, 2017. It was equally jam packed. Rylee gets out of school at about 2:11 p.m. It is about 2:30 p.m. before Kirk and Rylee get home. Kirk then fixes Rylee lunch as she only usually eats a snack lunch at school and his hungry. At 3:45 p.m., Kirk drives Rylee for an hour or so session with her math tutor on East Sahara, near Maryland Parkway. They usually do not get home until after 6:15 p.m. Kirk then fixes Rylee dinner so she can eat before leaving for dance at about 7:20 p.m. Somewhere in this limited time frame, Rylee must find time to study. Since many of her tests are given on Fridays, this is especially important.

Contrary to this Court's recent order, as of 5:40 p.m. on Wednesday, January 25, 2017, Vivian had still not brought Rylee's dance bag and other things to Kirk's home. Rylee asked Kirk to go to Vivian's house to get her dance bag. Kirk told her that he could not get her to dance on time, if they did that and suggested she have her mom or Brooke bring her dance bag to the dance studio. While driving to Vivian's house to get Rylee's dance bag for her dance class, which started in less than 20 minutes, Rylee told Kirk that she needed to go to Vivian's house for several hours to pack for their trip this weekend. Kirk, knowing Rylee has no dance on Mondays and no math tutoring on Mondays, responded by saying she was with her mom the last two and days and asked

---

[3] Although Vivian is now claiming that Brooke is complying with the Custody Order, on Kirk's custody days, Brooke does not come to Kirk's house until sometime between 11:00 p.m. and 11:30 p.m., is gone the entire following day and does not return until between 11:00 p.m. and 11:30 p.m.

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why she didn't pack then. She said she did not have time. Kirk told her that there was no time for her to go to her mom's house and that she could simply pack when she went to her mom's house on Friday.

Almost immediately upon hearing this, as they are driving to Vivian's house to get the dance bag, Rylee said she felt sick and was not going to dance. Kirk turned around and drove home. Rylee was visibly upset. Kirk asked her what was wrong. Rylee said she did not want to talk about it. She went in her bedroom. Kirk later knocked on the door and asked her to talk about it. Rylee said she did not want to talk about it. Kirk later checked again, and Rylee was sitting on the floor talking to Vivian on her telephone, crying, with a number of used tissues scattered about her. Minutes later Vivian drove in front of Kirk's home and Rylee went out and got in Vivian's car for about 30 minutes. [4]

Upon returning to the house, Rylee refused to talk to Kirk and was obviously upset with Kirk. Rylee had previously told Kirk she wanted a pizza for her birthday party. Rylee now told Kirk she did not want the pizza for her birthday dinner. Kirk took Rylee to her second dance class.

5. Kirk Has Lost 221 Custody Days with Brooke between August 12, 2015 and January 31, 2017

With this Reply, we wanted to update the Court on the total number of lost custody days.

Pursuant to the Custody Order, between August 12, 2015 and January 31, 2017, Brooke was to be with Kirk a total of 272 days. Despite the fact the Custody Order was agreed to between the parties and ordered by the Court, Brooke was only "with Kirk" a total of 51 days. Therefore, between August 12, 2015 and January 31, 2017, Kirk has **lost 221 days of custody time with Brooke.** During the 51 days Brooke was "with Kirk" she was not really "with Kirk." More specifically, Dr. Paglini noted that when Brooke is at

[4] Since the Court's recent order, every time Vivian brings Rylee's belongings for the custody transfer, she has Rylee get in her car for about 30 minutes during Kirk's custody time.

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Kirk's home, she remains in her bedroom and is primarily disengaged from Kirk. (46) Brooke acknowledged she has virtually no contact with Kirk when she is in his home. (17) Brooke acknowledged she does not eat any meals with Kirk. (24) Dr. Paglini noted his disagreement with how poorly Brooke treats Kirk. (52) Dr. Paglini specifically found that Brooke has rejected Kirk and is disengaged from him. (46, 50)[5]

III. CONCLUSION

We are alarmed and gravely concerned about Rylee during the next four years. It is not in Rylee's best interest to spend the next four years being callously manipulated by Vivian by being wrongfully empowered in her relationship with her father, by Vivian convincing Rylee that she does not have to do anything she does not want to when she is with Kirk as he is powerless to do anything about it, by Vivian severely alienating Kirk from Rylee based upon such fictitious issues as falsely asserting that Kirk does not care enough about his own children to pay their medical bills.

Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the "teenage discretion" provision, which has been eviscerated by Vivian's over empowerment of her children under that provision.

DATED this 31st day of January, 2017.

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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[5] Despite the foregoing, Dr. Paglini noted that Kirk is doing everything he can to remain connected to both Brooke and Rylee. (48) Dr. Paglini also noted that Kirk loves Brooke very much. (51)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2017, I caused to be served the ***Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary 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):

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Gvarshney@radfordsmith.com
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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: N/A
Time of Hearing: N/A

PLAINTIFF'S SUPPLEMENTAL EXHIBIT IN SUPPORT OF PLAINTIFF'S REPLY REGARDING MOTION FOR NEW EXPERT RECOMMENDATION IN LIEU OF DISCOVERY AND EVIDENTIARY HEARING

COMES NOW, Plaintiff, KIRK ROSS HARRISON, through his attorney, EDWARD KAINEN, ESQ., of the law firm of KAINEN LAW GROUP, PLLC., and

. . .

. . .

. . .

. . .

. . .

hereby supplements Plaintiff's Reply in Support of Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing with the following documents:

1. Affidavit of Kirk Harrison **(Exhibit 1)**.

DATED this 31ST day of January, 2017.

KAINEN LAW GROUP, PLLC

By: 8414 for
EDWARD L. KAINEN, ESQ., #5029
3303 Novat Street, Suite 200
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2017, I caused to be served the ***Plaintiff's Supplemental Exhibit in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary 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:

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Gvarshney@radfordsmith.com
Jhoeft@radfordsmith.com

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A.App. 2510

EXHIBIT “1”

AFFIDAVIT OF KIRK HARRISON
filed in Support of Plaintiff's Reply regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Kirk Harrison, being first duly sworn, deposes and says:

1. That I am the Plaintiff in this action.

2. That the facts set forth in the foregoing Reply regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary 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.

Dated this 31st day of January, 2017.

Kirk Harrison

State of Nevada
County of Clark

Subscribed and sworn before me
this 31st day of January, 2017.

SARA N. WELLS
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 12-7744-1
My Appt. Expires May 10, 2020

Notary Public

D-11-443611-D

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** February 01, 2017

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

February 01, 2017 1:30 PM 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

- EVIDENTIARY HEARING: DAY 2 ... PLAINTIFF'S MOTION FOR NEW EXPERT RECOMMENDATION IN LIEU OF DISCOVERY AND EVIDENTIARY HEARING.

Today is day two of the Evidentiary Hearing which began on 1/18/17. Discussion regarding Plaintiff's Motion and the need to go forward today. Testimony continued (see worksheet). COURT ORDERED, as follows:

1. The Court shall implement Dr. Ali and Dr. Paglini's recommendations. During week 1 Plaintiff and Brooke shall participate in a 90 minute counseling session. During week 2 Plaintiff and Brooke shall spend four hours of quality time between them. Defendant shall not be a passive observer in this process, and she shall be actively involved to make sure this happens. Plaintiff may pick Brooke up to

D-11-443611-D

attend the week 1 session and the week 2 activity.

2. The Court accepts Brooke's testimony that she is committed and has returned to the regular VISITATION schedule.

3. In regards to the Motion Regarding Teenage Discretion, the Court shall take this issue UNDER ADVISEMENT and issue a separate Order. Defendant is to submit an Affidavit by 2/10/17 regarding specific items of this past week related to the teenage discretion provision.

4. The Court shall address the issue of ATTORNEY'S FEES in the Order issued by the Court.

Mr. Smith is to prepare the Order from today's hearing with Mr. Kainen to countersign.

CLERK'S NOTE: Order #3 was corrected to show the due date of 2/10/17 versus 2/1/17. (2/6/17 - mp)

INTERIM CONDITIONS:

FUTURE HEARINGS: *Canceled: March 07, 2017 1:30 PM Evidentiary Hearing*

Canceled: March 07, 2017 1:30 PM Order to Show Cause
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per Judge
Duckworth, Bryce C.
Courtroom 01

Canceled: March 13, 2017 1:30 PM Evidentiary Hearing

Canceled: March 13, 2017 1:30 PM Order to Show Cause
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per Judge
Duckworth, Bryce C.
Courtroom 01

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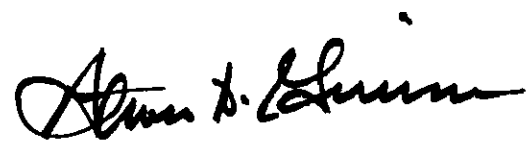

CLERK OF THE COURT

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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:
Time of Hearing:

ORAL ARGUMENT REQUESTED:
YES XX NO ___

PLAINTIFF'S SUPPLEMENT TO PLAINTIFF'S REPLY REGARDING PLAINTIFF'S MOTION FOR NEW EXPERT RECOMMENDATION IN LIEU OF DISCOVERY AND EVIDENTIARY 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 NAIMI LAW GROUP, and hereby files this

Supplement to Plaintiff's Reply regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing.

DATED this 13th day of February, 2017.

KAINEN LAW GROUP, PLC

By: _____ 8414 for
EDWARD L. KAINEN, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Introduction

As previously noted in the "Reply," when the hearing was adjourned on January 18, 2017, Vivian represented she would file an opposition to Plaintiff's Motion for New Recommendation in Lieu of Discovery and Evidentiary Hearing by the following Wednesday, January 25, 2017. In anticipation of the filing of that Opposition, a draft reply was prepared. However, the Opposition was not filed until the very day before the evidentiary hearing, on January 31, 2017. As a foreseeable consequence, there was no time to address the specific points actually made in Vivian's untimely Opposition. It is therefore necessary to file this Supplement to the Reply.

Consistent with our needing an opportunity to actually reply to Vivian's untimely Opposition, the Court will note that we supported the Court's decision to afford Vivian an opportunity to file an affidavit to address the new factual issues in the "Reply." We recognized that Vivian was similarly disadvantaged as new factual issues were addressed in the "Reply."

In addition, and very importantly, Vivian's Opposition contains a baseless character assault upon both Dr. Ali and Kirk, severely impugning Dr. Ali's character. In fairness to Dr. Ali, that "record" must be corrected.

B. Neither Dr. Ali Nor Kirk Have Done Anything Wrong or Improper

In February of 2014, Kirk received a telephone call from Dr. Ali's office. Kirk was advised during that telephone call that Mr. Radford Smith or his office had contacted Dr. Ali's office concerning Dr. Ali providing therapy to Brooke and Rylee. Kirk was further informed, during that call, that Dr. Ali already had an appointment scheduled with Vivian from 11:00 a.m. to 12:00 noon on Tuesday, February 25, 2014 and that Dr. Ali wanted to meet with Kirk the same day from 12:00 noon to 1:00 p.m.

When Kirk met with Dr. Ali at noon on February 25, 2014, Dr. Ali had Kirk sign a consent form. Presumably, Vivian signed the same form during the hour before. Dr. Ali asked Kirk if he had any particular concerns or issues regarding either Brooke or Rylee at the time. Kirk discussed those concerns and issues with Dr. Ali. Dr. Ali also told Kirk that if in the future Kirk had any concerns or issues concerning either Brooke or Rylee, for him to contact Dr. Ali. Presumably, Dr. Ali had the same discussion with Vivian during the hour before.

Dr. Paglini was appointed by the Court to make a recommendation to the Court for the purpose of reunifying Brooke with her father, Kirk. As part of that effort, Dr. Paglini contacted Dr. Ali for input. Dr. Paglini testified during the February 1, 2017 hearing, that prior to contacting Dr. Ali, he contacted Brooke. He asked for Brooke's permission to speak to Dr. Ali and advised Brooke that what Dr. Ali and he discussed would be included in his written report. Dr. Paglini testified that Brooke gave him her permission.[1] That input from Dr. Ali was documented in Dr. Paglini's report. Dr. Ali reported to Dr. Paglini that his first meeting with Brooke was on March 19, 2014. (43)[2] It was noteworthy to Dr. Ali that Brooke talked about teenage discretion at the beginning of that very first meeting.[3] (44) Brooke believed that when she was 16 years old she would be more empowered regarding where she would live. (45) In December of 2014, Brooke told Dr. Ali that when she is 16 years old, she would be able to

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[1] *See also* Dr. Paglini, 1.25.16 Report, p. 42.

[2] Reference to page number in Dr. Paglini, 1.25.16 Report

[3] Brooke told Dr. Paglini that she learned about teenage discretion from her mother. (24)

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choose to live with her mom and only visit Kirk.[4] (46)

Upon reading this, the Court became alarmed about the wrongful empowerment of Brooke under the teenage discretion provision and noted Dr. Paglini's report indicated that "the intent of that provision has been eviscerated." Kirk also read Dr. Paglini's report.

When Dr. Paglini recommended that Dr. Ali be utilized in his recommended joint therapy sessions with Brooke and Kirk, this obviously changed Dr. Ali's role with the parties and their children. Dr. Paglini noted in his report that Dr. Ali was not being utilized in his initial capacity on a consistent basis and had not been utilized at all for a number of months.

More specifically, Dr. Paglini wrote:

> What this evaluator would recommend is that Mr. Kirk Harrison and his daughter be involved in intense frequent therapy to resolve their issues. Dr. Ali already knows most of the dynamics of this case. It is recommended that Dr. Ali consult with this evaluator so he can understand this evaluator's perspective. Dr. Ali may also want to review this evaluator's report to facilitate his understanding of the case. **The downside of choosing Dr. Ali is that Brooke will not have a relationship with a therapist who is just there for her.** However, the advantage is that Dr. Ali has been involved in the case and has a better understanding, and another therapist would not [sic] have to "reinvent the wheel." If the courts elect otherwise, and want to have a separate therapist, I would recommend Nic Ponzo, LCSW. Mr. Ponzo has worked with complex family court cases, especially pertaining to family reunification. I'm good with either therapist, but **this evaluator asked Brooke and she selected Dr. Ali**. It is recommended to go with Dr. Ali. I have already contacted Dr. Ali, and he is willing to work with Mr. Harrison and Brooke.
>
> . . . .
>
> I am aware that Brooke sees Dr. Ali as needed. However, my concern is that **Brooke had not seen Dr. Ali on a consistent basis**. All these dynamics have occurred since August 2015, and **Brooke has not seen Dr. Ali since late August of 2015.** . . .

Dr. Paglini, 1.25.16 report, p. 57-58 (emphasis added).

This recommendation was in Dr. Paglini's January 25, 2015 report. The Court followed this recommendation during the hearing on January 26, 2015. Therefore, Vivian and her

---

[4] Brooke told Dr. Paglini that she learned about the concept of teenage discretion from her mother and it was Brooke's understanding she was utilizing the teenage discretion provision when she left to live with her mother full time in the Fall of 2015. (24)

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counsel were aware of this change in Dr. Ali's role no later than January 26, 2015. The first joint session with Brooke, Kirk and Dr. Ali was not until March 17, 2016.

Vivian has never complained or attacked Dr. Paglini's character or integrity by asserting that it was in anyway improper for Dr. Paglini to include what Dr. Ali reported to him in his January 25, 2015 report. At no time during the January 26, hearing or anytime between then and the first joint session on March 17, 2016, did Vivian ever complain that it was improper for Dr. Paglini to recommend and for the Court to order Dr. Ali to change his role and participate in a different capacity. Not one word of complaint!

Brooke refused to attend any further joint sessions with Kirk and Dr. Ali during the April 12, 2016 session. Since Dr. Paglini made the recommendation for joint sessions with Dr. Ali to the Court, Kirk reached out to Dr. Paglini for assistance. Dr. Paglini, not Kirk, recommended that Dr. Ali send a letter to the Court advising why the joint sessions were not taking place as ordered by the Court. Vivian refused to allow Dr. Ali to send the letter, requested by Dr. Paglini, to the Court. Dr. Paglini thereafter sent a letter to the Court on May 31, 2016. The Court then ordered that Dr. Ali send a letter to the Court. In compliance with the Court's order, Dr. Ali sent a letter to the Court, dated June 29, 2016.

The Court, in its order of January 3, 2017, wrote, "Considering the seemingly incompatible arguments submitted by the parties, the testimony of Dr. Ali similarly would benefit the Court. This Court further contemplates that Dr. Paglini may be called to testify at the evidentiary hearing." Court's Order, 1.3.17, p. 6, l. 12-16. In response to the Court's clear direction, Kirk subpoenaed both Dr. Ali and Dr. Paglini to testify at the hearing.

Despite these being the facts, which are not in dispute and took place before the Court, Vivian now attacks the character and integrity of Dr. Ali and Kirk. Vivian baselessly asserts as follows:

> [Kirk] has undermined the process of therapy by enlisting Dr. Ali as an advocate. Even Dr. Ali had to admit that it was Brooke who reached out to him in August, 2016, before Kirk's current round of motions to try to receive counseling, and recommence the counseling with Kirk. Instead of counseling her consistent with the therapy portion of the teenage discretion provision, Dr. Ali called Kirk to

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receive his instruction.

> Kirk has apparently related to Dr. Ali that there is no confidentiality associated with the current family counseling though the Court has never modified the parties' parenting. Kirk has managed to corrupt the very system designed to grant the girls an outlet to address his not so subtle attempts at manipulation.

Vivian's Opposition, p. 7, l. 2-16.

These allegations are knowingly false and outrageous. Vivian falsely alleges, "[Kirk] has undermined the process of therapy by enlisting Dr. Ali as an advocate." Kirk has never enlisted Dr. Ali as an advocate. Dr. Paglini recommended and the Court ordered that Dr. Ali conduct the joint sessions. The Court ordered that Dr. Ali submit the Dr. Paglini requested letter to the Court. The Court requested that Dr. Ali testify during the evidentiary hearing.

During the April 12, 2016 joint session, Brooke told Dr. Ali and Kirk that she does not love Kirk, she hates Kirk, does not want a relationship with Kirk, and would not participate in any further joint sessions. It was also made clear that Brooke was very upset over the medical billing issue and believed that Kirk is a bad and mean person because of that issue. During the December 2, 2016 joint session, Kirk learned that Brooke had previously told Dr. Ali, on several different occasions, that she does not love Kirk, she hates Kirk, and she does not want a relationship with Kirk. During the January 18, 2017 evidentiary hearing, in response to questions from Mr. Kainen, Dr. Ali confirmed the truthfulness of these facts. Again in response to questions, Dr. Ali also confirmed the truthfulness of his reporting to Dr. Paglini concerning the over empowerment of Brooke under the teenage discretion provision, as described by Dr. Paglini in his January 25, 2016 report.

Under these circumstances, which are all before the Court, there is no basis whatsoever to assert that Kirk enlisted, "Dr. Ali as an advocate." The Court wanted Dr. Ali to testify, Kirk subpoenaed Dr. Ali, and Dr. Ali responded truthfully to the questions posed.

Vivian's allegation that Dr. Ali "had to admit" implies he had improper motive or any problem with the fact that Brooke had called his office for an appointment. Dr. Ali clearly did not. The session with only Brooke and Dr. Ali was on October 6, 2016. Dr. Ali testified that

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he does not do the scheduling in his office. It is doubtful, therefore, Dr. Ali would have any knowledge as to when Brooke first called his office for that October 6, 2016 appointment. It is certainly understandable that Dr. Ali would be hesitant to accept Vivian's representation that Brooke called in August.

Vivian then falsely asserts, "Instead of counseling her consistent with the therapy portion of the teenage discretion provision, Dr. Ali called Kirk to receive his instruction." Dr. Ali never called Kirk and certainly never called Kirk "to receive his instruction." Dr. Ali's office called Kirk on October 6, 2016, to seek payment for the session with Brooke. Kirk responded that he was surprised, as Brooke had made it very clear that she would not participate in any more joint sessions and he had never been advised about this session. Dr. Ali's office informed Kirk that Brooke wanted to meet with Dr. Ali, without Kirk being present. Upon hearing this and mindful of Dr. Paglini's recommendation, Kirk asked to speak to Dr. Ali. Dr. Ali was put on the telephone by his office. Kirk merely told Dr. Ali that based upon Dr. Paglini's recommendations ("The downside of choosing Dr. Ali is that Brooke will not have a relationship with a therapist who is just there for her.") it was unclear in Kirk's mind whether Dr. Ali should meet with Brooke other than in a joint session. Dr. Ali then met with Brooke.

Vivian next falsely asserts, "Kirk has apparently related to Dr. Ali that there is no confidentiality associated with the current family counseling though the Court has never modified the parties' parenting." Kirk has never related anything to Dr. Ali regarding what confidentiality is or is not associated with family counseling. Kirk was asked and signed the same consent form Vivian, undoubtedly, signed on or about February 25, 2014. Kirk heard Dr. Ali's testimony during the hearing regarding Dr. Ali's view regarding confidentiality, assent, and consent issues when a child is involved in therapy, at the same time the Court and Vivian heard Dr. Ali's testimony.

Vivian next falsely alleges, "Kirk has managed to corrupt the very system designed to grant the girls an outlet to address his not so subtle attempts at manipulation." More utter nonsense. The facts are before the Court. It is undisputed that Dr. Paglini made the decision

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to include Dr. Ali's statements to him in his report. It is undisputed that Dr. Paglini made the recommendation to utilize Dr. Ali and the Court followed the recommendation and ordered Dr. Ali's capacity to change. It is undisputed that Dr. Paglini recommended that Dr. Ali send a letter to the Court and the Court ordered Dr. Ali to do so. It is undisputed the Court provided the parties clear direction it wanted Dr. Ali and Dr. Paglini to testify. Yet, incredulously, Vivian accuses Kirk of corrupting the system.

In summary, under the facts, almost all of which took place before the Court, there is no basis whatsoever to impugn Dr. Ali's character or Kirk's character. Vivian is livid with Dr. Ali because the **truth** came out. However, neither Dr. Ali nor Kirk did anything wrong to cause that to happen. Vivian would not have made her untimely baseless complaint if the truth had not come out and Dr. Ali's statements supported Vivian's false narrative that Vivian did not wrongly empower Brooke, Brooke does not hate Kirk, Brooke moved out merely because of "convenience," and Brooke moving out right after the medical billing issue was just a coincidence. According to Vivian, Vivian's omission of Kirk as Brooke's father from the Student Enrollment Form at the very same time Brooke moved out was just another coincidence as well.

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C. In the Face Of Known Facts and Sworn Testimony, Vivian Continues to Deny the Impact of the Medical Billing Issue Upon Brooke's Decision to Leave Kirk

Vivian, knowingly, falsely asserts, "Kirk's motion continues to center around the preposterous narrative that Brooke was influenced by an insurance issue, and continues to ignore his behavior and actions upon Brooke." Vivian's Opp., p. 6, l. 14-17.

Dr. Ali testified that Brooke was very upset over the medical billing issue. Dr. Ali reported to Dr. Paglini that Brooke removed all of her clothes from Kirk's house right after the medical reimbursement issue. Moreover, it was obvious to the Court what happened before having the benefit of Dr. Ali's testimony. During the September 22, 2015 hearing, the Court noted, "Everything does line up and fall into shape, so I do – it does appear, when we look at the fact that Dad gets the email and essentially he's – **Brooke's written Dad off, and she**

comes in and cleans her closet out while Dad is gone, all of this coincides with Brooke being on the phone." Hearing Transcript, 9.22.15, p. 12, l. 3-8 (emphasis added).

The Court is also aware of the fact that Brooke had no contact with Kirk for two months after she moved out and when Brooke encountered Kirk at the orthodontist's office, Brooke acted as if Kirk was not even there. Respectfully, this is not the behavior of a child who loves her father and wants a relationship with him. Of course, Brooke told Dr. Paglini there was nothing to the medical issue. (42)

D. All Evidence Confirms that Brooke does not Love Kirk, Hates Kirk, and does not Want a Relationship with Kirk, with One Exception – Vivian's and Brooke's Statements to Dr. Paglini regarding Brooke's Alleged Feelings Towards Kirk

We now know the following. Brooke has told Kirk on several occasions that she does not love him, hates him and does not want a relationship with him. Brooke told Dr. Ali the same thing on multiple occasions during their sessions. On April 12, 2016, Brooke told Dr. Ali and Kirk the same thing. Brooke's behavior in taking all of her clothes from Kirk's house, moving to Vivian's house full time, and not talking to Kirk for the next two months is consistent with those statements. Brooke's refusal to even acknowledge Kirk's existence at the orthodontist's office after not seeing her father for those two months is also consistent with her statements that she hates Kirk.

Brooke's statements to Dr. Paglini concerning her **behavior** towards Kirk are also consistent: Dr. Paglini concluded "there is no doubt, Brooke has rejected her father. . ."[5] (46); Dr. Paglini concluded that Brooke is primarily disengaged from Kirk when she is in his home (46); Brooke's conduct towards Kirk is rude and inappropriate (50); Brooke calls her father "Kirk" and her mother "Mom" (17; 50); Brooke has virtually no contact with Kirk when she is in his home (19); Brooke (falsely) believes that Kirk does not pay for her dance (45); Brooke

[5] This is despite the fact that, "Brooke really does not offer evidence of her father's bad character." (51)

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does not trust Kirk (45); Brooke said Kirk lies about her mother (37); Brooke said that Kirk has not earned the title of "Dad" since the divorce (45), and; Brooke treats Kirk very poorly.[6] (52)[7] Consistent with the foregoing behavior is the fact that Brooke was very upset over the medical billing issue. Add to this, Vivian's overt conduct to remove Kirk from Brooke's life, including refusing to provide Brooke's class schedule for six months and omitting Kirk as Brooke's father on the Student Enrollment Form, and it is obvious what has occurred.

The only thing which is inconsistent with all of the foregoing, are Vivian's and Brooke's statements to Dr. Paglini regarding Brooke's alleged **feelings** towards Kirk, which are diametrically opposite – Brooke loves Kirk, Brooke does not hate Kirk, and Brooke wants a relationship with Kirk. Vivian knew she was facing Kirk's allegations of alienation and manipulation, when both she and Brooke were interviewed by Dr. Paglini. Vivian was highly motivated to convince Dr. Paglini there was no alienation and for Brooke to do the same. It is noteworthy that Brooke's alleged feelings of love and desire to have a relationship with Kirk have not manifested themselves in any behavior consistent with those alleged feelings.

Logic, common sense, and thoughtful analysis of what has actually occurred is outcome determinative. As the Court is well aware, in evaluating conflicting evidence it is important to look at the relative quality of the conflicting evidence. Dr. Ali met with Brooke approximately ten (10) times between March 19, 2014 until late August of 2015. (43) During these meetings, Brooke had no motivation to lie.[8] In contrast, for the purpose of determining the best way to

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[6] In sharp contrast, Brooke is aligned with Vivian (43) and would not change a thing about Vivian. (10)

[7] The *Awad* compliant affidavit was filed on October 19, 2016. The hearing did not take place until 19 days later on November 7, 2016 and the first day of the evidentiary hearing on the motion did not take place until 91 days after the filing of the affidavit on January 18, 2017. There was no prejudice to Defendant caused by the filing of the affidavit after the filing of the motion.

[8] A cynic might allege that teenage discretion provisions are utilized to motivate a parent to alienate the other parent from a child and these child/therapist only provisions, prohibiting any parental contact with the therapist, are used in conjunction with teenage discretion provisions to reinforce the alienation of the target parent from the child. For example, if a mother tells a child that her father

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reunify Brooke with Kirk, Dr. Paglini met with Vivian, Brooke and Kirk a few times over the course of a little over one month. Respectfully, under these circumstances, where Brooke met with Dr. Ali over a longer period of time and had no motivation to lie to Dr. Ali, the evidence from Dr. Ali's sessions with Brooke is much more reliable and trustworthy than the few sessions with Dr. Paglini, when Vivian was motivated to lie and Brooke, enmeshed in Vivian's agenda, was also motivated to lie. For the same reasons, Brooke's statement to Dr. Ali and Kirk on April 12, 2016 are more trustworthy than Brooke's statements to Dr. Paglini.

Ironically, and perhaps somewhat unwittingly, Dr. Paglini has documented Brooke's behavior towards Kirk in his report. The Court is also fully aware of what truly happened regarding the medical billing issue, Brooke removing all her clothes right after, Brooke not communicating with Kirk for two months, and then ignoring his existence at the orthodontist's office. All this evidence, when combined with Dr. Ali's sworn testimony regarding Brooke's repeated statements to him that she does not love Kirk, hates Kirk, and does not want a relationship with Kirk, establishes a severe case of parental alienation.

In evaluating whether there is parental alienation, the evaluation must focus upon the behavior of the child toward the target parent. For obvious reasons, such a diagnosis should not be based upon merely the claims of the alienating parent and the child's professed feelings, which are in direct conflict with all of the child's exhibited behavior. This is especially true when the alienating parent and the child are motivated to not tell the truth.

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does not care enough about her to pay her medical bills, this will foreseeably upset the child and cause her to have severe ill feelings towards her father. When the child emotionally tells the therapist her father does not care enough about her to pay her medical bills, the therapist's role is to empathetically and compassionately comfort the child, which reinforces the child's false belief towards her father. In this role, it is not the therapist's role to challenge the child or dissuade the child from her belief. As a practical matter, the therapist would have no basis to challenge the belief because he is prohibited from talking to the parents and learning the truth. Perhaps this is also why, "[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).

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This point is aptly illustrated in this case, as Dr. Paglini thought it was important that: [1] Vivian claimed that she wants Brooke to have a great relationship with Kirk. (8 &9); [2] that it did not appear Vivian was pursuing primary custody of Brooke (56); [3] "Mrs. Harrison wants Brooke to be in her father's life, she is not trying to eradicate Mr. Harrison from Brooke's life, there is no campaign of degradation." (56), and; [4] "Brooke does not perceive her mother as a victim, nor does she perceive her mother being persecuted by her father." (52)

Dr. Paglini was unaware: [1] Vivian omitted Kirk as Brooke's father and as a person to contact in case of emergency on Brooke's student enrollment form; [2] Vivian refused to give Brooke's class schedule to Kirk for six months; [3] Vivian filed a motion for primary custody and appealed the denial of that motion, and; [4] Contrary to what Dr. Paglini was lead to believe, Brooke was very upset over the medical billing issue and believed that Kirk had victimized Vivian (and her credit rating) – he is a "bad and mean person."

E. Kirk's Focus Has Been What is Best for Brooke and Rylee

Vivian falsely asserts that this Court found that Kirk's prior motions to hold Vivian in contempt lacked merit. That is not true. The Court preliminary found there was a basis to find that Vivian acted contemptuously. The Court repeated over and over during hearings and in orders that Vivian had the affirmative responsibility and obligation to see that Brooke complied with the Custody Order, which she failed to do. Kirk has followed the Court's advise of not compelling Brooke to comply and holding Vivian in contempt, but rather to pursue reunification therapy so Brooke is motivated to comply with the Custody Order.

There is no evidence whatsoever that Kirk "manipulated the parties' two older daughters." The two older daughters were 26 and 24 years old at the time of the divorce and both were and are strong minded individuals. As adults, they were eye witnesses to what occurred in the Harrison home.

There has never been a campaign of denigration. Kirk has told all three of the older children not to discuss the divorce with Brooke and Rylee. Seeing Brooke grow further and further away from her, Tahnee, without Kirk's prior knowledge, broached the subject of the

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divorce with Brooke.

In her belated Opposition, Vivian falsely asserts, "Kirk chilled Brooke's use of the provision by leveling complaints to Brooke every time she did." Vivian's Opp., p. 5, l. 9-14. This assertion is false. Kirk obeyed Brooke's orders to take her to Vivian's house on numerous occasions without comment. Contrary to representations to the Court in open Court, when Brooke told Kirk to take her to Vivian's house so Vivian could do her make-up, Kirk took her without question.

F. Vivian's Wrongful Empowerment of Brooke Under the Teenage Discretion Provision Has Caused Kirk to Lose 221 Days of Custody Time with Brooke

Despite adamant denials from Vivian all these years, it has now been indisputably established that the cause of Brooke's material violations of the Custody Order is the **wrongful empowerment** of Brooke under the teenage discretion provision beginning when Brooke was 14 years old.

Respectfully, most experts would not form any conclusions regarding parental alienation based merely upon the stated "feelings" of the child and the assertions of the alienating parent, when such statements are inconsistent with all of the child's behavior and when both the alienating parent and the child, who is enmeshed in the alienating parent's agenda, are highly motivated to not tell the truth. This is especially true when the child has, indisputably, totally rejected the target parent and is knowingly violating a court order to avoid any contact with the target parent. However, there is no dispute of the existence of Vivian's over empowerment of Brooke since she was 14 years old. That cannot be denied or disputed.

Brooke told Dr. Paglini she learned about the concept of teenage discretion from her mother. (24) **Brooke told Dr. Paglini she was utilizing the teenage discretion provision when she left to live with her mother full time in the Fall of 2015.** (24) The nexus is clear. Beginning when Brooke is just 14 years old, Vivian began wrongfully empowering Brooke under the teenage discretion provision by telling her that when Brooke is 16 years old she will be empowered under the teenage discretion provision to leave Kirk and

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live with Vivian full time. Soon after Brooke is 16 years old and very upset over the medical billing issue, Brooke utilized the teenage discretion provision to leave Kirk and live with Vivian full time.

Vivian wrongfully empowered Brooke, under the teenage discretion provision, to live with Vivian full time when Brooke was 14 years old. However, during the hearing on October 30, 2013, this Court made it very clear to Vivian that the teenage discretion provision was not an instrument whereby the joint physical custody arrangement could be altered:[9]

> 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.

Hearing Transcript, 10.30.13, p. 32, l. 24, p. 33, l. 1-8.

This Court reiterated its position in its Findings and Orders Re: May 21, 2014 Hearing, finding and ordering:

> The exercise of "teenage discretion" should not be used as a tool to remove blocks of time from either part 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.

Findings and Orders Re: May 21, 2014 Hearing, filed 9.29.14, p. 3, l. 7-12.

Undaunted by the unequivocal rulings from the Court and in knowing direct violation of those rulings, Vivian then, while Brooke was still only 14 years old, wrongly empowered Brooke to believe that when Brooke was 16 years old she was empowered to live with Vivian full time. It has been confirmed that when Brooke was 15 years old, Vivian was still convincing Brooke that she could live with Vivian full time. Dr. Ali's testimony confirmed precisely what Dr. Paglini noted in his report had been reported to him by Dr. Ali.

Logic, common sense, and rational analysis all lead to the inescapable conclusion that

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[9] The Nevada Supreme Court noted this fact in its opinion, stating, "At a subsequent hearing, the district court explained . . . the provision was not an instrument whereby the joint custody arrangement could be altered." *Harrison v. Harrison*, 132 Nev. Advance Opinion 56 (2016) at 4.

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having wrongfully empowered Brooke under the teenage discretion provision to live with Vivian full time when she was 16 years old would result in no change in the ordered custody arrangement, if Brooke continued to love and want to be with her father. In addition, without more, Brooke would not be willing to leave her little sister for one-half the time. Therefore, Vivian had to motivate and incite Brooke to such an extent that: (1) Brooke developed a deep seated hatred of her father; (2) Brooke developed a belief that Kirk was a bad and mean person; (3) Brooke rejected her father; (4) Brooke disengaged from her father; (5) Brooke did not want to spend any time whatsoever with her father, which she did for several months, etc.

In addition, Vivian did everything she could to develop in Brooke's mind that Vivian's house was Brooke's only "home." That Kirk just lived in a "filler" house. And after Vivian convinced Brooke to move most of her clothes to Vivian's house, Vivian made sure Brooke felt it was a tremendous "inconvenience" to pack for every transfer from her "home" to Kirk's house.

G. Vivian's Wrongful Empowerment of Brooke Under the Teenage Discretion Provision has Been Devastating to Brooke, Rylee and Kirk

Kirk and Brooke had a joyful, loving, meaningful, incredibly close, warm, shared, and very positive father/daughter relationship for many years. Vivian, by wrongfully empowering Brooke under the teenage discretion provision, has destroyed that relationship. Brooke hates Kirk, does not want to spend any time with him,[10] do anything with him, or have a relationship with him.

As a consequence of Vivian's wrongful empowerment of Brooke under the teenage discretion provision, the provision has created a chamber of horrors for Brooke, Rylee and Kirk. Vivian has wrongfully utilized the teenage discretion provision to interfere with the relationship between Brooke and her father. Vivian is now wrongfully utilizing the teenage

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[10] Coming to Kirk's house at between 11:00 p.m. and midnight, leaving the next morning and not returning until between 11:00 p.m. and midnight is neither in compliance with the Custody Order nor any evidence that Brooke actually wants to spend any real time with Kirk.

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discretion provision to interfere with the relationship between Rylee and her father. It is not in Rylee's best interest to go through her own chamber of horrors during the next two years, with all of the totally unnecessary suffering, emotional pain, crying, stress, tears, and ill-based feelings of hate, disdain, and resentment towards her father, when he has been and will continue to be a good, attentive, caring, and loving father.

In light of Vivian's wrongful empowerment of Brooke under the teenage discretion provision, which has been clearly established by Dr. Ali's testimony, there is no reason whatsoever to allow the same horrible things to happen to Rylee. Although it may not yet be apparent, the consequences of wrongfully empowering Brooke, at only 16 years old, to make the ill-advised decision to violate the Custody Order and leave her father will likely have devastating adverse consequences for Brooke. An adolescent is much more vulnerable than they appear. It is, without question, in Rylee's best interest for this Court to protect Rylee from being taken down the same path by nullifying the teenage discretion provision.

As a consequence of Vivian's wrongful empowerment of Brooke under the teenage discretion provision, Vivian – at Kirk's loss – has enjoyed 221 days of Kirk's custody time with Brooke. Vivian has not suffered any adverse consequence as a result of her wrongful actions and knowing violations of this Court's orders and is now emboldened to do the same thing to Rylee.

Vivian has Rylee headed down the same path of wrongful empowerment under the teenage discretion provision. Brooke testified that she believes Rylee, if Rylee believes it is necessary, should be able to make the same decision to live full time with Vivian when she is 16 years old.

In addition to being a violation of the Custody Oder, it is not in the best interests of a 16 year old child to make such a decision. The treatise, "A Judge's Guide – Making Child-Centered Decisions in Custody Cases," 2nd Ed., (ABA 2008) addresses this issue for adolescent or high school-aged children:

. . .

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The Adolescent or High School-Aged Child (14 to 18 Years)

> • Strike a balance. An adolescent should express his or her views via testimony, a court-appointed attorney, or an in camera interview. 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.***

A Judge's Guide, p. 75 (emphasis added).

Therefore, Brooke's decision to live full time with Vivian, after being wrongfully empowered by Vivian under the teenage discretion provision and incited by Vivian to hate Kirk, was not only an undeniable violation of the Custody Order, but it was clearly not in Brooke's best interest as it was a vulnerable time for Brooke. Unfortunately, it may be too late for Brooke. However, it is a vulnerable time for Rylee and she needs significant protection. The Court should insure that protection by nullifying the teenage discretion provision so Rylee gets a clear message that it is not her responsibility to make such a decision and she is not empowered in her relationship with her father.

Vivian has exhibited no respect for this Court's orders or the authority of this Court, has taught Brooke the same, and is now teaching Rylee to follow suit. The Custody Order meant nothing. The terms of the teenage discretion provision, as interpreted by this Court and the Nevada Supreme Court, have meant nothing. The terms of this Court's order regarding joint reunification therapy with Dr. Ali have meant nothing. The authority of this Court to enforce its own orders has meant absolutely nothing to Vivian. This Court's repeated statements that, "Mom is ultimately responsible for that lack of time with Dad" have meant nothing to Vivian and have been no deterrent whatsoever to Vivian.

There is no question, whatsoever, it is in Rylee's best interest for the Court to nullify the teenage discretion provision.

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H. Vivian's Wrongful Empowerment of Brooke Under the Teenage Discretion Provision, Kirk's Loss of 221 Custody Days with Brooke, and Brooke's Behavior Towards Kirk Have All Been Established

When the Nevada Supreme Court heard the appeal regarding the teenage discretion provision, Kirk had lost, in the aggregate, less than a handful of days of custody with Brooke. Kirk has now lost **221 custody days** because of Vivian's wrongful empowerment of Brooke under the provision. At the time of the appeal, Vivian's wrongful empowerment of Brooke under the teenage discretion provision to leave Kirk and live with Vivian full time, was not known and had not been established. The medical billing issue which Vivian used to incite Brooke to leave Kirk and live full time with Vivian had not occurred. Brooke had not yet completely rejected her father – "there is no doubt, Brooke has rejected her father. . ." (46) All of Brooke's behavior evidencing her disengagement from Kirk had not been established. Vivian's knowing violations of the Custody order, including the terms of the teenage discretion provision (as interpreted by this Court and the Nevada Supreme Court) were not known and established.

Through Vivian's knowing wrongful empowerment of Brooke under the teenage discretion provision, she has obtained *de facto* primary custody of Brooke. This was never contemplated by this Court nor the Nevada Supreme Court. Unless the teenage discretion provision is nullified, Vivian will wrongfully empower Rylee under the teenage discretion provision and obtain *de facto* primary custody of Rylee. As part of this effort, between now and then, Vivian will indoctrinate Rylee with false beliefs, misplaced entitlement, and wrongful empowerment, which will cause a lot of needless heartache, suffering, stress, sadness, crying, tears, and emotional pain for Rylee and Kirk. It is in Rylee's best interest to not be put through this chamber of horrors by nullifying the teenage discretion provision as soon as possible.

II. Requested Relief

Vivian has consistently taken the position that the reason for the inclusion of the teenage discretion provision was because **Brooke** wanted to spend more time with Vivian. Suffice it

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to say, everyone will agree that Brooke has spent more time with Vivian. Vivian's stated purpose for the provision has been fulfilled.

Unfortunately, as a consequence of the over empowerment of Brooke, this provision has caused a lot of heartache for Brooke, Rylee, and Kirk. This over empowerment has overly empowered Brooke in every aspect of her relationship with Kirk. Brooke, Rylee and Kirk have all suffered as a consequence of this over empowerment. Too many tears have been shed too many times by Brooke, Rylee and Kirk. As the Court has witnessed, this over empowerment has caused repeated violations of this Court's orders as well. It has been harmful to everyone involved. Vivian is already wrongly empowering Rylee in her relationship with her father.

The Court has made very clear its view that the best chance for Brooke and Kirk to heal their relationship is to spend quality time together. It is likely this relationship cannot be reunified in the courtroom or in therapy. Brooke made it very clear during her testimony that she does not want to talk about anything in the past. It seems, therefore, that joint therapy sessions will be of marginal value in comparison to Brooke and Kirk spending more quality time together.

Kirk has lost 221 days of custody time with Brooke between August 12, 2015 and January 31, 2017. Kirk should be compensated for all of this lost time. However, as we have noted previously to the Court, Kirk strongly believes that Brooke and Rylee have been separated too much already and it is important that Brooke and Rylee spend as much time together as possible before Brooke leaves for college in the Fall.

Based upon all of the foregoing, Kirk, respectfully, requests the following relief:[11]

First, the teenage discretion provision is immediately declared null and void.

Second, Brooke fully complies with the existing Custody Order, which includes living

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[11] Kirk ardently believes it is in the best interests of Brooke and Rylee for the Court to nullify the teenage discretion provision and to order the previously requested reunification therapy with Linda J. Gottlieb of Turning Points 4 Families, in accordance with the Proposed Order for Reunification Therapy, submitted as Exhibit "7" to Plaintiff's Reply in Support of a Motion for an Order to Show Caused, filed 9.30.16.

at Kirk's home during her custody time with Kirk. It is acknowledged that Brooke has a busy schedule. However, during her custody time with Kirk she should eat meals with Rylee and Kirk, study, change clothes for dance, change clothes after dance, etc. at Kirk's home – spend time with Kirk and Rylee. It is understood that sometimes Brooke may eat lunch at school or cannot eat dinner until 9:30 at night, but she needs to be living with Rylee and Kirk during her custody time with Kirk, as opposed to not arriving until after 11:00 p.m. at night, leaving the next morning, and not returning until after 11:00 p.m. the next night.

Third, during each weekend Kirk has custody of Brooke and Rylee, the three of them will spend at least four hours doing something together. Brooke, Rylee and Kirk spent years sharing many fun experiences. Kirk wants to include, not exclude, Rylee during these weekend four hour periods.

Fourth, during each weekend Vivian has custody of Brooke and Rylee, Brooke and Kirk will spend at least six hours of one on one quality time together. Assuming this starts the weekend beginning, Saturday, February 18, 2017 and ends the weekend beginning Saturday, June 24, 2017, this would constitute a total of ten (10) six hour periods for a total of only sixty (60) hours. So long as the teenage discretion provision is nullified, Kirk would accept this mere five (5) day aggregate period of time, which is less than 2.3% of the time lost, as full compensation for the 221 days he has lost.

Fifth, Brooke and Kirk have a one hour joint session once a month with Dr. Ali for the purpose addressing any issues and, hopefully, updating Dr. Ali with the progress that is being made.

Sixth, pursuant to Paragraph 7.1 of the Custody Order, Kirk selects summer vacation weeks first during odd-numbered years. However, Vivian always is allowed to pick 10 days for sewing camp prior to vacation week selection, which historically, has been after Brooke's birthday of June 26. There is nothing which prevents Vivian from picking 10 days for "sewing camp" prior to June 26. Under the circumstances, Kirk requests the Court order the "sewing camp" days be selected after June 26 and that Brooke not take any summer classes or work

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during the month of June to enable Kirk to maximize his vacation time and Utah/Lagoon trip time with Brooke and Rylee prior to Brooke's 18th birthday on June 26, 2017.

DATED this 13th day of February, 2017.

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By: _____ 8414 for

EDWARD L. KAINEN, ESQ.
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AFFIDAVIT OF KIRK HARRISON
filed in Support of Plaintiff's Supplement to Reply regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Kirk Harrison, being first duly sworn, deposes and says:

1. That I am the Plaintiff in this action.

2. That the facts set forth in the foregoing Supplement to Reply regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary 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.

Dated this 10th day of February, 2017.

Kirk Harrison

State of Nevada
County of Clark

Subscribed and sworn before me
this 10th day of February, 2017.

SARA N. WELLS
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 12-7744-1
My Appt. Expires May 10, 2020

Notary Public

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13TH day of February, 2017, I caused to be served the ***Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary 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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OPP

RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
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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 DIVISION

DEFENDANT'S SUPPLEMENTAL DECLARATION IN OPPOSITION TO PLAINTIFF'S MOTIONS FILED DECEMBER 29, 2016; REQUEST FOR SANCTIONS

DATE OF HEARING: February 1, 2017
TIME OF HEARING: 1:30 p.m.

COMES NOW Defendant Vivian Marie Lee Harrison ("Vivivan") and submits the following Declaration consistent with the Court's order at the hearing of February 1, 2017.

SWORN DECLARATION OF VIVIAN MARIE LEE HARRISON

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

I, VIVIAN MARIE LEE HARRISON, being duly sworn, deposes and says as follows:

1. The matters stated in this Declaration 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. Under Order of Judge Duckworth, I submit this Declaration to address Kirk's allegations contained in his Reply filed January 31, 2017 relating to his fourth motion to vacate paragraph 6 of our stipulated parenting plan entered July 11, 2012. I am concerned, however, that doing so will only continue to fuel Kirk's campaign to denigrate me, and to engage me and our children in expensive, unproductive, and damaging litigation.

3. The allegations in Kirk's January 31, 2017 Reply include Kirk's continued false narrative and misstatements about both the history of the case, and the facts underlying his motion. I have not again taken the time to address those claims because they have been addressed many, many times in various pleadings.

4. [Page 3 of Kirk's Reply] Contrary to Kirk's allegations, Brooke has not been wrongfully empowered in her relationship with Kirk, has not been manipulated into

believing Kirk is a bad and mean person (who does not deserve her respect), nor has she been manipulated into believing Vivian's house is her only home. I am informed and believe that Brooke has addressed this in her testimony. I am advised that Brooke explained that both Kirk, and our adult daughters Whitney and Tahnee, have continuously denigrated me to the children. Both the adult children and Kirk have tried to convince the children of lies about me, and when Brooke told him about Tahnee's recent outrageous behavior and allegations, Kirk did nothing.

5. Further, Kirk admitted he lied to Brooke about the nature of the litigation in sessions with Dr. Paglini (by claiming I filed the initial custody motion), and he has admitted in his pleadings that he has told all our children that there is something wrong with me. He now suggests that I have done something to cause his relationship with the children to deteriorate. It is his constant denigration of me that is damaging to the children, and the basis for problems in his relationship with Brooke.

6. Instead of showing any insight or responsibility for his role in his relationship with Brooke, he continues to attack me and Brooke, and now attacks Rylee. He incredibly claims that I have "caused Brooke to shed too many tears and experience too much emotional pain as a consequence of [my] concerted and calculated effort to separate Brooke from Kirk." His claims are delusional. From the commencement of this case he has unequivocally and endlessly stated his contempt for me, and by that revealed

his motivation for his continued legal assault on me. Here are just a few of the quotes from his pleadings:

a. "I must do everything I can to get full custody of Brooke and Rylee?"

b. "I cannot let Brooke and Rylee continue to be exposed to someone like that nor to end up like that"

c. "However, I now realize I must get them away from Vivian"

d. "If Vivian gets partial custody…Brooke and Rylee will emotionally suffer for the rest of their lives"

e. "I am scared that a judge might not fully appreciate the severity of the situation nor the severity of Vivian's condition and give Vivian partial custody of Brooke and Rylee-that would be unbearable"

f. "I was concerned I would not get total custody in a divorce, and I was extremely concerned for Brooke and Rylee."

g. "Vivian is missing something inside. Some might say she has lost her soul."

h. "..Vivian is about the lowest form of human existence"

By his motion, Kirk asks to dismantle the system that was designed to allow the children to process and address Kirk's denigration of me.

7. The premise of Kirk's argument (at page 3-4 of his Reply) is that I manipulated Brooke, and now I am manipulating Rylee, using the teenage discretion provision. Brooke testified that the teenage discretion provision was not the basis upon

which she altered her schedule with Kirk. I have not told Rylee about the teenage discretion provision allowing her some flexibility to her mandated schedule should she feel it is necessary.

8. As he has done in virtually all his pleadings addressing Brooke and Rylee, Kirk places words into their mouths, and mischaracterizes their statements. The Court should allow the children to address these claims, particularly considering his statements about Brooke that turned out to be false. I will address first his claims regarding Brooke since those are the basis for his request to alter our agreed parenting plan. I can address some of Kirk's claims simply through my experience of Brooke, and things she has told me.

9. Kirk's claims that Brooke has "insisted that Kirk drive her to Target in Henderson and buy her something." Brooke told me that Kirk refused to allow her to come to my home to get supplies for school projects (I have a full room of office supplies, crafting, hobby and sewing materials), and that she has asked him to take her (before she could drive) to Target for shampoo, conditioner, shaving cream and feminine supplies to use at his house. She advised me that Kirk has refused to bring her to my home for supplies, and that he has complained about taking her to get toiletries and schools supplies from Target.

10. Kirk claims that Brooke has said she hates him. I'm advised that Brooke acknowledged and explained those statements in her testimony. She explained that Kirk

refuses to stop disparaging me to all our children, and constantly discusses our divorce. He also continuously insults Brooke, calling her rude, inconsiderate, profane names (a fact he has acknowledged in his pleadings) unsympathetic and uncaring. I believe Brooke's angry statements should be viewed in that context. Again, I believe that Brooke loves Kirk, but is just tired of all of his, and our adult daughters', insults toward her and me.

11. Kirk is the master at making innocuous circumstances into something sinister. Kirk claims in his Reply that on one occasion. He went with Brooke to the dance studio to drop off a payment and "the front door [of the dance studio] was locked and [he] insisted that he and Brooke would get back into the car and drive around the block to the back of the studio and that Brooke said to him, 'I hate you.'" He then claims that I was "sitting in a car in the back of the studio with Utah plates," and that I "slipped into the studio." Kirk's claim is more of the same kind of preposterous nonsense that he has continually come up with in this case. I was there at the dance studio one day when Kirk came there with Brooke, but I was there to watch a special class for my neighbor Nyla Robert's daughter Hannah and other dancers. I didn't sneak in to the studio, and I didn't take Brooke anywhere. If the front door of the studio was locked (which I don't believe it was), there would be no one at the front desk to take a check as he described. Also, if front door was locked, he wouldn't have to drive her around back because there is a side door that is always open and is only a few feet around corner of building. It

would have been much easier to reach the side door by foot than going back to the parking lot and getting into the parked car and driving around the block to the back of the dance building to enter the studio from the side door which is only a few feet away from the front and takes less than 15 seconds to reach by foot. I believe the incident he is describing may be when Brooke explained that she and Kirk got into a heated screaming match at the studio during which he called her names and accused her of being a liar and an unkind, selfish, piece of shit.

12. (page 6) Kirk claims that Brooke has called him a bully, and said that he calls her names. Kirk arguably *has* bullied Brooke. On at least one occasion when she was twelve he dragged her across the kitchen floor after she fell asleep on the floor early that morning because she was up late the night before studying. He also dragged her once to a car when she didn't want to go shopping with him and her siblings because she needed to complete a project and study for a test.

13. There is no truth to Kirk's statement that "Vivian has convinced Brooke and Rylee that they do not have to do anything they do not want to do when they are with Kirk." I have never said that to the girls. Ever. I insist that the girls work at my home, do all their chores, homework etc. and I would be very disappointed in them if they refused to do their homework and chores at Kirk's home.

14. (page 15) Kirk falsely alleges that I have caused Rylee to start taking large piles of clothes from Kirk's home, and caused Rylee to be frustrated whenever custody is

transferred. The only occasion I can think of that Kirk may be referring to is was when Rylee called me and asked me if I would bring her dance bag to Kirk's home. I apologized to her, and told her I was not at home but that I would get it to her as soon as I could. She said that it was fine, that she would let her Dad know, and ask him if he would stop by my house on her way to class so she could run in and grab her items before class.

15. Later Rylee called me upset and crying saying her Dad refused to stop by the house and allow her to grab her bag. She was frustrated, and she felt her Dad was not helping her, was not caring about her situation, and was acting mean. She didn't understand why he wouldn't allow her to grab her bag even after she told him I wasn't home and I couldn't bring the bag to her for class. I live two stop signs and less than four minutes from the dance studio so frankly I didn't understand why he wouldn't get the bag, but I didn't suggest to her it was his fault. She was frustrated that she missed her class for no good reason. She said Kirk (who she refers to as "Dad") told her it was "his time", and that it was my responsibility to bring her bag not his responsibility to go and get it.

16. I brought her bag to her at Kirk's house within the hour, and I took responsibility for not bringing it earlier, and her missing her class. I told her I would speak to her teacher to explain what happened, and let her know she still had time to make her second class. She said she would, and hugged me and thanked me.

17. Kirk argues that I have "wrongly empowered Rylee to threaten Kirk" and have allowed Rylee to treat Kirk like "the misbehaving child." He claims, "it is now very apparent that Vivian has also wrongfully empowered Rylee under the teenage discretion provision." His claims are false. **I have never discussed or mentioned the teenage discretion provision to Rylee**. I have never talked to Rylee about what Kirk has said about her, nor have I tried to manipulate her. How long will the Court condone Kirk repeatedly making these allegations without any proof? I would welcome the Court to have Rylee interviewed so it can again learn that Kirk, just like he was with Brooke, is not being truthful about her actions, statements, or feelings.

18. (page 7) Kirk also alleges that I have "wrongly empowered Rylee to threaten Kirk" and have Rylee treat Kirk like "the misbehaving child." I do not believe Rylee threatened Kirk or treated him like a child. I cannot fathom Rylee ever threatening anyone, including Kirk, nor "scolding" him and tell him to "never do such a thing again." Rylee is a very non-confrontational person. She is very quiet and extremely shy. Rylee does not engage. It is not her personality to yell, let alone threaten, anyone. She is compassionate very considerate and caring. She is sweet and kind. I have heard that description of Rylee from many parents, teachers, friends, etc. Kirk's depiction of Rylee suggests to me that he will continue to misrepresent the children to try to support his narrative that I have damaged them.

19. (page 8) Contrary to Kirk's allegation, I don't callously manipulate Rylee or wrongly empower her with Kirk. His claim of alienation is nonsense, and is the same false claim he made about Brooke. I have not disparaged Kirk to the children; it is clearly and undeniable that Kirk that has disparaged me to them. The Court does not need to take my word for it; Dr. Paglini and Brooke both acknowledged that he disparages me to Brooke and Rylee, and now apparently allows our adult daughters to do so with impunity. In his pleadings he has also acknowledged where he has said many disparaging and alienating statements.

20. (page 9) Kirk suggests that my actions will cause "Rylee [to] develop a deep hatred of Kirk just like Brooke did." Brooke doesn't have a "deep hatred" of Kirk. Dr. Paglini, and I'm told Brooke, both addressed Kirk's claim and stated it was false. Rylee loves her father; she does not have any hatred toward him.

21. (page 12) Kirk claims that he "does not question Rylee as to what she does when she is with Vivian…Unfortunately, the same is not true with respect to Vivian." I don't question the children about what they do with Kirk.

22. (page 13) "Vivian would have preferred that Rylee spent the entire Spring Break in her bedroom on her phone watching videos." Again ridiculous, not true. My quoted email addressed Rylee's complaints about going to her sister's homes when she wanted to stay in Boulder City to have time with her friends, but the gist of it was that I wanted her to spend extra time at Kirk's house so she wouldn't have to transport all her

stuff again just to transfer again the next day, and instead could just rest and have down time after her long trip. It has now become apparent to me why Rylee might resist going to see Tahnee and Whitney (who I know she loves). I'm told Brooke testified as to Whitney and Tahnee's continued negative statements about me in front of and to Brooke and Rylee.

23. The only issue I have ever been aware of regarding Rylee was Kirk's complaints to the Court that she took too long during exchanges. The Court has now changed the transfers to address Kirk's claims. Rylee explained to me that since the change in transfers, Kirk now goes into her room and goes through all her packed items she intends to take to my home. He goes through her bags, places her packed items on the floor, and tells her what she can't take away from his home. The reason Rylee told me this is because Kirk embarrassed her by taking out a sports bra she had packed, and while holding it up in the air began questioning her as to why she felt she needed to take it. Kirk's explanation for his actions was his statement that she has a closet at his house just like my house. Kirk was apparently oblivious to how absurd and embarrassing his actions would seem to a young teenage girl.

24. Kirk's actions made little sense to me, but I didn't even explore it with Rylee. Frankly, it is the type of ludicrously obsessive behavior that I have regularly seen Kirk engage in. Contrary to Kirk's false statements, I have not noticed *any* increase in Rylee's clothes exchanged from either house since the new court order. Brooke and

Rylee are teenage girls and they pack their own stuff. No one should go through their bags to determine what they can take to either home. They shouldn't have to feel stress or guilt for taking things back and forth, and should been shown respect for their privacy as they grow older.

25. I did take Rylee to Kirk's house to pick up some items before a trip to Disneyland. Rylee said Kirk did not bring the items she packed, and that she needed to get some things for the trip. Instead of looking at this as simply Rylee grabbing some extra items for a trip, Kirk views it as evidence that she is being manipulated to hate him.

26. I've always maintained, and I continue to believe, that my divorce from Kirk should not hamper our children's lives. I've always gone out of my way to make their transitions easier, and have never questioned them regarding their belongings. I've told them if they need more time at Kirk's home, want to sleep in and have me pick them up later than the scheduled time, or stay with their Dad longer or different days, that it would not be an issue. If they tell me they need something, I do what I can and don't try to make it difficult or seem like it's an inconvenience, burden or scold them in any way. Kirk does not do that. Instead, he makes everything extremely difficult, and then becomes irate (or litigious) if Brooke and Rylee do not do exactly what he demands.

27. Kirk has not lost 221 custody days, no matter what he has claimed or written down. I do not think his calculation is accurate. Brooke has been with Kirk during

summer vacations, holidays and ½ of his normal custody days. She has been fully adhering to the custody schedule since this school semester began in January.

28. Brooke spoke to Dr Ali in June of 2015, weeks before the "insurance issue", regarding her desire to modify custody schedule at the beginning of school year which she enrolled in six College courses in addition to her high school class load, etc. She also expressed her desire to modify her schedule with her Dad before August 2015 when she "moved" her school clothing from her closet at Kirk's house. Kirk informed her that it couldn't be changed because it was a court order. Brooke contends she never told Ali or Kirk at that time or anytime thereafter that she could change custody because of the teenage discretion clause.

29. Brooke has unequivocally stated many times that she modified her schedule because of her change in lifestyle demands. Her life changed from the time she was 12 years old. She began driving, she became old enough to date, she began attending college more than full time, and she was preparing for college entrance exams, testing, etc. If the Teenage Discretion Clause never existed, Brooke would have done the same thing because her decision to spend less time with Kirk was to release some of the pressure that she was under. This statement is confirmed by Dr Pagliani's testimony. I continuously encouraged her to spend time with her father. She simply grew up and the demands on her, and her circumstances, changed. Brooke didn't evoke the teenage

discretion clause, and she understood that the clause did not grant her the right to change custody.

30. If the court modifies the teenage discretion clause which was agreed upon by both Kirk and me, it will fundamentally change the parenting agreement and the protections that were placed within to allow the minor children rights and freedoms that they would have had if their parents were still married. I never agreed to nor would I ever have agreed to joint custody without the protection of a confidential therapist, Parenting Coordinator, and teenage discretion.

31. The teenage discretion clause was in part to help Brooke address her issues with Kirk, but also designed to protect the children from what I anticipated would be Kirk's relentless onslaught of disparagement. The therapist and Parenting Coordinator's were buffers to help the children weather the storm. The quotes listed above evidence his unending willingness to disparage me, and the following quotes demonstrate, ironically, his recognition that his current behavior would be damaging to the children:

a. "Vivian needs to know that a family doesn't stop being a family when a child moves away from home and/or you can no longer control your children"

b. "We must consistently act so that our children become confident, self-reliant and, frankly reach a point early in their lives where they do not need us anymore. Vivian must learn to accept that fact"

c. "[Vivian] must be made to understand that her need to control our children's lives is contrary to their best interests. They need to make their own life decisions, wrong or right they need to choose what classes to take and to manage their own lives."

d. "Brooke and Rylee are attached to their home, the neighborhood and their friends, and it would only cause unnecessary disruption to force them to move from their home.

e. "The blaming must stop. Vivian must be made to understand that there is no reason for anyone in the family to be in charge of blaming others for anything. There is no reason to place blame upon other people. Vivian constantly blaming others for anything and everything is the most major cause of stress and divisiveness in our family. If she could be made to see the damage she is doing. She might be motivated to stop. When she constantly blames others, she begins to resent those she blames, the person being blamed resents her finger pointing and relationships consequently deteriorate. This need to blame really is a root of evil."

32. Finally, I believe the evidence received at the recent evidentiary hearing demonstrates the need for a teenage discretion provision, the existence of a parenting coordinator, and the confidential counseling that is written into the stipulation. It is my understanding that Brooke testified that for years Kirk has continuously denigrated me to

the children, including our adult children, who have also denigrated me, and stated false statements that could only come from Kirk to the children.

33. My absolute frustration in this case is Kirk has continued to attack the system that we all agreed was designed to give the children an outlet to express concerns about the behavior of either parent, and avoid the kind of deterioration that has happened to Kirk and Brooke's relationship. The system was fine for Kirk when he believed he could manipulate the children to believe I was an evil sick person and cause them to reject me, but his view of the system (which ironically he originally proposed would allow them complete discretion to change custody at 16) changed when he saw his disparagement could not change the children's relationship with me.

34. Kirk has undermined the system by repeatedly challenging the teenage discretion provision, delaying and then challenging the appointment of a Parenting Coordinator, and now destroying the confidential counseling for the children. Now, for the fifth time, and after the expenditure of hundreds of thousands of dollars, I am forced to again defend a system that has never been given a chance, and is now more than ever needed in this case. Kirk's continuous attacks on me and the children must have a system in place that does not require me to continuously respond to his never ending filings in this Court.

35. I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

VIVIAN MARIE LEE HARRISON

DATED: 2-10-17

The Declaration supplements the Opposition and Request for Sanctions on file.

Dated this 10th day of February, 2017.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
Nevada State Bar No. 002791
2470 St. Rose Pkwy – Suite 206
Henderson, Nevada 89074
Attorneys 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 described as DEFENDANT'S SUPPLEMENTAL DECLARATION IN OPPOSITION TO PLAINTIFF'S MOTIONS FILED DECEMBER 29, 2016; REQUEST FOR SANCTIONS on this 10th day of February, 2017, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Edward Kainen, Esq.
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129

Attorneys for Plaintiff

An Employee of Radford J. Smith, Chartered

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) REPLY BRIEF.

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: VIVIAN MARIE LEE HARRISON Date 2/11/17

Signature of Party or Preparer _____

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CLERK OF THE COURT

MOT

RADFORD J. SMITH, CHARTERED
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Attorney for Defendant

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 DIVISION

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 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

Date of Hearing: 03/16/17
Time of Hearing: 10:00 PM

A.App. 2557

COMES NOW, Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), by and through her attorneys, Radford Smith, Esq. and Garima Varshney, Esq., of Radford J. Smith, Chartered, and moves this court for an order striking Plaintiff, KIRK ROSS HARRISON's ("Kirk") pleading titled, "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" filed on February 13, 2017 and requests that the Court sanction Plaintiff and award Defendant attorney's fees and costs pursuant to EDCR 7.60 for having to file this Motion.

This motion is made and based upon the points and authorities and affidavits attached hereto, and upon all such argument as may be made by counsel at the time of the hearing of this matter.

Dated this 15th day of February, 2017.

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, NV 89074
Attorneys for Plaintiff

NOTICE OF MOTION

TO: KIRK ROSS HARRISON, Plaintiff

TO: EDWARD KAINEN, ESQ., Attorney for Plaintiff

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled Court on the 16 day of March, 2017 at the hour of 10:00 P.m or as soon thereafter as counsel may be heard.

Dated this 15th day of February, 2017.

RADFORD J. SMITH, CHARTERED

Garima Varshney

RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
GARIMA VARSHNEY, ESQ.
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Attorneys for Plaintiff

I.
THE COURT SHOULD 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"

The parties appeared before this Court for a two-day Evidentiary Hearing on January 18, 2017 and February 1, 2017. At the Evidentiary Hearing, the Court heard all arguments by counsel, evidence presented at Evidentiary Hearing and testimony from the parties, and witnesses. At the conclusion of that hearing, the Court adopted Dr. Ali and Dr. Paglini's recommendations, directed Kirk and Brooke to participate in counseling sessions. *See* Minutes from the Hearing of February 1, 2017. The order from that hearing is being reviewed by counsel.

With regard to Kirk's Motion regarding Teenage Discretion, the Court took the issue under advisement and stated that it will enter a separate order. The Court also directed Vivian to file an Affidavit by February 1, 2017 regarding the specific items of the past week related to the teenage discretion provision. The Court did not order that Kirk can file a supplement/response or any other pleading after Vivian files her Affidavit. On February 1, 2017, Vivian timely filed her Affidavit.

On February 13, Kirk filed a pleading titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing."

EDCR 2.20 states in relevant part,

> (i) . . . Supplemental briefs will only be permitted if filed within the original time limitations of paragraphs (a), (b), or (d), or ***by order of the court.*** [Emphasis added]

Kirk has not filed leave of Court to file the Supplement. Neither does he cite to any law that permits such filings. Vivian submits that these filings are designed to supplement motions already filed, and heard (a practice not permitted by our rules). Pursuant to EDCR 2.20, Kirk's Supplement should be stricken in its entirety as an impermissible supplement.

Finally, Vivian should be awarded attorney's fees pursuant to EDCR 7.60 for having to file this motion due to Kirk's filing of a supplement without seeking leave of court and without following the correct procedure under our rules.

Dated this 15th day of February, 2017.

RADFORD J. SMITH, CHARTERED

Garima Varshney

GARIMA VARSHNEY, ESQ.
Nevada Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Attorney for Defendant

AFFIDAVIT OF GARIMA VARSHNEY, ESQ.

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

Garima Varshney, Esq., having been duly sworn, deposes and says:

1. We are the attorneys for the Defendant, VIVIAN MARIE LEE HARRISON, in the above-entitled matter.

2. I make this Affidavit 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.

3. I have reviewed the foregoing Motion and can testify that the facts contained therein are true and correct and to the best of my knowledge. I hereby affirm and restate them as if set forth fully herein.

FURTHER AFFIANT SAYETH NAUGHT.

Garima Varshney
GARIMA VARSHNEY, ESQ.

Subscribed and sworn before me
this 15 day of February, 2017.

NOTARY PUBLIC in and for
said County and State

NOTARY PUBLIC
JOLENE M. HOEFT
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. NOV. 23, 2017
No: 05-100754-1

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Kirk Harrison
Plaintiff/Petitioner

v.

Vivian Harrison
Defendant/Respondent

Case No. D11443611D

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: Defendant Date 2/15/17

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 11

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ATTORNEYS FOR APPELLANT

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

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///

[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-11-443611-D
DEPT NO: Q

Date of Hearing: October 24, 2016
Time of Hearing: 10:00 a.m.

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

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. The facts set forth in Plaintiff's Motion for an Order to Show Cause, filed August 30, 2016, 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.

3. During my discussions with Dr. Paglini, prior to his report of January 25, 2016, I told Dr. Paglini of Brooke's strong hatred of me. However, Dr. Paglini assured me that Brooke did not hate me. Dr. Paglini told me what Brooke had told him regarding her feelings towards me and why she was violating the custody order: Brooke does not hate me. Brooke does not think I am a bad person. Brooke does not think I am mean. Brooke wants to have a relationship with me. Brooke's knowingly violating the Custody Order, which provides that Brooke is to spend 50% of her time with me on a bi-weekly basis, to spending almost no time with me 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. Brooke also complained that it was simply too hard on Brooke to pack clothes for each custody transfer. Brooke also told Dr. Paglini that the medical reimbursement issue was of no consequence in her decision to stop honoring the Custody Order.

4. The issue of having to pack clothes for custody transfers was created by Vivian and Brooke. For years, Brooke had ample clothing at both homes and there was no need to "pack" clothes for custody transfers. I 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 shortly after the medical reimbursement issue, does Brooke need to "pack" any clothes during the extremely rare and brief times she stays at my home.

5. In Dr. Paglini's discussions with me, 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 me and wanted a relationship with me. I told Dr. Paglini that was surprising, as Brooke had previously told me that she hated me and did not want to spend any time with me. Dr. Paglini was focused on what he was led to believe was Brooke's state of mind, and based upon that conclusion, deduced the parental

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alienation was not severe because it had failed to completely alienate me from Brooke. It was apparent to me that Dr. Paglini 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.

6. The discussions Dr. Paglini and I had 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.

7. Dr. Paglini also told me that Brooke had no problem with me attending Parent Observation with the other parents and that Brooke only wanted me 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 me attending all of her other dance classes, I went to Parent Observation to attend Brooke's dance classes. On February 1, 2016, I 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 I first walked in the lobby area, Brooke saw me and avoided me. Later, when they opened the door for Studio B where the jazz class was to take place, I approached Brooke and said hello. Brooke responded by telling me she did not want me there and told me she wanted me to leave. I explained to Brooke that I was told she did not want me to attend only her hip hop class. Brooke emphatically said she did not want me to attend any of her dance classes and to please leave. I left.

8. Dr. Paglini strongly recommended that Brooke and I meet with Dr. Ali for a two hour session each week. The Court ordered that Dr. Ali determine the pace of therapy. Dr. Ali determined the pace of therapy to be a two hour session each week and attempted to schedule a two hour session each week with Brooke and I.

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9. Brooke refused to meet with Dr. Ali and I each week for two hours. I was informed by Dr. Ali's office that Brooke claimed that her "college" class schedule did not permit her to meet each week for two hours. Brooke would only agree to meet for 1.5 hours each week. However, when Dr. Ali's office scheduled those appointments, Brooke refused to honor those appointments. On more than one occasion, Brooke cancelled an appointment the same day as the appointment.

10. 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 math tutor could meet with her was during the time of the session. When Dr. Ali's office advised me of Brooke telling them that she had to cancel the session because the only time the tutor could meet with her was during the time of the session, I knew it was not true. 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. I telephoned Brooke's math tutor to determine what actually happened. Apparently, unaware her math tutor was not available until 2:30 p.m. for tutoring, Brooke 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 I. 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. Vivian and Brooke have represented to Dr. Paglini and Dr. Ali that Brooke cannot schedule a session with Dr. Ali and I 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.

. . .

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11. Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the Court, on May 31, 2016, Brooke, Dr. Ali, and I should reasonably have had fifteen or sixteen two hour weekly sessions. 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.

12. During the April 12, 2016 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 me. Brooke is not naturally a liar. Brooke, initially, tried to continue with Vivian's false narrative. However, I asked Brooke to simply be honest and Brooke soon admitted to Dr. Ali and I that she did not stop complying with the Custody Order because of her "college" schedule, convenience, or the stress of the custody transfers, which is what Vivian has been representing to the Court. Brooke made it very clear that she stopped complying with the Custody Order when she did because of her hatred of me. Brooke said that she hates me and that I am a mean person and a bad person. Brooke said she does not want to spend any time with me at all, and said she would not attend anymore appointments.

13. It was very evident during this second session that Brooke hates me and believes that I am 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. 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 I am 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 Becky Palmer and I, 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

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services to ask them directly as to why his daughters claims 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.**"

14. Dr. Paglini was appointed as an independent expert by this Court and Dr. Paglini had strongly recommended the two hour sessions each week. Therefore, I contacted Dr. Paglini and advised 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 me 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, I 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.

15. On or about September 1, 2015, I asked Vivian for a copy of Brooke's class schedule for Nevada State High School. Vivian told me to ask Brooke. I asked Brooke for a copy of Brooke's class schedule at Nevada State High School later that same day. Neither would provide me with Brooke's class schedule. I later again asked Brooke for a copy of her class schedule. The schedule was still not provided. Then on December 14, 2016, my attorneys sent a letter to Radford Smith, noting both Vivian's and Brooke's unwillingness to provide the class schedule and requesting that Mr. Smith provide the class schedule. Mr. Smith has never responded to this letter.

16. After months of attempting to get Brooke's class schedule from Brooke, Vivian, and Vivian's attorneys, I called Nevada State High School, Henderson Campus, in an effort to get her schedule. I spoke with Carina Deras. I told Ms. Deras that I am Brooke's father and

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asked Ms. Deras if she could email me Brooke's class schedule. She said she would and I gave her my email address. The email I 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 is dated April 1, 2016 and is attached as Exhibit "4" to the Motion for Order to Show Cause, filed 8.30.16.

17. I then contacted Dr. John Hawk, the Executive Director of Nevada State High School. On April 4, 2016, Dr. Hawk emailed to me the document which established why I 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" to the Motion for Order to Show Cause, filed 8.30.16. Vivian – not Brooke – made the conscious decision to exclude me, Brooke's father, from Brooke's academic records.

18. Vivian made the conscious decision to exclude me, Brooke's Dad, 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 me with a copy of Brooke's class schedule is a further continuing attempt to exclude me from any involvement or even knowledge of Brooke's life. This truly reveals how Vivian is intentionally and overtly excluding me from Brooke's life. The Enrollment Form confirms Vivian's intimate involvement and overt efforts to exclude me from Brooke's life. The date of this form of August 10, 2015, was the same time Vivian was

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making other efforts to alienate me 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, I returned from my trip with Joseph, to find that, while in Vivian's custody, Brooke had come to our home and cleaned out her closet and drawers. On August 12, 2015, Brooke sent me a text advising me 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. The Enrollment Form completed by Vivian is dated, August 10, 2015. It was shortly after this date that Vivian was representing to the Court that she had nothing to do with Brooke's decision to knowingly violate the Custody Order.

19. I am extremely concerned because as a consequence of Vivian's affirmative actions, 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. I, Brooke's father, would not be contacted. I, who, by order of this Court, has shared legal custody of Brooke and joint physical custody of Brooke for 50% of the time on a bi-weekly basis, would first learn of the incident when I received the medical bills or saw the funeral notice in the newspaper.

20. As a consequence of how Vivian completed the Enrollment Form, Dr. Hawk also refused to provide me with a copy of Brooke's class schedule. However, I continued my effort's with Dr. Hawk to get a copy of Brooke's class schedule and finally, on May 26, 2016, Dr. Hawk texted to me a copy of Brooke's Spring Class schedule. A true and correct copy of Brooke's class schedule is attached to the Motion for Order to Show Cause, filed 8.30.16, as Exhibit "6."

21. 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

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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.

22. 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.

23. In light of Brooke's actual schedule (as opposed to what Vivian and Brooke represented in their emails to Dr. Paglini), 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.

24. 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

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A.App. 2346

Order. Despite this fact, I 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. As a consequence, I paid 100% of the fees.

25. Pursuant to this Court's Custody Order, between August 12, 2015 and August 26, 2016, Brooke was supposed to be with me a total of 192 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 192 days Brooke was to be with me pursuant to this Court's Custody Order, Brooke was only with me a total of 38 days. Therefore, just between August 12, 2015 and August 26, 2016, I lost 154 days with Brooke, which is 80% of my custody time. Between August 27, 2016 and September 23, 2016, I lost an additional 13 days of custodial time with Brooke. Therefore, between August 12, 2015 and September 23, 2016, I have lost a total of 167 lost custodial days.

26. During the time period the 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 a two month period, Brooke spent less than one day in my physical custody. Dr. Paglini's letter to the Court was on May 31, 2016. Without any prior notice whatsoever, Brooke showed up at our home at 9:45 p.m. on June 16, 2016, stating she was going to spend some vacation time with me. That did not last long.

27. I have previously represented to the Court what an incredibly wonderful and caring child Brooke has been. There has never been a big sister who was more caring, loving, and considerate of her little sister. Whenever Rylee would ask Brooke to help her with her homework, without hesitations, Brooke would always help her, and do so, with a positive attitude. Brooke was always respectful of others, incredibly close to all her sisters and her brother, very witty with a great sense of humor, a loyal friend, humble, and honest in every way. Brooke was always a joy to be with and to share experiences. It is very difficult for me to see the damage that has been done to Brooke as a consequence of Brooke being incited to severely alienate me and now to alienate her older sisters, and as a consequence of the

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empowerment of Brooke to such an extent the teenage discretion provision has been totally eviscerated. I never would have believed it possible that Brooke could have been motivated to leave Rylee for 167 days since August 12, 2015.

28. 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 I 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.

29. Brooke has always been close to Tahnee and Whitney. Brooke has been especially close to Tahnee, as they share many of the same interests. As just noted, 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 me, Brooke did not come to our 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 me 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 me from after school on December 16, 2015 until noon on December 25, 2015. However, Brooke did not come to our home until about 6:30 p.m. the night of December 23, 2015.

30. 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 our home from after school on October 14, 2015 through after school on October 19, 2015. However, Brooke did not come to our home until 11:00 p.m. the night of October 16, 2015. Whitney was again home from February 14, 2016 until February 21, 2016.

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Brooke was supposed to be with me 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.

31. This situation has deteriorated even further. I 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 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. I 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 my or Whitney's texts and made no effort, whatsoever, to see Whitney, despite being in Boulder City.

32. Until the Vivian created medical reimbursement issue last Summer, Vivian would not have been able to convince Brooke to not only knowingly violate the Custody 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. Brooke now hates and has disdain for me, without any basis whatsoever. Brooke is now also 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. I am very alarmed with all of this as 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.

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33. Vivian is rewarding Brooke for her loyalty to Vivian and her alienation of me 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.

34. I strongly believe that 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 me, her father, is very serious. I do not want Brooke to go through life incapable of having trusting loving relationships with other people. If Brooke later marries and has children, I do 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.

35. Before Vivian's evisceration of the teenage discretion provision, wrongful empowerment of Brooke, and Vivian's severe alienation of me from Brooke: (1) Brooke would not have chosen to leave Rylee for one-half the time and me, basically, all of the time; (2) Brooke did not know how to hate someone – and certainly not me, her own Dad; (3) Brooke had not been enmeshed in an agenda of revenge and alienation; (4) Brooke would not have shown so little respect for and knowingly violated Court orders; (5) Brooke would not have lied to Dr. Paglini about why she stopped obeying the Custody Order; (6) Brooke would have not lied about her "college class schedule" prohibiting her from scheduling the Court ordered double sessions with Dr. Ali; (7) Brooke would not have learned how to manipulate other people; (8) Brooke would not have gained an inordinate amount of distrust of other people, including me and her older sisters, who love and care about her, and; (9) Brooke loved and trusted me and knew that I loved and cared for her.

36. Each summer, I plan 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 I, take all four girls to see the plays at Tuacahn in St. George, Utah. Each summer, I plan at least a one week vacation with all four girls. However, my ability to schedule vacation time is restricted each summer by Vivian's right each year to choose 10

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days of her vacation time before I get to choose any of my vacation time. In addition, Brooke and Rylee have historically had two weeks of intensive dance classes each summer. Last summer, despite it being my year to choose "first," because of these restrictions I was, for practical purposes, relegated to choosing my 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 I made my 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 me from utilizing any of the three one week periods of vacation time, when all four girls could spend time together.

37. 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 my ability to schedule a one week vacation or longer for all of the four girls together. 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. I picked my 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 I could take Brooke and Rylee on a vacation with Tahnee. Brooke, however, is taking dance from July 18 through July 21.

38. It is very evident that Vivian is trying to control Rylee while she is with me and Vivian is also 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 me, Vivian is now trying to do the same to Rylee. I do not question Rylee as to what she does when she is with Vivian and I certainly do not try to control what Rylee does when Rylee is with Vivian. The same is not true with respect to Vivian.

39. Vivian and I alternate custody during Spring Break each year, with me having custody during the even numbered years. 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 . . .

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Vivian failed to pick up Rylee, I sent a "Courtesy Custody 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. I responded to Vivian's email when I 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 as Exhibit "**7**" to the Motion for an Order to Show Cause, filed 8.30.16.

. . .

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40. Vivian is well aware of the fact that each Spring Break that I have custody of the Brooke and Rylee, I schedule time so Brooke and Rylee can spend time with Tahnee and Whitney. The last time I had Brooke and Rylee for Spring Break was in 2014 and I 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." I drove Rylee to Victorville where we met Tahnee and I picked Rylee up in the same way, by meeting Tahnee approximately half way. Rylee and I 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 me.

41. Vivian is so blinded by seeking revenge against me, 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 me. 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.

42. Just as Vivian has callously convinced Brooke, Vivian is now attempting to indoctrinate Rylee into believing that joint physical custody is too much of an inconvenience, writing, "She gets hauled back and forth to [sic] much as it is."

43. 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. 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 me from Brooke, culminating in the medical reimbursement issue, has caused Brooke to now hate me, erroneously believes

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I victimized Vivian, and with Vivian's guidance and encouragement, Brooke is trying to remove me 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.

44. I was recently told that one of the reasons that Brooke hates me is that, according to Brooke, I have never supported her in dance and that I refused to pay any part of Brooke's dance tuition for an entire year. There is no truth to either one of these assertions. While Vivian and I 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 me stating she wasn't sure she wanted to take the intensive program because of the time commitment during school. I responded that Brooke is a very good dancer and that I fully supported her taking dance. I also stated that although Tahnee and Whitney took dance, they also played team sports such as volley ball, soft ball, basketball, and golf. I said that although it was Brooke's decision, I wished she had the time to also participate in team sports. I 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 me and asked me to drive her to Dance Etc. so she could change her dance schedule. I asked Brooke if she had talked to Vivian about her decision. Brooke said that Vivian told her it was Brooke's decision. I 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 me 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.

45. Both during the marriage and after the divorce, I have attended every dance production in which Brooke or Rylee has danced. During the marriage, although I always drove Brooke and Rylee to and from their dance classes, Vivian had the dance studio bill her credit card for the lessons. I would then pay Vivian's credit card bill each month. After the divorce, I have always paid each and every bill I have received for Brooke and Rylee's extra-curricular activities, such as dance lessons, piano lessons, and voice lessons. Vivian has made

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the arrangements for payments with the dance studio, the piano teachers, and the voice teacher. I received a bill for two months of dance lessons during 2013, which I promptly paid.

Sometime in August of 2014, the office manager of the dance studio informed me that Vivian told her that since she had paid for dance the prior year, then I should pay 100% of the dance charges for the year then beginning. Despite paying for the two months I was billed the prior year, I did not argue and paid for all the dance classes for Brooke and Rylee for that year. When I received a bill for Brooke's and Rylee's dance classes in August of 2015, I called the dance studio office manager to advise her it was Vivian's year to pay. I was advised that Vivian now wanted me to pay one-half and Vivian to pay one-half. It is my understanding that is how the dance bills have been billed and paid since that time. I, therefore, believe that since the divorce, I have paid more money than Vivian for Brooke's and Rylee's dance lessons. I believe I paid for all of the Brooke and Rylee's piano lessons during 2013. I believe I paid for all of the girls piano and voice lessons during 2014. To this day, I continue to pay what I understand 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 the foregoing, it is my understanding now that Vivian has convinced Brooke that I have never supported Brooke in taking dance classes and that I refused to pay for any part of her dance lessons for an entire year.

46. Vivian has made a concerted effort to alienate Brooke and Rylee from me beginning after the filing of the Motion for Temporary Custody on September 14, 2011. Vivian's overt acts to alienate me from Brooke and Rylee have been well documented throughout this litigation. At the first opportunity after Brooke's 14th birthday, Vivian convinced Brooke that upon her 14th birthday, Brooke would be empowered to determine her own custody and could decide to live with Vivian full-time. Brooke's 14th birthday was on June 26, 2013. I had *never* even broached the subject of the "teenage discretion" provision with Brooke. In fact, subparagraph 6.2 prohibits a parent from 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

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Brooke about her "rights" under the provision. The very day Brooke was returned to me, on July 17, 2013, Brooke told both her older sister, Whitney, and I 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, I 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 me that she was going to live with Vivian full time. Brooke told me 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. I asked Brooke why she wanted to live with Vivian full-time. Brooke initially responded that "girls are supposed to live with their mommies."

47. Contrary to Vivian's allegation, I have never told Brooke that "Vivian filed the divorce action." The treatises on parental alienation strongly advise that the alienated parent must attempt to defend himself or herself. Vivian has been alienating me from Brooke and Rylee since the filing of the Motion for Temporary Custody in September of 2011, including telling Brooke and Rylee that the divorce was all my fault. After Brooke stopped complying with the Custody Order, I finally tried to defend myself by simply telling Brooke that the divorce was not my fault. That is all I said.

48. I have consistently advised Brooke and Rylee to love and be respectful of Vivian. When Vivian would bring Brooke and Rylee to pick up their stuff from my home to get their things when custody was transferred, I have consistently told them to have their stuff ready so Vivian did not have to wait in the car. As a consequence, the vast majority of time, Vivian waits less than 5 minutes and most times, waits less than 2 or 3 minutes. The only time that I have been critical of Vivian to Brooke and Rylee is when custody is being transferred to me, and Vivian keeps me waiting in the car for 20 to 45 minutes, while Vivian visits with Brooke and Rylee, despite the fact they have been in Vivian's custody until that time and they are picking up the identical items.

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49. Between July 17, 2016 and September 14, 2016, Brooke spent no time whatsoever at my home. Without any prior notification, Brooke showed up at 10:12 p.m. the night of September 14, 2016 and said she was staying that Wednesday and Thursday. However, Brooke has no dance classes on Wednesdays, but chose not to show up until after 10:00 p.m. The next morning, September 15, 2016, Brooke got up, had a bowl of cereal and left around 9:10 a.m. Brooke did not return home until sometime after 9:40 p.m. The next morning, September 16, 2016, at 7:07 a.m., I heard the front door open and Brooke say goodbye. Therefore, between June 17, 2016 and September 28, 2016, Brooke came to our home late one night, stayed away the entire next day and evening, slept there a second night, and then left shortly after 7:00 a.m. the next morning. Vivian's assertion to the Court that, "Brooke spends alternating weekends and one night per week at Kirk's home" is simply not true.

50. Vivian represented to the Court, "[Brooke] recently spent three weeks at his home." This is simply not true. My three week vacation schedule with Brooke and Rylee this summer was supposed to be Monday, June 13 through Sunday, June 19; Monday, June 27 through Tuesday, July3, and; Thursday, July 14 through Wednesday, July 20. Except for the part of the day Brooke came to see Tahnee on May 1, 2016 beginning at around 2:25 p.m. and leaving the next morning at 9:00 a.m., Brooke had not been to our home since April 8, 2016 – about nine weeks. Without any prior notice whatsoever, Brooke showed up at about 9:45 p.m. the evening of June 16, 2016, stating she was there for the vacation period. The vacation period began on June 13, 2016 – not June 16, 2016. Brooke left at 9:00 a.m. on June 20, 2016. Therefore, Brooke was there only three of the seven vacation days. The next vacation period was June 27, 2016 through July 3, 2016. This year was also my turn to have Brooke for the 4th of July. However, of the total of eight days, Brooke only spent five days with Tahnee or I. For the three days she was home, Brooke would leave around 9:00 a.m. and not return until around 9:00 p.m. or later. Brooke spent from June 30, 2016 until July 3, 2016 visiting Tahnee in California. I dropped Brooke off at Vivian's house on July 3, 2016 to pick up her car. However, Brooke did not pick up her car and return to my home. Brooke never returned to our home during this custody period, including the 4th of July. The last vacation period was from

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July 14, 2016 to July 20, 2016. I was to have custody of Brooke for nine days from 9:00 a.m. on July 13, 2016 until 9:00 a.m. on July 22, 2016 (seven days of vacation time and two days of regularly scheduled custody time). However, Brooke did not show up until 10:30 p.m. the night of July 14, 2016 with no explanation as to why she didn't come the morning of the day before. On July 15, 2016, Brooke left shortly after 10:00 a.m. to spend the day with a friend and did not return until about 11:30 p.m. that night. On July 16, 2016, Brooke slept in until around noon, left at 2:45 p.m. and did not return until after 9:30 p.m. On July 17, 2016, although Brooke spent most of the day at home, it was in her bedroom with the door shut. She left for Vivian's that night and did not return. Therefore, Brooke only spent about two days of the nine days she was supposed to spend with me. Although this was the most time Brooke has spent with me in over a year, Brooke only spent a small fraction of the three weeks of vacation time she was supposed to spend with me.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 19th day of October, 2016, by Kirk Harrison.

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

NOTARY PUBLIC in and for said County and State

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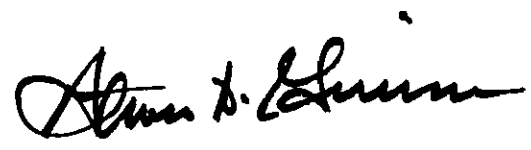

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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: November 7, 2016
Time of Hearing: 1:30 p.m.

ORAL ARGUMENT REQUESTED:
YES XX NO ___

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR AN ORDER TO NULLIFY AND VOID EXPERT REPORT

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 Nullify and Void Expert Report, filed September 28, 2016.

. . .

This Reply is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, the affidavit of Kirk Harrison, and oral argument of counsel at the time of hearing.

DATED this 2nd day of November, 2016.

KAINEN LAW GROUP, PLC

By: /s/ Edward L. Kainen 8147
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Vivian's Material Representations to this Court are not Based Upon Truth, But Rather, Whatever is Perceived as Necessary to Persuade This Court At the Time

Despite custody being resolved by a Stipulation and Order being entered on July 10, 2012, during the hearing on July 18, 2012, Vivian requested that Dr. Paglini finish his report on the purported basis that it would assist the parenting coordinator and the therapist. When that request was made, Vivian **failed** to advise the Court that Dr. Paglini had already indicated to Vivian's counsel what his opinions were at the time and, therefore, what the report would likely provide.

However, in Defendant's Motion for Attorney's Fees and Sanctions, filed April 3, 2013, Vivian made the affirmative material misrepresentation to the Court that Kirk refused to allow the custody assessment to be published "only after Dr. Paglini discussed the results of the assessment with the parties." This misrepresentation was made in the following heading:

> 4. *Kirk's Refusal to Allow the Child Custody Assessment to be Published only after Dr. Paglini Discussed the Results of the Assessment with the Parties.*

Defendant's Motion for Attorney's Fees at 14, l. 16-17.[1]

Below this heading, Vivian then made the further misrepresentation to the Court, "Just a few days **before** the parties settled the case (on the second day of Kirk's deposition), **Dr. Paglini met with each party to discuss his findings and report**." Defendant's Motion at 14, l. 26-27 (Exhibit 6) (Emphasis added).

Vivian made these affirmative misrepresentations to this Court in an effort to place Kirk in a false and unfavorable light before this Court as being totally unreasonable. Vivian did not mince words. Vivian represented to the Court that, Kirk refused "to allow the child custody assessment to be published **only after** Dr. Paglini discussed the results of the assessment with the parties."[2] (Emphasis added).

The problem is that these very material representations to the Court have no truth whatsoever, and Vivian knew they were false when she made these knowingly false material representations to the Court. Dr. Paglini **never** completed a child custody assessment. Dr. Paglini **never** discussed the results of the assessment with Kirk. Dr. Paglini **never** discussed the results of the assessment with Vivian. Dr. Paglini **never** completed his report. Dr. Paglini **never** discussed "his findings and report" with Kirk. Dr. Paglini **never** discussed "his findings and report" with Vivian.

In the Motion to Nullify, it was established that Dr. Paglini only met with Brooke and Rylee, together with Vivian; Dr. Paglini still wanted to meet with Brooke and Rylee, together with Kirk; Dr. Paglini never met with Kirk during this time period, and; Dr. Paglini was aware there was a 25 page single space memorandum that Kirk's attorneys were withholding from Dr. Paglini pending the custody settlement negotiations.

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[1] A true and correct copy of page 14 is attached hereto for the Court's convenience, as Exhibit "6" and by this reference incorporated herein.

[2] As Kirk set forth in the Motion to Nullify, Vivian's desired effect was accomplished as the Court expressed its displeasure with Kirk. Clearly based upon these misrepresentations, in footnote 19 of the Court's Findings, Conclusions and Orders, filed February 10, 2014, the Court was highly critical of Kirk's opposition to Mr. Smith's request that Dr. Paglini finish his report.

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Now confronted with the undeniable truth, Vivian is running away as fast as she can from these material knowing misrepresentations, which she made to the Court. Vivian is now also trying to minimize the significance of these material misrepresentations.

Vivian is **now** saying the only communication from Dr. Paglini to Vivian or her attorneys was that prior to the settlement of custody, Dr. Paglini met with Vivian "to discuss the results of her testing, and advised Vivian that the results were all 'within normal limits.' " Vivian's Opposition, filed 10.18.16, p. 7, l. 9-10. Compare this to the affirmative representations to the Court quoted above. This is absolutely outrageous!

Vivian, incredulously, does not see a problem making the affirmative representation to this Court that Dr. Paglini met with Kirk and discussed his child custody assessment, the results of that assessment, Dr. Paglini's conclusions, and Dr. Paglini's report **when he never did!** It is also significant, that Vivian affirmatively represented to the that Court that Dr. Paglini met with Vivian and discussed his child custody assessment, the results of that assessment, Dr. Paglini's conclusions, and Dr. Paglini's report **when he never did!**

B. The Sequence of Events, Established by Contemporaneous Records and Sworn Testimony, Reveal What Actually Happened

On July 10, 2012, the parties and their attorneys negotiated the custody agreement. There is **no** provision in the agreement providing that despite custody being resolved, the parties still wanted Dr. Paglini to complete his report. At no time during these settlement negotiations did Vivian or Vivian's attorneys ever state that Dr. Paglini discussed with Vivian his custody assessment, conclusions, report, or that her testing was within normal limits. Exh. 1, Standish Aff. ¶5; Exh. 2, Kainen Aff. ¶5; Exh. 3, Kirk Aff. ¶9 & 10. If such a discussion had actually taken place between Dr. Paglini and Vivian, and it was favorable to Vivian, one would assume that Vivian's attorneys would use that "fact" to obtain leverage in the settlement negotiations.

On July 11, 2012, Mr. Smith telephones Dr. Paglini and advises him the parties had resolved custody. Standish Aff. ¶6. Dr. Paglini then calls Mr. Standish. Mr. Standish memorializes this call in his invoice as follows, "Telephone call from Dr. Paglini confirming he

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will stop preparation of his evaluation report." Exh. 4 (invoice); Standish Aff. ¶6. Mr. Standish then receives a telephone call from Mr. Smith, wherein Mr. Smith advises that Vivian now wants Dr. Paglini to finish his report. Mr. Standish memorializes this telephone call in his invoice as well, "Telephone call from opposing counsel Smith regarding his client's insistence that Dr. Paglini finish his evaluation report for advisory purposes." Exh. 4 (invoice); Standish Aff. ¶6.

On July 10, 2012, the desire to have Dr. Paglini finish his report was not important and was obviously not included in the settlement agreement. This begs the question as to what happened between July 10, 2012 and July 11, 2012, to where this request was unimportant one day and such a big deal the next. The overwhelming evidence leads to only one conclusion. During the telephone call from Mr. Smith to Dr. Paglini on July 11, 2012, unfortunately, Mr. Smith had Dr. Paglini reveal to him at least some insight of what Dr. Paglini's opinions were at that time. That is what prompted the request later that same day from Mr. Smith to Mr. Standish for Dr. Paglini to finish his report. That is also what precipitated the conference call on July 12, 2012 among Mr. Smith, Dr. Paglini, and Mr. Standish, "regarding Mr. Smith's desire to have Dr. Paglini complete his report." Standish Aff. ¶7. There is no other plausible explanation for the radical change in position from one day to the next.

Under these facts, Vivian's counterclaim for sanctions is patently baseless and should be summarily denied on that basis.

C. Vivian's Claim of Waiver is Without Merit

When the possibility of Dr.Paglini being selected a second time by the Court to act as a court appointed independent expert was first broached, both Kirk and Ed Kainen immediately stated their opposition. Both clearly asserted the basis of that opposition was the other side was privy to information from Dr. Paglini during the prior appointment of Dr. Paglini, which they were not. *See* Motion to Nullify, filed 9.28.16, p. 13, l. 4-28.

D. Dr. Paglini Now Knows that Vivian and Brooke Lied to Him

It should be noted that Kirk respects Dr. Paglini and believes Dr. Paglini recommended what he earnestly believed was best for Brooke and what would be successful in reunifying

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Brooke and Kirk – joint reunification therapy for Brooke and Kirk with Dr. Ali. Dr. Paglini was very concerned about how poorly Brooke treats Kirk and the harshness of her criticisms of Kirk. (52-53) Dr. Paglini noted during his interview with Brooke that Brooke refers to Vivian as "Mom," but refers to Kirk as "Kirk." (17) Dr. Paglini noted that when Brooke is at Kirk's home, she remains in her bedroom and is primarily disengaged from Kirk. (46) Brooke acknowledged she has virtually no contact with Kirk when she is in his home. (17) Brooke acknowledged she does not eat any meals with Kirk. (24) Dr. Paglini noted his disagreement with how poorly Brooke treats Kirk. (52) Dr. Paglini specifically found that Brooke has rejected Kirk and is disengaged from him. (46; 50)

Despite the foregoing, Dr. Paglini noted that Kirk is doing everything he can to remain connected to both Brooke and Rylee. (48) Dr. Paglini also noted that Kirk loves Brooke very much. (51)

Dr. Paglini noted how very important it is that Brooke re-establish a positive relationship with Kirk before she goes away to college. Based upon what Vivian and Brooke told him, Dr. Paglini believed what he recommended would re-establish their positive relationship. (59) Dr. Paglini believed the relationship between Brooke and Kirk to be very salvageable. (58)

Although Dr. Paglini went beyond his charge from the Court in his report and, apparently, was predisposed going into this assignment, Kirk believes that Dr. Paglini reached the conclusions he did in good faith. Unfortunately, Dr. Paglini's conclusion of no alienation and his very optimistic view of a favorable outcome of joint therapy with Dr. Ali, were based upon the false statements made to him by Vivian and Brooke that: (1) Brooke loves Kirk; (2) Brooke does not hate Kirk; (3) Brooke does not think Kirk is a bad or mean person, and; (4) Brooke wants a relationship with Kirk.

1. Vivian had Brooke Tell Dr. Paglini that She Did Not Hate Kirk, that She Loves Kirk, and Wanted a Relationship with Kirk

It is now very clear that Vivian's agenda was to convince Dr. Paglini that she had not alienated Kirk from Brooke. Vivian erroneously concluded that if Dr. Paglini believed there

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was no alienation, then he would not recommend any reunification therapy whatsoever. Vivian guessed wrong.

Brooke is so enmeshed in Vivian's agenda that Brooke was willing to lie to Dr. Paglini and tell him that she does not hate Kirk, she loves Kirk, and she wants a relationship with him. (35) Brooke was also willing to tell Dr. Paglini she does not think Kirk is a bad or mean person, when she, most definitely, believed otherwise.

Vivian told Dr. Paglini that Brooke loves her father, but it was just to stressful for Brooke to go back and forth from home to home. (7-8) Brooke was later on script when she also told Dr. Paglini that she loves her father, but just wants to live in one home. (25) Vivian told Dr. Paglini that she wants Brooke to have a great relationship with both parents. (9) Vivian also told Dr. Paglini that she wants Brooke to be in Kirk's life and she is not trying to eradicate Kirk from Brooke's life.[3] (56)

Based upon Brooke's repeated statements to him that she does not hate Kirk, she loves Kirk, and she wants a relationship with Kirk, Dr. Paglini concluded that Brooke had not pathologically rejected Kirk. (59)

Throughout his report, Dr. Paglini documents the many times that Brooke told him that she does not hate Kirk, that she loves Kirk, and she wants a relationship with Kirk. (7, 10, 12, 17, 25, 35, 51, 59) This was the primary reason Dr. Paglini concluded there had been no alienation. Dr. Paglini believed there was a very favorable prognosis because Brooke told him she loves Kirk and she was willing to address the issues with Kirk. (59) It was for this reason Dr. Paglini believed the reunification therapy with Dr. Ali would be successful **if** it was done immediately on an intense basis – weekly double sessions.

However, Brooke's thereafter refusal to agree to the weekly double sessions, cancellation of sessions when scheduled, only attending two sessions over the span of several months, and

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[3] Dr. Paglini was unaware of Vivian's refusal to provide Brooke's class schedule to Kirk month after month after month, and Vivian's submission of the Nevada State High School Enrollment Form wherein Vivian omitted Kirk as being Brooke's father and a person to contact in case of an emergency. Vivian has been, most definitely, attempting to eradicate Kirk from Brooke's life.

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ultimate refusal to attend any more sessions sent an undeniable signal to Dr. Paglini that Vivian and Brooke had lied to him. In addition, during the last session with Dr. Ali, Brooke made it very clear to both Dr. Ali and Kirk that Brooke hates Kirk, does not love Kirk, accused him of being a bad and mean person, and does not want a relationship with him.[4]

It is also noteworthy that Brooke presented the medical reimbursement issue to Dr. Paglini as a non-event. Not surprisingly, this is consistent with Vivian's representation to the Court.[5] (42) As this Court well knows and as Dr. Ali now knows as well, this was a very significant event. It is not coincidental that Brooke emptied her dresser drawers and her closet from Kirk's house shortly thereafter. Dr. Ali also knows the primary reason Brooke believes that Kirk is a bad and mean person is because of this event.

There is a reason that in his letter to the Court on May 31, 201, that Dr. Paglini stated that he was very "dismayed" with what has occurred. Dr. Paglini is likely now aware the underlying factual predicate for much of Dr. Paglini's report was wrong because he was terribly misled by Vivian and Brooke. Brooke does not love Kirk. Brooke hates Kirk. Brooke believes Kirk is a mean and bad person. Brooke does not want to have a relationship with Kirk. In other words, Kirk has been severely alienated from Brooke.

2. In Support of His Conclusion of No Alienation, Dr. Paglini Believed It was Significant that Vivian Did Not Want Primary Custody and Had Not Sought Primary Custody

In concluding no alienation, it is noteworthy that Dr. Paglini's believed it was significant that it did not appear Vivian needed primary custody and she clearly was not pushing for primary custody. (56) For this reason, Dr. Paglini did not believe that Vivian was behind Brooke's request for a reduction in time. (56)

On September 14, 2015, Vivian filed a Countermotion for Modification of Custody of

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[4] Vivian's refusal to allow Dr. Ali to provide a letter to this Court regarding Brooke's refusal to participate with Dr. Ali and Kirk is in sharp contrast to the false persona Vivian portrayed in her interviews with Dr. Paglini.

[5] This is consistent with Vivian's declaration to the Court, attached to Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause, filed 9.14.15, ¶6, wherein Vivian claims the medical bill issue "has nothing to do with Brooke's decision to not spend as much time with Kirk. . ."

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Minor Child, Emma Brooke Harrison ("Brooke") seeking an order granting Vivian primary physical custody of Brooke. On June 27, 2016, Vivian filed an appeal from the notice of entry of this Court's order which provided, in part, "It is further ORDERED that the Countermotion to modify physical custody is denied."

3. Both Vivian and Brooke Lied to Dr. Paglini Telling Him that Brooke Only Wanted Kirk to Not Attend the Hip Hop Dance Class Because it Was a Little Too Provocative

Vivian told Dr. Paglini that Brooke only wanted Kirk to not attend those dance classes that were a little too provocative. (6) Brooke was again on script when she told Dr. Paglini that she only wanted Kirk to not attend her hip hop class during parent observation. (14)

However, when Kirk went to parent observation shortly thereafter, Brooke, emphatically, told Kirk that she did not want him to attend any classes during parent observation. *See* Plaintiff's Motion for Order to Show Cause, filed 8.30.16, p. 10, l. 1-16.

Brooke does not want Kirk to attend any dance classes because she hates him – not because of anything he has actually done, but because of what Vivian has told Brooke he has done.

4. Vivian Has Told Brooke that Kirk Does Not Pay for Her Dance Classes

Dr. Ali reported to Dr. Paglini that Brooke told Dr. Ali that she does not know why Kirk cares about her participation in dance, since he does not pay for her dance classes. (45) Not surprisingly, Brooke does not believe Kirk is supportive of her. (45) Of course, none of this is true, as Kirk pays for Brooke's dance lessons, voice lessons, piano lessons, Deca, academic counseling, math tutoring, health insurance, car insurance, etc. *See* Plaintiff's Motion for Order to Show Cause, filed 8.30.16, p. 23-25.

Despite Kirk having always attended his daughters' dance recitals, including all of Brooke's dance recitals, Brooke told Dr. Paglini that he does not. Despite Kirk having always attended Brooke's and Rylee's dance classes during parent observation, Brooke told Dr. Paglini that he did not.

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Despite Kirk having always supported Brooke in dance, Brooke told Dr. Paglini that he did not. Kirk has never told Brooke that she should not take dance.[6]

5. Vivian and Brooke Both Sent Emails to Dr. Paglini Claiming that Brooke's "College" Schedule Precluded the Weekly Double Sessions Dr. Paglini Recommended to the Court

Brooke indicated a willingness to Dr. Paglini to have joint therapy sessions with Kirk to resolve their issues. (42; 59) However, there was no way Vivian was going to let that happen.

Knowing that she had refused to provide Kirk with Brooke's actual class schedule month after month, Vivian and Brooke sent emails to Dr. Paglini setting forth, purportedly, why Brooke could not meet with Dr. Ali for two hours once a week. *See* Exhibit "1" to Plaintiff's Motion for an Order to Show Cause, filed 8.30.16. According to these emails, Brooke has 6 college classes 5 days a week. Because Vivian had omitted Kirk from Brooke's Enrollment Form with Nevada State High School, Vivian erroneously believed that Kirk, the Court, Dr. Paglini, and Dr. Ali would not be able to discover the truth. Vivian was wrong. When Kirk was finally able to obtain Brooke's class schedule, it was evident that Brooke should have had no problem scheduling one two hour session each week. Contrary to what was represented, Brooke does not have any classes on Fridays, except for just one class once each month. More importantly, on Tuesdays and Thursdays, when Dr. Ali's office was trying to schedule the appointments, Brooke's last class ended at 10:50 a.m. Brooke's first dance class on Tuesdays was not until 3:30 p.m. and her first dance class on Thursdays was not until 3:45 p.m.

6. Vivian is alienating those people closest to Kirk from Brooke – Tahnee and Whitney

Dr. Paglini felt it was noteworthy that Vivian said nice things about Kirk's sister, Janie, and his friend Hank. (29) It is common in cases of severe alienation that the alienating parent not only alienates the target parent from the child, but those closest to the target parent as well. For example, the parents of the targeted parent. Kirk only sees Hank a handful of times a year

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[6] The affidavit of Kirk Harrison is attached hereto as Exhibit "7" and by this reference is incorporated herein.

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and although Kirk is especially close with Janie, she lives in Gardnerville, Nevada.

However, what is especially relevant to Vivian's severe alienation of Kirk from Brooke, is that Vivian is successfully alienating Brooke's older sisters, Tahnee and Whitney, from Brooke. *See* Plaintiff's Motion for Order to Show Cause, filed 8.30.16, p. 16-21.

7. Kirk Does Not Call His Children Names

Brooke told Dr. Paglini that Kirk calls her names, listing, among others, selfish, inconsiderate, and rude. (22) Kirk does not call their children names. Kirk has said Vivian and Brooke are behaving in a manner that is rude, disrespectful, and inconsiderate when they leave him waiting in a hot car for 40 to 50 minutes to pick up their stuff – the same stuff it takes Brooke 2 to 3 minutes to pick up from Kirk's house, while Vivian is waiting.

Vivian is teaching Brooke and Rylee to be inconsiderate and disrespectful of Kirk. The last two times Kirk has taken Rylee to pick up her things from Vivian's house after Kirk picks up Rylee from school to change custody, Kirk has been kept waiting in the car 33 minutes and 50 minutes, respectfully. Vivian will make the children an "after school snack" and has them sit down and eat, while Kirk waits in the car. Vivian has convinced their 13 year old daughter that she is too fat and must be on a "diet" and now it takes time to pack the "diet" food while Kirk waits in the car.[7]

E. Much More is at Stake than Merely Compensating Kirk for Lost Physical Custody Time

Significantly more is at stake than simply compensating Kirk for lost physical custody time.

As Kirk has previously represented to the Court, Brooke has been an incredibly wonderful, sensitive, tender, loving, and caring child. It is doubtful there has ever been a big sister who was more caring, loving, and considerate of her little sister. When Vivian lost

[7] Oftentimes while at Kirk's home, she will not eat baked salmon, grilled chicken, a salad, or similar fresh non-processed food, because Vivian has convinced her she must eat her frozen processed diet food, which is usually macaroni & cheese, ravioli, or some other highly processed high carbohydrate and high sodium food.

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interest in Brooke and Rylee beginning in the fall of 2005, Rylee was just two years old and Brooke was only six years old. Without any encouragement from Kirk whatsoever, Brooke was such a tender hearted, loving, and caring child that she stepped in to try to fill that void for Rylee.[8] She was referred to by her older siblings as the "little mother." During all of the time that Brooke, Rylee and Kirk spent together, Brooke always had an eye out for Rylee. On the rare occasion, when they were both very young, that Rylee misbehaved and was scolded, it was Brooke, not Rylee, that began to cry. When they were later both in school, whenever Rylee would ask Brooke for help with her homework, without hesitation, Brooke would always help her, and do so, with a positive attitude. The Court will recall when Brooke was 11 years old, her statement that "[Rylee] has really never had a mom."

Brooke was always respectful of others, very close to all her sisters and her brother, witty with a great sense of humor, a loyal friend, humble, and honest in every way. Brooke was always a joy to be with and to share experiences.

Kirk did not believe it was possible that Brooke could have been motivated to leave Rylee for 167 days since August 12, 2015. It took a very powerful force to motivate Brooke to leave Rylee. Brooke would have never left Rylee for convenience or because of a "college schedule." That powerful force was hatred -- not of Rylee, but of Brooke's own father, Kirk. There is no better evidence of the severity of the alienation of Kirk from Brooke by Vivian than the fact the hatred was so great that Brooke was willing to leave Rylee.

Vivian telling Brooke and Rylee over and over that the divorce was Kirk's fault and Vivian was a victim was a very effective ploy to alienate Kirk. Vivian telling Brooke that Kirk refused to pay for her dance classes and does not pay for her dance classes was also an effective lie. Vivian telling Brooke and Rylee each week that it is just "Kirk" – and not their father – sitting in the hot car waiting for them for 30 or 40 minutes, while she made them an after school snack and they visited, was another effective way to denigrate Kirk to Brooke and Rylee.

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[8] Kirk was concerned for Brooke and did not want her to feel that she had to compensate and undertake that responsibility.

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There are many many other lies that Vivian has utilized to severely alienate Kirk from Brooke.[9] Vivian's use of the medical reimbursement issue to convince Brooke that Brooke had to become involved to save the day, as Kirk did not care enough about his own children to pay their medical bills and was unwilling to prevent Vivian's credit rating from being ruined, was enough to send Brooke packing. That is why, in front of Dr. Ali, Brooke told Kirk that she hates him, he is a mean and bad person, and she never wants to see him again.

Before Vivian's evisceration of the teenage discretion provision, wrongful empowerment of Brooke, and Vivian's severe alienation of Kirk from Brooke: (1) Brooke would not have chosen to leave Rylee for one-half the time and Kirk, basically, all of the time; (2) Brooke did not know how to hate someone – and certainly not Kirk, her own father; (3) Brooke had not been enmeshed in an agenda of revenge and alienation; (4) Brooke would not have shown so little respect for and knowingly violated Court orders; (5) Brooke would not have lied to Dr. Paglini about why she stopped obeying the Custody Order; (6) Brooke would have not lied about her "college class schedule" prohibiting her from scheduling the Court ordered weekly double sessions with Dr. Ali; (7) Brooke would not have learned how to manipulate other people; (8) Brooke would not have gained an inordinate amount of distrust of other people, including Kirk and her older sisters, who love and care for her, and; (9) Brooke loved and trusted Kirk and knew that Kirk loved and cared for her.

The family reunification therapy, which Kirk seeks, has a very high probability of saving both Brooke and Rylee from what will otherwise most likely be a horrible fate.

F. Dr. Ali Confirmed that Brooke Has Been Wrongfully Empowered Under the Teenage Discretion Provision for a Long Time

In order for Vivian's severe alienation of Brooke from Kirk to bear fruit, Vivian had to wrongfully empower Brooke under the teenage discretion provision. The hatred of Kirk that Vivian instilled in Brooke was ample motivation for Brooke to exercise that wrongful power.

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[9] *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 thru 24.

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The source of Brooke's wrongful empowerment is well known. Brooke told Dr. Paglini that she learned about teenage discretion from her mother. (24) Dr. Ali reported to Dr. Paglini that his first meeting with Brooke was on February 25, 2014. (43) It was noteworthy to Dr. Ali that Brooke talked about teenage discretion at the beginning of that very first meeting. (44) Brooke believed that when she was 16 years old she would be more empowered regarding where she would live. (45) In December of 2014, Brooke told Dr. Ali that when she is 16 years old, she would be able to choose to live with her mom and only visit Kirk. (46) In November of 2015, Vivian told Dr. Paglini that when Brooke turned 14 years old, she could go freely from house to house. (7)

All of this is very consistent with what this Court is already aware. Vivian's counsel, Mr. Silverman, opined, "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. Aff. of Gary R. Silverman, dated September 9, 2013, Exh. S to Vivian's Exhibits, filed September 11, 2013, at 9. Apparently, consistent with his opinion, Mr. Silverman advised Vivian that the teenage discretion provision could be utilized to obtain *defacto* primary custody.

Upon her 14th birthday, Vivian had Brooke convinced she was empowered to live with Vivian full time. Right after Brooke's return to Kirk, on August 3, 2013, crying and emotionally distraught, Brooke announced to Kirk that she was going to live with Vivian full time.

Although this Court held that teenage discretion could not be utilized to alter the agreed joint physical custody and the Nevada Supreme Court affirmed that decision, Vivian has, nonetheless, continued down that same path. *See* Plaintiff's Reply in Support of Motion for an Order to Show Cause, filed 9.30.16, p. 3, l. 8-28; p. 4, l. 1-28.

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The Court was absolutely correct in expressing alarm with the empowerment of Brooke through the teenage discretion provision to such an extent the provision has been eviscerated. *See* Hearing Transcript, dated 1.26.16, p. 8, l. 17-24. There is no question Vivian is planting the same seeds with Rylee. Rylee will be 14 years old on January 24, 2017. What Vivian has done to Brooke is tragic. Hopefully, she can be saved. Vivian should not be allowed to do the same thing to Rylee.

II. CONCLUSION

It is very difficult for Kirk to see the damage that has been done to Brooke as a consequence of Brooke being incited to severely alienate Kirk and now to alienate her older sisters. Kirk is saddened by the fact that Vivian was able to incite Brooke to such an extent that Brooke was willing to leave Rylee. Kirk is, understandably, gravely concerned about both Brooke and Rylee.

Dr. Paglini is justified at being very **dismayed** by Brooke's refusal to participate in the weekly double sessions with Dr. Ali and Kirk. This behavior is indicative of a child who has been severely alienated from the target parent. It is inconsistent with a child, where there has been no alienation. Vivian's refusal to allow Dr. Ali to send the letter to the Court to apprise the Court of the problem is inconsistent with the persona Vivian projected when Dr. Paglini interviewed her.

If Dr. Paglini has had an opportunity to speak with Dr. Ali about the second and last session with Brooke, Dr. Ali and Kirk, then Dr. Paglini now knows the truth – Brooke does not love Kirk, Brooke hates Kirk, Brooke believes Kirk is a bad and mean person, and Brooke does not want to have a relationship with Kirk. Dr. Paglini also now knows the medical reimbursement issue was a huge issue for Brooke and a major source of Brooke's hatred of Kirk, a big reason Brooke believes Kirk to be a mean and bad person, and the primary reason Brooke moved out of Kirk's home shortly thereafter. Brooke believes that Kirk severely victimized Vivian in that circumstance – so much so that Brooke had to talk to the insurance

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company on Vivian's behalf.[10]

Dr. Ali, Dr. Paglini, the Court, and Kirk are all alarmed and seriously concerned about the degree of wrongful empowerment of Brooke. Everyone is alarmed, but Vivian. Rylee sees all of this behavior and Vivian has her heading down the same ill-advised path. Rylee will be 14 on January 24, 2017.

As has been addressed numerous times, upon turning 14, Vivian convinced Brooke she was empowered by the teenage discretion provision to determine where she lived. It was within a few days of Kirk getting custody of Brooke after her 14th birthday that Brooke, Rylee and Kirk traveled to Layton, Utah to go to Lagoon, just as they had done for several years. However, now empowered, Brooke refused to go to Lagoon the next morning. None of this is coincidental and all of it is very troubling. The Court has the power to save Rylee from the same fate and is respectfully urged to do so.

Vivian argues that Kirk did not proceed with the motions for orders to show cause because they were not meritorious based upon Dr. Paglini's report. The Court knows otherwise. The Court is very familiar with what was said and done in connection with the medical reimbursement issue. Contrary to what Vivian and Brooke told Dr. Paglini, this was a very big deal. It is not coincidental that shortly after this issue, Brooke came to Kirk's home and emptied her closets and drawers.

As the Court is very much aware, Kirk did not proceed with the contempt motions, because Kirk was heeding this Court's advice to not force Brooke to comply with the Custody order , but rather to seek reunification therapy so that Brooke wants to have a relationship with her father. Kirk chose reunification therapy because his goal is to save their children, not because any motion he filed lacked merit. The Court correctly suggested this course of action based upon the Court's concern that forcing Brooke to comply with the Custody Order would

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[10] The Court also knows what happened regarding the medical reimbursement issue. Despite all of this, Vivian takes the position that since Dr. Paglini erroneously concluded this incident was no big deal, based upon what he was told by Brooke, that is somehow outcome determinative and the Court is bound by that finding. Such a position flies in the face of the truth and makes no sense.

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risk further alienation and likely create additional issues.

In 2012, Kirk met with Dr.Paglini when he was told to do so. Kirk did not make the telephone calls alleged.

In 2016, Dr. Paglini strongly recommended the "immediate" need for two hour joint sessions each week. When Brooke and Vivian strongly resisted and ultimately refused to have those sessions, Kirk telephoned Dr. Paglini to seek his assistance.

Dr. Paglini has informed the Court that he is extremely "dismayed" the Court ordered weekly double sessions did not take place. This is especially true after Brooke indicated her willingness to Dr. Paglini, on two occasions, to participate in such joint therapy. Dr. Ali expressed his serious concern about the extent of the wrongful empowerment of Brooke in refusing to schedule the Court ordered appointments, cancelling appointments that were made, and ultimately refusing to schedule any future appointments. Dr. Ali had previously reported to Dr. Paglini his concerns about the early and continued empowerment of Brooke under the teenage discretion provision. This Court has clearly stated that it is "alarmed" by the empowerment of Brooke to such an extent that the teenage discretion provision has been eviscerated. Kirk is doing everything he possibly can to save Brooke from what the experts believe will be a horrible fate, and to do everything he can to keep Rylee from going down the same path. It is in this context, where Vivian is the only one who does not see the horrific damage that is being done to Brooke, that Vivian wants Kirk sanctioned.

The Court his well aware of the actual facts in this case and the established and documented pattern of alienation of Kirk from Brooke, and to a lesser extent, Rylee, since the filing of the motion for temporary custody on September 14, 2012. The Court is also well aware of the lack of such allegations by Vivian or any documentation that Kirk has attempted to alienate Vivian from Brooke and Rylee during the same time period. All one has to do is look at the record in this case to verify this is the truth.

As stated in the motion to nullify, the overriding reason for filing the motion was so that this Court would know the **truth**! Although the nullification of the expert report is the appropriate remedy under *G.K. Las Vegas Limited Partnership v. Simon Property Group, Inc.*,

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671 F. Supp.2d 1203 (D. Nev. 2009), it is significantly more important for the Court to know that Vivian materially misled this Court during the July 18, 2012 hearing and again on April 3, 2013, in Vivian's Motion for Attorney's Fees. It is important for this Court to know that under the truthful circumstances at the time, Kirk absolutely should have opposed the request to complete the report and was justified in so doing. Finally, it is important to know that Vivian's attorney compromised and tainted that process and then tainted this process. The Court's knowledge of the truth is what is paramount, because it was terribly misled then and now. Whether or not this Court ultimately nullifies the expert report is of secondary importance.

Vivian has successfully thwarted the efforts of Dr. Paglini, Dr. Ali and this Court to reunify Brooke and Kirk and for Vivian to cause Brooke to comply with the Custody Order, filed July 11, 2012. It is critical that family reunification efforts be undertaken at the earliest possible time.

DATED this 2nd day of November, 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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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of November, 2016, I caused to be served the **Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report** 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

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EXHIBIT “6”

perhaps most important, she knew the devastating effect that an order limiting her time would have on Brooke and Rylee. Thus, she was required to meet all of Kirk's factual allegations. For Vivian, the stakes in this case could have been higher only if her life or freedom were at stake. She met each claim with great care, providing the Court with multiple expert reports, the statements of 18 fact witnesses, and a mountain of documents rebutting Kirk's claims and supporting the claims in her affidavit, and the affidavits of others.

At the hearing of February 24, 2011, the Court did not grant Kirk's motion to limit Vivian's contact to supervised visitation, nor did the Court make any finding that Vivian suffered from NPD (the Court, in fact, clearly stated that it made no such finding). Though the Court granted Kirk's request for possession of the marital residence, within a short time of that hearing Kirk admitted that he had always viewed the home as Vivian's based upon the work that she had put into the home (something he never mentioned in any of the pleadings prior to February 24, 2012). *See* Excerpts of the Deposition of Kirk Harrison, pages 101-102, attached hereto as **Exhibit "J."**

4. <u>Kirk's Refusal to Allow the Child Custody Assessment to be Published only after Dr. Paglini Discussed the Results of the Assessment with the Parties.</u>

In March, 2012, the Court appointed Dr. John Paglini to perform psychological assessments of both parties, and perform a child custody assessment. Though the parties settled the matter in early July, 2012, Vivian requested that Dr. Paglini's report be completed to end Kirk's continued claims that Vivian suffered from a personality disorder. The parties counsel had repeatedly discussed permitting Dr. Paglini's assessment to be completed to inform both the Parenting Coordinator and the children's therapist on the various issues that had been raised in the litigation.

Just a few days before the parties settled the case (on the second day of Kirk's deposition), Dr. Paglini met with each party to discuss his findings and report. Dr. Paglini reported to the parties' counsel that he was nearly done with the preparation of his report, and he was scheduled to provide the

EXHIBIT “7”

AFFIDAVIT OF KIRK HARRISON
filed in Support of Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Kirk Harrison, being first duly sworn, deposes and says:

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

2. That the facts set forth in the foregoing Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report 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.

Dated this 22nd day of November, 2016.

Kirk Harrison

State of Nevada
County of Clark

Subscribed and sworn before me
this 22nd day of November, 2016, by Kirk Harrison.

Notary Public

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

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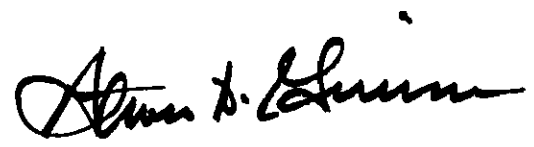

CLERK OF THE COURT

RPLY
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DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO.: D-11-443611-D

DEPT NO.: Q

FAMILY DIVISION

REPLY TO DEFENDANT'S OPPOSITION TO COUNTERMOTION FOR SANCTIONS ; MOTION TO STRIKE REPLY; MOTION TO STRIKE AFFIDAVIT

DATE OF HEARING: November 7, 2016
TIME OF HEARING: 1:30 p.m.

COMES NOW Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), by and through her attorney Radford J. Smith, Esq. and Garima Varshney, Esq. of the firm of Radford J. Smith, Chartered, and submits the following points and authorities in Reply to Plaintiff, KIRK ROSS HARRISON's ("Kirk") Opposition to Countermotion for Sanctions and seeks an order striking Kirk's Affidavit filed on October 19, 2016 and striking Kirk's Reply filed on November 2, 2016 in their entirety.

This Reply and Motions to Strike are based upon the points and authorities attached hereto, the evidence provided in the form of Exhibits to the Reply and Motions to Strike, all pleadings and papers on file in this matter, and any oral argument adduced at the time of the hearing of this matter.

DATED this 4th day of November 2016.

RADFORD J. SMITH, CHARTERED

Garima Varshney

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I.

THE COURT SHOULD DIRECT KIRK TO PAY SANCTIONS TO VIVIAN AND STRIKE HIS AFFIDAVIT FILED OCTOBER 21, 2016, AND REPLY FILED NOVEMBER 3, 2016

On August 30, 2016, Kirk filed his Motion for Order to Show Cause. On September 23, 2016, Vivian filed her Opposition to that Motion. Among other arguments in her Opposition, Vivian pointed out that Kirk's Motion was defective because it did not contain a required affidavit, and otherwise did not adequately advise Vivian of the acts of contempt Kirk was alleging. She countermoved for sanctions based in part upon Kirk filing a defective motion.

On September 30, 2016, Kirk filed his Reply claiming that his affidavit filed with his motion was adequate. Nevertheless, nearly ***two*** months after he filed is Motion, on October 21, 2016, he caused to be served upon Vivian an affidavit with his substantive allegations. Kirk's Affidavit is replete with hearsay and opinions in violation of NRCP 56. Vivian moves to strike Kirk's untimely and defective Affidavit.

Further, on September 28, 2016, Kirk filed a Motion for an Order to Nullify and Void Expert Report. On October 18, 2016, Vivian filed her Opposition to that motion, and Countermoved for Sanctions under NRS 7.60 based upon Kirk's unnecessary multiplication of the proceedings. On November 2, 2016, Kirk filed a Reply in support of his Motion for an Order to Nullify and Void Expert Report. Kirk's Reply (which ostensibly contains his justification for his motion and thereby opposes sanctions) is a perfect example of how this case has continued to cost Vivian tens of thousands of dollars in fees for no apparent reason. Vivian moves to strike Kirk's Reply.

II.

VIVIAN'S REQUEST TO STRIKE KIRK'S AFFIDAVIT SHOULD BE GRANTED

NRCP 56 states in relevant part,

> **(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on ***personal knowledge***, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith . . .
> [Emphasis added]

EDCR 2.21 states in relevant part,

> (c) Affidavits/declarations must contain only factual, evidentiary matter, conform with the requirements of N.R.C.P. 56(e), and avoid mere general conclusions or argument. **Affidavits/declarations substantially defective in these respects may be stricken, wholly or in part.**
> [Emphasis added]

Kirk's affidavit contains very few statements from his personal knowledge. The "facts" upon which Kirk bases his motion are primarily presented as hearsay in his affidavit. Attached hereto as **Exhibit "A"** is Kirk's Affidavit with yellow highlighted portions identifying hearsay and the red underlined portions identifying opinions. Because Kirk's affidavit is untimely (EDCR 2.21(a) requires that affidavits be filed with the motion), and because it does not comply with NRCP 56, the Court should strike it.

Kirk's Affidavit primarily relies on quotes from Brooke and Dr. Paglini. He even attributes a quote to Dr. Paglini that Vivian alienated Brooke when Dr. Paglini's report came to precisely the opposite opinion. *See* Dr. Paglini's Report dated January 25, 2016, page 57. Most of Kirk's hearsay comes from what Brooke alleges. Kirk again repeats his previous unsubstantiated allegations without identifying a specific act that Vivian did that violated the Court's order. Kirk essentially calls Brooke as a liar and uncaring, and Brooke should have the opportunity to address those allegations either through testimony at any hearing or through a Guardian Ad Litem.

Kirk's affidavit criticizes Vivian for alienating and empowering Brooke, those criticisms also were specifically addressed and dismissed by Dr. Paglini in his report. Kirk cites no specific behavior other than the insurance incident to support his claim of empowerment. Though Kirk's allegation that Brooke's behavior is based upon teenage discretion clause is wrong. She has not indicated that. This court has specifically found all of those times when Brooke exercised teenage discretion. Dr. Paglini specifically found that Brooke's actions were not related to the insurance incident. *See* Dr. Paglini's Report dated January 25, 2016. Brooke's present actions have nothing to do with teenage discretion. specifically addresses Brooke's current behavior as based upon the teenage discretion clause.

Vivian submits that the reunification sessions between Brooke and Kirk with Dr. Ali should be confidential consistent with the terms of the Order Appointing the Parenting Coordinator. Kirk quotes Brooke and Dr. Ali knowing fully well that Vivian cannot respond since she was not in attendance and has no way to verify such claims, and is not in any way responsible for outcome of those sessions. She has not discouraged Brooke in any way from attending any of Dr. Ali's scheduled appointments and has encouraged Brooke to be in contact with Dr. Ali's office regarding scheduling and has asked Brooke to return any phone calls or emails from Dr. Ali promptly.

Upon information and belief, Brooke met with Dr. Ali and Kirk for 2 hours on January 6. They met a second time on March 17 for two hours. On March 31, Brooke had to cancel a scheduled meeting because of a school commitment and notified Dr. Ali's office. She didn't "no show" as Kirk alleges. Neither Vivian nor Brooke were contacted by Amanda or Dr. Ali for a rescheduled meeting. Upon information and belief, Brooke was asked to submit her schedule and her availability for sessions. She asked Dr. Ali if during the school period, she could come to the meetings every two weeks on Thursdays. Dr. Ali advised her that she would have to discuss that request with Dr. Paglini, so she wrote an email to Dr. Paglini that she forwarded to Dr. Ali. A copy of the email is attached as **Exhibit "B".** It reads:

> 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?

Dr. Paglini never responded to Brooke or Vivian.

See Email from Brooke to Dr. Paglini dated February 25, 2016 attached hereto as **Exhibit "B."**

She also wrote an email to Dr. Ali –

Hi Amanda my mom said you called and to forward you this email that I sent to Paglini earlier today, see below. My spring break is from March 14-18 therefore I'm available until 4:00 on Mondays, 2:15 on Tuesdays, 3:00 on Wednesday (SAT/ACT Course), 2:15 on Thursday and all of Friday because I still have dance classes during my spring break. Thank you.

Brooke

See Email from Brooke to Amanda at Dr. Ali's office dated February 26, 2016 attached hereto as **Exhibit "B."**

Amanda finally wrote back on March 8 as follows –

Good morning Brooke,
I wanted to let you know that I am working on scheduling a couple appointments for you and your dad next week during your spring break. Dr. Ali and I are going to look at his schedule and I will call you with the appointment dates and times. I appreciate you e-mailing me your availability for next week and will be in contact with you soon about appointments.
Have a good day!
Amanda

See Email from Amanda to Brooke dated March 8, 2016 attached hereto as **Exhibit "C.'**

Brooke although available everyday was scheduled only 1 appointment on March 17, 2016. Dr. Ali's office did not contact Vivian or Brooke regarding Thursday sessions. If they had moved the sessions to Thursday, Brooke and Kirk would have had more than 20 sessions by now. Neither Vivian nor Brooke heard anything from Dr. Ali or Kirk to schedule any appointments the entire summer or anytime during Kirk's scheduled time. Vivian is not aware of any time that Brooke cancelled a meeting between Kirk and Dr. Ali other than her school conflicts which she notified Dr. Ali's office as indicated above. Upon information and belief, in around August, Brooke contacted Dr. Ali's office to schedule a therapeutic session but was informed that Dr. Ali did not have any time available before October and that date was scheduled and attended.

Kirk's claim that Brooke refused to attend counseling sessions is something that should be addressed with Brooke, but that is not Vivian's understanding. She is informed and believes that Brooke made efforts to schedule meetings, but that Dr. Ali's was unavailable or had a scheduling conflict and would let Brooke know when he was available. For example, her email suggests sessions during her Spring Break, but Dr. Ali did not schedule any during that time. She also was available during summer, but Kirk did not add any sessions during that time. Dr. Ali's office never contacted Vivian that Brooke refused to attend or schedule appointments. Vivian did not refuse Dr. Ali to talk to the court. Vivian never received a response but was told Amanda would schedule appointments on Thursday when they became available.

When Vivian told Kirk that Brooke's schedule was extremely busy, she was repeating to Kirk what Brooke told her and in an email sent to Dr. Paglini and Dr. Ali. While Kirk alleges that Brooke is in classes only 15 hours a week, he fails to acknowledge the time spent in preparing for the classes, travelling to the classes, study for the classes, do homework, time spent for meals, etc. Brooke, who is an A grade student, is also a member of DECA. She has already completed high school and a year of college in her junior year of high school. She does not only "attend" Musical Theater on Wednesday nights; she is the lead in that

production. She is an avid reader – has read 44 books this year alone, mostly during the summer and breaks. She is on advising committee to a major publishing company on story line, character development, covers, character for novels. She is also studying and preparing for college exams and completing college applications.

Rylee is also doing extremely well. Rylee took high school Algebra in 7th grade and is taking high school geometry in 8th grade and is 2 years ahead of her classmates. She is taking high school Spanish courses. She is in the National Jr. honor society and in intensive advance dance training and on pointe in Ballet. To Vivian's knowledge Rylee has a good relationship with Kirk and has regularly exercised his custodial timeshare with Rylee.[1]

Kirk alleges in his affidavit that Vivian signed an information sheet for Brooke's school in August, 2015, but fails to advise the Court that the parties had each provided their own information to the children's schools in years since their separation. Moreover, it is inconceivable that Kirk, an experienced lawyer with experienced counsel, would not understand that he could just provide a copy of the Parenting Plan to the school, or just sign up and indicate that he was Brooke's father. Again, he had done that in previous years with the school, Doctors and Dance Studio.

Kirk is responsible for Brooke during his time and yet he never scheduled any time with Dr. Ali during his time. But he instead had Brooke leave to visit her sister in California during his 3 week summer vacation. He could have scheduled "intense reunification" and chose not to. Why? Because Kirk would rather blame Vivian than do anything to repair his relationship with Brooke, and instead his desire to file multiple pleadings causing Vivian to incur substantial attorney's fees while he incurs none because he write all his pleadings.

[1] Kirk even complains when Vivian gives him ***more*** time with Rylee and blames Vivian for not following the custody order.

Vivian has urged both the Court and Kirk to tell her what else she can do to comply with the Court's order. Kirk, on the other hand, upon information and belief, has not followed any of those procedures to cause Brooke's compliance. He has not advised Vivian either directly or through counsel what he thinks she should do to get a child, who is 17.5 years old, to visit her father. Vivian again welcomes the Court's further instruction as to steps she can take to cause Brooke's compliance.

Kirk alleges that Vivian is "rewarding Brooke for her loyalty" by buying her a 2015 Toyota Avalon XLE. Kirk fails to advise the Court that the parties have always purchased their older children cars when they are 17 years old. Kirk again claims that Vivian will somehow harm Brooke and Brooke will "go through life incapable of having trusting loving relationships with other people and have a horrible fate" without providing any proof of his allegation. Indeed, contrary is true. Brooke has shown herself to be a committed, bright, independent and highly motivated young girl.

As shown in **Exhibit "A,"** Kirk's Affidavit is replete with hearsay and opinions in violation of NRCP 56 and is untimely. Neither Kirk's Motion nor affidavit identifies the specific order that he claims Vivian violated. He further does not identify the acts or omissions that Vivian committed in violation of any specific order. He generally blames Vivian for Brooke's behavior, citing again facts that have been dispelled by Dr. Paglini's report. Kirk takes no responsibility for his relationship with Brooke, and insults and attacks her, referring to her as a liar. The conclusions that litter his motion are not supported by fact. Brooke is not suffering, is not isolated, has good relationships with friends and members of her family, is still incredibly close to Rylee and her brother Joseph, is successful in school, dance and theater, is active in DECA, and has completed her equivalent of her high school graduation requirements and 1 year of college in her Junior year, and is 3 classes away from receiving her Associates Degree while still in high school.

A.App. 2390

In order to hold a party in contempt, the order must be clear and unequivocal, and the behavior in violation of the order must be identified in the Order to Show Cause. Vivian submits that no Order to Show Cause meeting those criteria can be fashioned from Kirk's Affidavit. Vivian moves to strike Kirk's untimely and defective Affidavit.

III.

VIVIAN'S REQUEST TO STRIKE KRIK'S REPLY SHOULD BE GRANTED

EDCR 5.11 states in relevant part,

> (c) If the respondent files a timely response, opposition or defense to the motion or countermotion pursuant to these rules, ***the movant may file a timely reply to the same*** pursuant to these rules. No additional papers may be filed by or on behalf of either party without leave of the court.
> [Emphasis added]

On September 28, 2016, Kirk filed a Motion for an Order to Nullify and Void Expert Report. On October 18, 2016, Vivian filed her Opposition to Kirk's Motion and Countermoved for Sanctions under NRS 7.60 based upon Kirk's unnecessary multiplication of the proceedings. On November 2, 2016, Kirk filed a Reply that does not address Vivian's Opposition, but instead raises new and additional claims that were never raised before. Kirk's Reply is a perfect example of how this case has continued to cost Vivian tens of thousands of dollars in fees for no apparent reason which is the basis, in part, for Vivian's request for sanctions against Kirk.

The arguments that he makes in his Reply are the exact same arguments that he makes in his Motion to Nullify and Void Expert Report. He fails to respond to the arguments that Vivian makes in her Opposition. As Vivian suggested, Dr. Paglini should weigh in on what transpired. Vivian and her counsel believe Dr. Paglini will affirm that there was no communication with Vivian and her counsel at any time regarding his present analysis or his analysis in 2012. Kirk did not file a motion to disqualify Dr. Paglini, or seek to have his report vacated before the issuance of the Court's May 25, 2016 Order, nor did he appeal

that order. Kirk tacitly avoids those arguments. Instead, Kirk adds 14 more pages of arguments to support his previous motion that have little to do with the motion to nullify. He instead takes the opportunity to add to his motion for order to show cause, something that is completely unnecessary and a waste of time. He has now added new allegations about Rylee that have not been raised before. Kirk's reply is a prime example of why the costs in this case have exacerbated. He does not consider any solutions to the problems but instead again accuses Vivian for everything. Vivian moves to strike Kirk's Reply.

IV.

CONCLUSION

Based on the foregoing, Kirk's Motions should be denied and Vivian's countermotions should be granted. Further, the Court should strike Kirk's Affidavit filed on October 19, 2016 and striking Kirk's Reply filed on November 2, 2016 in their entirety.

Dated this 4th day of November, 2016.

RADFORD J. SMITH, CHARTERED

Garima Varshney

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GARIMA VARSHNEY, ESQ.
Nevada State Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Attorney for Defendant

SWORN DECLARATION OF VIVIAN HARRISON

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

I, VIVIAN HARRISON, 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 am the Defendant in the above-entitled matter.

3. I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I have reviewed the foregoing Reply and Motions to Strike 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.

4. I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

TO BE SUPPLEMENTED
VIVIAN HARRISON

DATED: _____

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 REPLY TO DEFENDANT'S OPPOSITION TO COUNTERMOTION FOR SANCTIONS; MOTION TO STRIKE REPLY; MOTION TO STRIKE AFFIDAVIT on this 4th day of November, 2016, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Edward Kainen, Esq.
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Thomas J. Standish, Esq.
STANDISH NAIMI LAW GROUP
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Attorneys for Plaintiff

An Employee of Radford J. Smith, Chartered

EXHIBIT “A”

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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: October 24, 2016
Time of Hearing: 10:00 a.m.

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

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. The facts set forth in Plaintiff's Motion for an Order to Show Cause, filed August 30, 2016, 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.

3. During my discussions with Dr. Paglini, prior to his report of January 25, 2016, I told Dr. Paglini of Brooke's strong hatred of me. However, Dr. Paglini assured me that Brooke did not hate me. Dr. Paglini told me what Brooke had told him regarding her feelings towards me and why she was violating the custody order: Brooke does not hate me. Brooke does not think I am a bad person. Brooke does not think I am mean. Brooke wants to have a relationship with me. Brooke's knowingly violating the Custody Order, which provides that Brooke is to spend 50% of her time with me on a bi-weekly basis, to spending almost no time with me 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. Brooke also complained that it was simply too hard on Brooke to pack clothes for each custody transfer. Brooke also told Dr. Paglini that the medical reimbursement issue was of no consequence in her decision to stop honoring the Custody Order.

4. The issue of having to pack clothes for custody transfers was created by Vivian and Brooke. For years, Brooke had ample clothing at both homes and there was no need to "pack" clothes for custody transfers. I 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 shortly after the medical reimbursement issue, does Brooke need to "pack" any clothes during the extremely rare and brief times she stays at my home.

5. In Dr. Paglini's discussions with me, 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 me and wanted a relationship with me. I told Dr. Paglini that was surprising, as Brooke had previously told me that she hated me and did not want to spend any time with me. Dr. Paglini was focused on what he was led to believe was Brooke's state of mind, and based upon that conclusion, deduced the parental

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alienation was not severe because it had failed to completely alienate me from Brooke. It was apparent to me that Dr. Paglini 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.

6. The discussions Dr. Paglini and I had 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.

7. Dr. Paglini also told me that Brooke had no problem with me attending Parent Observation with the other parents and that Brooke only wanted me 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 me attending all of her other dance classes, I went to Parent Observation to attend Brooke's dance classes. On February 1, 2016, I 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 I first walked in the lobby area, Brooke saw me and avoided me. Later, when they opened the door for Studio B where the jazz class was to take place, I approached Brooke and said hello. Brooke responded by telling me she did not want me there and told me she wanted me to leave. I explained to Brooke that I was told she did not want me to attend only her hip hop class. Brooke emphatically said she did not want me to attend any of her dance classes and to please leave. I left.

8. Dr. Paglini strongly recommended that Brooke and I meet with Dr. Ali for a two hour session each week. The Court ordered that Dr. Ali determine the pace of therapy. Dr. Ali determined the pace of therapy to be a two hour session each week and attempted to schedule a two hour session each week with Brooke and I.

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9. Brooke refused to meet with Dr. Ali and I each week for two hours. I was informed by Dr. Ali's office that Brooke claimed that her "college" class schedule did not permit her to meet each week for two hours. Brooke would only agree to meet for 1.5 hours each week. However, when Dr. Ali's office scheduled those appointments, Brooke refused to honor those appointments. On more than one occasion, Brooke cancelled an appointment the same day as the appointment.

10. 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 math tutor could meet with her was during the time of the session. When Dr. Ali's office advised me of Brooke telling them that she had to cancel the session because the only time the tutor could meet with her was during the time of the session, I knew it was not true. 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. I telephoned Brooke's math tutor to determine what actually happened. Apparently, unaware her math tutor was not available until 2:30 p.m. for tutoring, Brooke 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 I. 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. Vivian and Brooke have represented to Dr. Paglini and Dr. Ali that Brooke cannot schedule a session with Dr. Ali and I 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.

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11. Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the Court, on May 31, 2016, Brooke, Dr. Ali, and I should reasonably have had fifteen or sixteen two hour weekly sessions. 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.

12. During the April 12, 2016 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 me. Brooke is not naturally a liar. Brooke, initially, tried to continue with Vivian's false narrative. However, I asked Brooke to simply be honest and Brooke soon admitted to Dr. Ali and I that she did not stop complying with the Custody Order because of her "college" schedule, convenience, or the stress of the custody transfers, which is what Vivian has been representing to the Court. Brooke made it very clear that she stopped complying with the Custody Order when she did because of her hatred of me. Brooke said that she hates me and that I am a mean person and a bad person. Brooke said she does not want to spend any time with me at all, and said she would not attend anymore appointments.

13. It was very evident during this second session that Brooke hates me and believes that I am 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. 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 I am 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 Becky Palmer and I, 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

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services to ask them directly as to why his daughters claims 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.**"

14. Dr. Paglini was appointed as an independent expert by this Court and Dr. Paglini had strongly recommended the two hour sessions each week. Therefore, I contacted Dr. Paglini and advised 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 me 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, I 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.

15. On or about September 1, 2015, I asked Vivian for a copy of Brooke's class schedule for Nevada State High School. Vivian told me to ask Brooke. I asked Brooke for a copy of Brooke's class schedule at Nevada State High School later that same day. Neither would provide me with Brooke's class schedule. I later again asked Brooke for a copy of her class schedule. The schedule was still not provided. Then on December 14, 2016, my attorneys sent a letter to Radford Smith, noting both Vivian's and Brooke's unwillingness to provide the class schedule and requesting that Mr. Smith provide the class schedule. Mr. Smith has never responded to this letter.

16. After months of attempting to get Brooke's class schedule from Brooke, Vivian, and Vivian's attorneys, I called Nevada State High School, Henderson Campus, in an effort to get her schedule. I spoke with Carina Deras. I told Ms. Deras that I am Brooke's father and

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asked Ms. Deras if she could email me Brooke's class schedule. She said she would and I gave her my email address. The email I 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 is dated April 1, 2016 and is attached as Exhibit "4" to the Motion for Order to Show Cause, filed 8.30.16.

17. I then contacted Dr. John Hawk, the Executive Director of Nevada State High School. On April 4, 2016, Dr. Hawk emailed to me the document which established why I 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" to the Motion for Order to Show Cause, filed 8.30.16. Vivian – not Brooke – made the conscious decision to exclude me, Brooke's father, from Brooke's academic records.

18. Vivian made the conscious decision to exclude me, Brooke's Dad, 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 me with a copy of Brooke's class schedule is a further continuing attempt to exclude me from any involvement or even knowledge of Brooke's life. This truly reveals how Vivian is intentionally and overtly excluding me from Brooke's life. The Enrollment Form confirms Vivian's intimate involvement and overt efforts to exclude me from Brooke's life. The date of this form of August 10, 2015, was the same time Vivian was

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making other efforts to alienate me 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, I returned from my trip with Joseph, to find that, while in Vivian's custody, Brooke had come to our home and cleaned out her closet and drawers. On August 12, 2015, Brooke sent me a text advising me 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. The Enrollment Form completed by Vivian is dated, August 10, 2015. It was shortly after this date that Vivian was representing to the Court that she had nothing to do with Brooke's decision to knowingly violate the Custody Order.

19. I am extremely concerned because as a consequence of Vivian's affirmative actions, 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. I, Brooke's father, would not be contacted. I, who, by order of this Court, has shared legal custody of Brooke and joint physical custody of Brooke for 50% of the time on a bi-weekly basis, would first learn of the incident when I received the medical bills or saw the funeral notice in the newspaper.

20. As a consequence of how Vivian completed the Enrollment Form, Dr. Hawk also refused to provide me with a copy of Brooke's class schedule. However, I continued my effort's with Dr. Hawk to get a copy of Brooke's class schedule and finally, on May 26, 2016, Dr. Hawk texted to me a copy of Brooke's Spring Class schedule. A true and correct copy of Brooke's class schedule is attached to the Motion for Order to Show Cause, filed 8.30.16, as Exhibit "6."

21. 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

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T & Th 8:00 a.m. to 9:20 a.m.

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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.

22. 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.

23. In light of Brooke's actual schedule (as opposed to what Vivian and Brooke represented in their emails to Dr. Paglini), 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.

24. 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

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Order. Despite this fact, I 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. As a consequence, I paid 100% of the fees.

25. Pursuant to this Court's Custody Order, between August 12, 2015 and August 26, 2016, Brooke was supposed to be with me a total of 192 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 192 days Brooke was to be with me pursuant to this Court's Custody Order, Brooke was only with me a total of 38 days. Therefore, just between August 12, 2015 and August 26, 2016, I lost 154 days with Brooke, which is 80% of my custody time. Between August 27, 2016 and September 23, 2016, I lost an additional 13 days of custodial time with Brooke. Therefore, between August 12, 2015 and September 23, 2016, I have lost a total of 167 lost custodial days.

26. During the time period the 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 a two month period, Brooke spent less than one day in my physical custody. Dr. Paglini's letter to the Court was on May 31, 2016. Without any prior notice whatsoever, Brooke showed up at our home at 9:45 p.m. on June 16, 2016, stating she was going to spend some vacation time with me. That did not last long.

27. I have previously represented to the Court what an incredibly wonderful and caring child Brooke has been. There has never been a big sister who was more caring, loving, and considerate of her little sister. Whenever Rylee would ask Brooke to help her with her homework, without hesitations, Brooke would always help her, and do so, with a positive attitude. Brooke was always respectful of others, incredibly close to all her sisters and her brother, very witty with a great sense of humor, a loyal friend, humble, and honest in every way. Brooke was always a joy to be with and to share experiences. It is very difficult for me to see the damage that has been done to Brooke as a consequence of Brooke being incited to severely alienate me and now to alienate her older sisters, and as a consequence of the

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empowerment of Brooke to such an extent the teenage discretion provision has been totally eviscerated. I never would have believed it possible that Brooke could have been motivated to leave Rylee for 167 days since August 12, 2015.

28. 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 I 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.

29. Brooke has always been close to Tahnee and Whitney. Brooke has been especially close to Tahnee, as they share many of the same interests. As just noted, 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 me, Brooke did not come to our 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 me 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 me from after school on December 16, 2015 until noon on December 25, 2015. However, Brooke did not come to our home until about 6:30 p.m. the night of December 23, 2015.

30. 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 our home from after school on October 14, 2015 through after school on October 19, 2015. However, Brooke did not come to our home until 11:00 p.m. the night of October 16, 2015. Whitney was again home from February 14, 2016 until February 21, 2016.

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Brooke was supposed to be with me 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.

31. This situation has deteriorated even further. I 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 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. I 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 my or Whitney's texts and made no effort, whatsoever, to see Whitney, despite being in Boulder City.

32. Until the Vivian created medical reimbursement issue last Summer, Vivian would not have been able to convince Brooke to not only knowingly violate the Custody 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. Brooke now hates and has disdain for me, without any basis whatsoever. Brooke is now also 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. I am very alarmed with all of this as 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.

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33. Vivian is rewarding Brooke for her loyalty to Vivian and her alienation of me 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.

34. I strongly believe that 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 me, her father, is very serious. I do not want Brooke to go through life incapable of having trusting loving relationships with other people. If Brooke later marries and has children, I do 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.

35. Before Vivian's evisceration of the teenage discretion provision, wrongful empowerment of Brooke, and Vivian's severe alienation of me from Brooke: (1) Brooke would not have chosen to leave Rylee for one-half the time and me, basically, all of the time; (2) Brooke did not know how to hate someone – and certainly not me, her own Dad; (3) Brooke had not been enmeshed in an agenda of revenge and alienation; (4) Brooke would not have shown so little respect for and knowingly violated Court orders; (5) Brooke would not have lied to Dr. Paglini about why she stopped obeying the Custody Order; (6) Brooke would have not lied about her "college class schedule" prohibiting her from scheduling the Court ordered double sessions with Dr. Ali; (7) Brooke would not have learned how to manipulate other people; (8) Brooke would not have gained an inordinate amount of distrust of other people, including me and her older sisters, who love and care about her, and; (9) Brooke loved and trusted me and knew that I loved and cared for her.

36. Each summer, I plan 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 I, take all four girls to see the plays at Tuacahn in St. George, Utah. Each summer, I plan at least a one week vacation with all four girls. However, my ability to schedule vacation time is restricted each summer by Vivian's right each year to choose 10

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days of her vacation time before I get to choose any of my vacation time. In addition, Brooke and Rylee have historically had two weeks of intensive dance classes each summer. Last summer, despite it being my year to choose "first," because of these restrictions I was, for practical purposes, relegated to choosing my 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 I made my 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 me from utilizing any of the three one week periods of vacation time, when all four girls could spend time together.

37. 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 my ability to schedule a one week vacation or longer for all of the four girls together. 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. I picked my 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 I could take Brooke and Rylee on a vacation with Tahnee. Brooke, however, is taking dance from July 18 through July 21.

38. It is very evident that Vivian is trying to control Rylee while she is with me and Vivian is also 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 me, Vivian is now trying to do the same to Rylee. I do not question Rylee as to what she does when she is with Vivian and I certainly do not try to control what Rylee does when Rylee is with Vivian. The same is not true with respect to Vivian.

39. Vivian and I alternate custody during Spring Break each year, with me having custody during the even numbered years. 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 ...

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Vivian failed to pick up Rylee, I sent a "Courtesy Custody 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. I responded to Vivian's email when I 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 as Exhibit "7" to the Motion for an Order to Show Cause, filed 8.30.16.

. . .

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40. Vivian is well aware of the fact that each Spring Break that I have custody of the Brooke and Rylee, I schedule time so Brooke and Rylee can spend time with Tahnee and Whitney. The last time I had Brooke and Rylee for Spring Break was in 2014 and I 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." I drove Rylee to Victorville where we met Tahnee and I picked Rylee up in the same way, by meeting Tahnee approximately half way. Rylee and I 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 me.

41. Vivian is so blinded by seeking revenge against me, 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 me. 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.

42. Just as Vivian has callously convinced Brooke, Vivian is now attempting to indoctrinate Rylee into believing that joint physical custody is too much of an inconvenience, writing, "She gets hauled back and forth to [sic] much as it is."

43. 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. 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 me from Brooke, culminating in the medical reimbursement issue, has caused Brooke to now hate me, erroneously believes

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I victimized Vivian, and with Vivian's guidance and encouragement, Brooke is trying to remove me 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.

44. I was recently told that one of the reasons that Brooke hates me is that, according to Brooke, I have never supported her in dance and that I refused to pay any part of Brooke's dance tuition for an entire year. There is no truth to either one of these assertions. While Vivian and I 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 me stating she wasn't sure she wanted to take the intensive program because of the time commitment during school. I responded that Brooke is a very good dancer and that I fully supported her taking dance. I also stated that although Tahnee and Whitney took dance, they also played team sports such as volley ball, soft ball, basketball, and golf. I said that although it was Brooke's decision, I wished she had the time to also participate in team sports. I 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 me and asked me to drive her to Dance Etc. so she could change her dance schedule. I asked Brooke if she had talked to Vivian about her decision. Brooke said that Vivian told her it was Brooke's decision. I 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 me 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.

45. Both during the marriage and after the divorce, I have attended every dance production in which Brooke or Rylee has danced. During the marriage, although I always drove Brooke and Rylee to and from their dance classes, Vivian had the dance studio bill her credit card for the lessons. I would then pay Vivian's credit card bill each month. After the divorce, I have always paid each and every bill I have received for Brooke and Rylee's extra-curricular activities, such as dance lessons, piano lessons, and voice lessons. Vivian has made

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the arrangements for payments with the dance studio, the piano teachers, and the voice teacher. I received a bill for two months of dance lessons during 2013, which I promptly paid. Sometime in August of 2014, the office manager of the dance studio informed me that Vivian told her that since she had paid for dance the prior year, then I should pay 100% of the dance charges for the year then beginning. Despite paying for the two months I was billed the prior year, I did not argue and paid for all the dance classes for Brooke and Rylee for that year. When I received a bill for Brooke's and Rylee's dance classes in August of 2015, I called the dance studio office manager to advise her it was Vivian's year to pay. I was advised that Vivian now wanted me to pay one-half and Vivian to pay one-half. It is my understanding that is how the dance bills have been billed and paid since that time. I, therefore, believe that since the divorce, I have paid more money than Vivian for Brooke's and Rylee's dance lessons. I believe I paid for all of the Brooke and Rylee's piano lessons during 2013. I believe I paid for all of the girls piano and voice lessons during 2014. To this day, I continue to pay what I understand 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 the foregoing, it is my understanding now that Vivian has convinced Brooke that I have never supported Brooke in taking dance classes and that I refused to pay for any part of her dance lessons for an entire year.

46. Vivian has made a concerted effort to alienate Brooke and Rylee from me beginning after the filing of the Motion for Temporary Custody on September 14, 2011. Vivian's overt acts to alienate me from Brooke and Rylee have been well documented throughout this litigation. At the first opportunity after Brooke's 14th birthday, Vivian convinced Brooke that upon her 14th birthday, Brooke would be empowered to determine her own custody and could decide to live with Vivian full-time. Brooke's 14th birthday was on June 26, 2013. I had *never* even broached the subject of the "teenage discretion" provision with Brooke. In fact, subparagraph 6.2 prohibits a parent from 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

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Brooke about her "rights" under the provision. The very day Brooke was returned to me, on July 17, 2013, Brooke told both her older sister, Whitney, and I 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, I 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 me that she was going to live with Vivian full time. Brooke told me 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. I asked Brooke why she wanted to live with Vivian full-time. Brooke initially responded that "girls are supposed to live with their mommies."

47. Contrary to Vivian's allegation, I have never told Brooke that "Vivian filed the divorce action." The treatises on parental alienation strongly advise that the alienated parent must attempt to defend himself or herself. Vivian has been alienating me from Brooke and Rylee since the filing of the Motion for Temporary Custody in September of 2011, including telling Brooke and Rylee that the divorce was all my fault. After Brooke stopped complying with the Custody Order, I finally tried to defend myself by simply telling Brooke that the divorce was not my fault. That is all I said.

48. I have consistently advised Brooke and Rylee to love and be respectful of Vivian. When Vivian would bring Brooke and Rylee to pick up their stuff from my home to get their things when custody was transferred, I have consistently told them to have their stuff ready so Vivian did not have to wait in the car. As a consequence, the vast majority of time, Vivian waits less than 5 minutes and most times, waits less than 2 or 3 minutes. The only time that I have been critical of Vivian to Brooke and Rylee is when custody is being transferred to me, and Vivian keeps me waiting in the car for 20 to 45 minutes, while Vivian visits with Brooke and Rylee, despite the fact they have been in Vivian's custody until that time and they are picking up the identical items.

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49. Between July 17, 2016 and September 14, 2016, Brooke spent no time whatsoever at my home. Without any prior notification, Brooke showed up at 10:12 p.m. the night of September 14, 2016 and said she was staying that Wednesday and Thursday. However, Brooke has no dance classes on Wednesdays, but chose not to show up until after 10:00 p.m. The next morning, September 15, 2016, Brooke got up, had a bowl of cereal and left around 9:10 a.m. Brooke did not return home until sometime after 9:40 p.m. The next morning, September 16, 2016, at 7:07 a.m., I heard the front door open and Brooke say goodbye. Therefore, between June 17, 2016 and September 28, 2016, Brooke came to our home late one night, stayed away the entire next day and evening, slept there a second night, and then left shortly after 7:00 a.m. the next morning. Vivian's assertion to the Court that, "Brooke spends alternating weekends and one night per week at Kirk's home" is simply not true.

50. Vivian represented to the Court, "[Brooke] recently spent three weeks at his home." This is simply not true. My three week vacation schedule with Brooke and Rylee this summer was supposed to be Monday, June 13 through Sunday, June 19; Monday, June 27 through Tuesday, July3, and; Thursday, July 14 through Wednesday, July 20. Except for the part of the day Brooke came to see Tahnee on May 1, 2016 beginning at around 2:25 p.m. and leaving the next morning at 9:00 a.m., Brooke had not been to our home since April 8, 2016 – about nine weeks. Without any prior notice whatsoever, Brooke showed up at about 9:45 p.m. the evening of June 16, 2016, stating she was there for the vacation period. The vacation period began on June 13, 2016 – not June 16, 2016. Brooke left at 9:00 a.m. on June 20, 2016. Therefore, Brooke was there only three of the seven vacation days. The next vacation period was June 27, 2016 through July 3, 2016. This year was also my turn to have Brooke for the 4th of July. However, of the total of eight days, Brooke only spent five days with Tahnee or I. For the three days she was home, Brooke would leave around 9:00 a.m. and not return until around 9:00 p.m. or later. Brooke spent from June 30, 2016 until July 3, 2016 visiting Tahnee in California. I dropped Brooke off at Vivian's house on July 3, 2016 to pick up her car. However, Brooke did not pick up her car and return to my home. Brooke never returned to our home during this custody period, including the 4th of July. The last vacation period was from

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July 14, 2016 to July 20, 2016. I was to have custody of Brooke for nine days from 9:00 a.m. on July 13, 2016 until 9:00 a.m. on July 22, 2016 (seven days of vacation time and two days of regularly scheduled custody time). However, Brooke did not show up until 10:30 p.m. the night of July 14, 2016 with no explanation as to why she didn't come the morning of the day before. On July 15, 2016, Brooke left shortly after 10:00 a.m. to spend the day with a friend and did not return until about 11:30 p.m. that night. On July 16, 2016, Brooke slept in until around noon, left at 2:45 p.m. and did not return until after 9:30 p.m. On July 17, 2016, although Brooke spent most of the day at home, it was in her bedroom with the door shut. She left for Vivian's that night and did not return. Therefore, Brooke only spent about two days of the nine days she was supposed to spend with me. Although this was the most time Brooke has spent with me in over a year, Brooke only spent a small fraction of the three weeks of vacation time she was supposed to spend with me.

FURTHER AFFIANT SAYETH NAUGHT.

KIRK HARRISON

SUBSCRIBED AND SWORN to before me this 19th day of October, 2016, by Kirk Harrison.

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

NOTARY PUBLIC in and for said County and State

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EXHIBIT “B”

Garima Varshney

From: Vivian Harrison <vivianlharrison@aol.com>
Sent: Thursday, November 03, 2016 3:45 PM
To: Garima Varshney
Subject: Fwd: Dr. Ali Therapy

-----Original Message-----
From: Vivian Harrison <vivianlharrison@aol.com>
To: rsmith <rsmith@radfordsmith.com>
Sent: Mon, Oct 17, 2016 4:32 pm
Subject: Fwd: Dr. Ali Therapy

---------- Forwarded message ---------
From: Emma Harrison <ebrookeharrison@gmail.com>
Date: Thu, Feb 25, 2016 at 9:38 PM
Subject: Fwd: Dr. Ali Therapy
To: <amanda@adhdcenteroflasvegas.org>

Hi Amanda my mom said you called and to forward you this email that I sent to Paglini earlier today, see below. My spring break is from March 14-18 therefore I'm available until 4:00 on Mondays, 2:15 on Tuesdays, 3:00 on Wednesday (SAT/ACT Course), 2:15 on Thursday and all of Friday because I still have dance classes during my spring break. Thank you.

Brooke

---------- 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 "C"

Garima Varshney

From: Vivian Harrison <vivianlharrison@aol.com>
Sent: Thursday, November 03, 2016 3:45 PM
To: Garima Varshney
Subject: Fwd: Dr. Ali Therapy

-----Original Message-----
From: Vivian Harrison <vivianlharrison@aol.com>
To: rsmith <rsmith@radfordsmith.com>
Sent: Mon, Oct 17, 2016 4:33 pm
Subject: Fwd: Dr. Ali Therapy

-----Original Message-----
From: Emma Harrison <ebrookeharrison@gmail.com>
To: vivianlharrison <vivianlharrison@aol.com>
Sent: Mon, Oct 17, 2016 3:21 pm
Subject: Fwd: Fwd: Dr. Ali Therapy

---------- Forwarded message ----------
From: Amanda Thorpe <amanda@adhdcenteroflasvegas.org>
Date: Tue, Mar 8, 2016 at 9:50 AM
Subject: Re: Fwd: Dr. Ali Therapy
To: Emma Harrison <ebrookeharrison@gmail.com>

Good morning Brooke,
I wanted to let you know that I am working on scheduling a couple appointments for you and your dad next week during your spring break. Dr. Ali and I are going to look at his schedule and I will call you with the appointment dates and times. I appreciate you e-mailing me your availability for next week and will be in contact with you soon about appointments.
Have a good day!
Amanda

On February 26, 2016 at 12:38 AM Emma Harrison <ebrookeharrison@gmail.com> wrote:

Hi Amanda my mom said you called and to forward you this email that I sent to Paglini earlier today, see below. My spring break is from March 14-18 therefore I'm available until 4:00 on Mondays, 2:15 on Tuesdays, 3:00 on Wednesday (SAT/ACT Course), 2:15 on Thursday and all of Friday because I still have dance classes during my spring break. Thank you.

Brooke
---------- 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:

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Chemistry Lab
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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?

	11th 16.2 Disclosure	
1.	Anthem Forensics report, dated: 10-27-16	1561-1647
	11th 16.2 Disclosure	
1.	**Affidavit of Custodian of Records, dated: 10-25-16**	**1648-1649**
2.	**License Agreement between Max Art & Pfhiilp-Silvestri Lane, LLC, dated: 12-15-16**	**1650-1657**
3.	**Industrial/Commercial Single-Tenant Lease between Max Art & Pfhiilp-Silvestri Lane, LLC,, dated: 01-15-16**	**1658-1732**
4.	**1st Amendment to Industrial/Commercial Single-Tenant Lease**	**1733-1776**
5.	**2nd Amendment to Industrial/Commercial Single-Tenant Lease**	**1777-1820**

Dated this _____ day of November, 2016.

RADFORD J. SMITH, CHARTERED

_____
RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada Bar No. 11878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
Attorney for Defendant

D-11-443611-D

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** November 07, 2016

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

November 07, 2016 **1:30 PM** **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

- 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 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 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

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

D-11-443611-D

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 PLAINTIFF'S MOTION FOR AN ORDER TO NULLIFY AND VOID EXPERT REPORT.

Court reviewed the matters at issue and noted there is a pending appeal; however, the Court has the authority to enforce its Order during the appeal. Court indicated the focus today is the Motion for Reconsideration and the Motion for an Order to Show Cause. Discussion regarding Plaintiff's relationship with Brooke; Plaintiff's request for compensation time; child exchange issues; Brooke's teenage discretion; the lack of counseling sessions with Dr. Ali; and Plaintiff's request for an order to show cause. Following discussion, COURT ORDERED, as follows:

1. Matter is set for an EVIDENTIARY HEARING on 3/7/17 at 1:30 PM (day 1) and 3/13/17 at 1:30 PM (day 2).

2. Discovery is OPEN as it relates to the issues before the Court. Discovery shall close by the close of business on 2/27/17. The Court is not allowing discovery as it relates to Brooke.

3. Matter is set for an ORDER TO SHOW CAUSE on 3/7/17 at 1:30 PM (day 1) and 3/13/17 at 1:30 PM (day 2) at which time Defendant is to appear and show cause as to why she should not be held in contempt. Per STIPULATION, the Court shall issue the Order to Show Cause.

4. The Court shall not preclude either party from calling Brooke as a witness.

5. The prior Order for Brooke to participate in reunification counseling with Dr. Ali shall remain IN EFFECT. The parties are to send a letter to Dr. Ali indicating reunification counseling is to continue. Dr. Ali is to be provided with Plaintiff's telephone number and Brooke's telephone number.

6. The Court does not have an issue with Dr. Paglini receiving information from Dr. Ali. The Court is not looking for any other reports outside of Dr. Paglini's report.

7. Defendant shall provide Brooke's Nevada State High School schedule to Mr. Kainen by this Friday (11/11/16).

8. Any communication with the experts is to be provided to both parties.

9. If Plaintiff so desires, the Court shall allow participation in the 4-day program; however, the Court is not prepared to issue any Orders as it relates to compensation time.

D-11-443611-D

10. The CHILD EXCHANGES shall take place at school and there shall be no further need to go to either party's residence after school. If the minor children need to have any school books, dance bags, and/or special food, then the party who has those items are to deliver those items to the custodial parent's residence so that the children have use of those items.

11. The request to nullify the expert report is DENIED.

Per STIPULATION, the Court shall issue the Order from today's hearing.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: November 16, 2016 11:00 AM Motion

Canceled: November 16, 2016 11:00 AM Motion for Order to Show Cause

Canceled: November 16, 2016 11:00 AM Opposition & Countermotion

Canceled: November 16, 2016 11:00 AM Motion

March 07, 2017 1:30 PM Evidentiary Hearing
Duckworth, Bryce C.
Courtroom 01

March 07, 2017 1:30 PM Order to Show Cause
Duckworth, Bryce C.
Courtroom 01

March 13, 2017 1:30 PM Evidentiary Hearing
Duckworth, Bryce C.
Courtroom 01

March 13, 2017 1:30 PM Order to Show Cause
Duckworth, Bryce C.
Courtroom 01

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12/29/2016 05:07:21 PM

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: January 31, 2017
Time of Hearing: 9:00 a.m.

ORAL ARGUMENT REQUESTED:
YES XX NO ___

PLAINTIFF'S MOTION FOR NEW EXPERT RECOMMENDATION IN LIEU OF DISCOVERY AND EVIDENTIARY 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 NAIMI LAW GROUP, and hereby moves this Court for a new expert recommendation in lieu of discovery and evidentiary hearing.

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. . .

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, the affidavits in support thereof, and oral argument of counsel at the time of hearing.

DATED this 29th day of December, 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 31st day of January, 2017, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 29th day of December, 2016.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD L. KAINEN, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. The Best and Most Efficient Way to Reunify Brooke with Her Father, Kirk, Is For Dr. Paglini to Make a New Recommendation With the Benefit of Assistance from Dr. Ali

1. It is Not in Brooke's Best Interest to Testify

On November 7, 2016 , this Court ordered there be an evidentiary hearing on March 7, and March 13, 2017. Upon Vivian's request, the Court ordered that discovery be allowed. The Court ordered that Brooke be allowed to testify during that hearing, noting the Court could count on "one finger" the number of times it had previously ordered a minor to testify in Court. The Court also noted that it expected that Dr. Paglini and Dr. Ali would testify during this evidentiary hearing.

We respectfully submit that such discovery and evidentiary hearing is not in the best interest of Brooke or Rylee, will likely cause further conflict between the parties, and will likely further alienate Kirk from Brooke. On Friday, December 2, 2016, Dr. Ali conducted a reunification session with Brooke and Kirk. Kirk is gravely concerned about Brooke and believes that Dr. Ali is seriously concerned as well.[1]

Compelling Brooke to testify is not in her best interest and will most likely further alienate Kirk from Brooke. In response to Vivian's prior efforts for Brooke to testify or be interviewed by the Court, the Court has consistently rejected those efforts on the basis that it would not be in Brooke's best interest. For example, during the hearing on October 20, 2013, the Court made its view very clear, "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." (Hearing Transcript, 10.30.13, p. 32, l. 22-24). Consistent with this Court's view, EDCR 5.06, provides in part, "Minor children will not be permitted to testify in open court unless the judge, master, or commissioner determines that the probative value of the child's testimony

[1] The Affidavit of Kirk Harrison is attached hereto as Exhibit "1" and by this reference incorporated herein.

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substantially outweighs the potential harm to the child." In this circumstance, the risk of potential harm to Brooke is too great. The probative value of Brooke's testimony does not substantially outweigh the potential harm to Brooke.

Such discovery and evidentiary hearing will also cause the parties to incur an unnecessary substantial financial burden.

2. Dr. Paglini Unequivocally Opined that Brooke's Relationship with Her Father is Extremely Important and Needs to be on the Forefront of Issues Addressed

Dr. Paglini was appointed by the Court "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**." Findings and Orders Re: January 26, 2016 Hearing, filed May 25, 2016 (emphasis added).

In his report, dated January 25, 2016, Dr. Paglini stressed the importance of Kirk and Brooke resolving their issues **immediately** and that they re-establish their positive relationship before Brooke goes away to college. (58-59). Dr. Paglini strongly recommended, "[Brooke] 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. The Court also agreed with Dr. Paglini's recommendations and 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.

Unfortunately, Brooke refused to comply with the Court ordered schedule. As a consequence, on May 31, 2016, Dr. Paglini wrote a letter to the Court expressing his "dismay" at the lack of weekly sessions that have occurred. In this letter to the Court, date, Dr. Paglini re-emphasized what he wrote in his recommendations to the 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.'" . . . "Brooke and her father need to be involved in continuous/frequent treatment and address their issues." In that same letter to the Court, Dr. Paglini later opined, ". . .**[Brooke's] relationship with her father is**

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extremely important and needs to be on the forefront of issues addressed and not something that is possibly delayed/avoided by Brooke." (Emphasis added).

Therefore, the Court, Dr. Paglini, and Dr. Ali are all of the opinion that it is extremely important that Brooke be reunified with her father, Kirk, before she goes away to college.

3. Dr. Paglini's Prior Recommendation for Reunification Therapy Was Based Upon Material Misrepresentations to Dr. Paglini

Dr. Paglini's prior reunification therapy recommendation was clearly based upon representations to him by Vivian and Brooke that Brooke loves Kirk, does not hate Kirk, and wants a relationship with Kirk. It was also based upon the fact that Brooke represented to Dr. Paglini, on more than one occasion, that she was willing to address the issues she had with Kirk.

Vivian told Dr. Paglini that Brooke loves her father, but it was just to stressful for Brooke to go back and forth from home to home. (7-8) Brooke was later on script when she also told Dr. Paglini that she loves her father, but just wants to live in one home. (25) Based upon Brooke's repeated statements to him that she does not hate Kirk, she loves Kirk, and she wants a relationship with Kirk, Dr. Paglini concluded that Brooke had not pathologically rejected Kirk. (59)

Throughout his report, Dr. Paglini documents the many times that Brooke told him that she does not hate Kirk, that she loves Kirk, and she wants a relationship with Kirk. (7, 10, 12, 17, 25, 35, 51, 59) This was the primary reason Dr. Paglini concluded there had been no alienation. Those representations were also clearly why Dr. Paglini was so optimistic that reunification therapy with Dr. Ali and Kirk would be successful. Dr. Paglini believed there was a very favorable prognosis because Brooke told him she loves Kirk and she was willing to address the issues with Kirk. (59) In his Report, Dr. Paglini specifically noted that the prognosis in this case is favorable because Brooke has a willingness to address issues with Kirk and Brooke loves Kirk. (59)

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Unfortunately, those representations to Dr. Paglini were diametrically opposed to what Brooke later told Dr. Ali and Kirk. Those representations were also contrary to what Brooke had previously told Kirk and, likely, also contrary to what Brooke had previously told Dr. Ali. Not surprisingly, when Dr. Paglini later learned that Brooke was resisting his recommended and Court ordered reunification therapy with Dr. Ali and Kirk, Dr. Paglini was "dismayed."

4. Brooke's Refusal to Schedule the Court Ordered Joint Sessions and Her Refusal to Fully Participate in the Four Sessions Which Were Finally Scheduled Is Inconsistent with the Representations which Brooke Made to Dr. Paglini

Despite the Court's orders, Dr. Paglini's very strong recommendations, and the best efforts of Dr. Ali and his office, Brooke has only met with Kirk and Dr. Ali on four occasions since January 26, 2016. Three of those four sessions were significantly abbreviated because Brooke either walked out or insisted the session stop.

1. March 17, 2016 – scheduled for 2 hours, but Brooke walked out about half way through the session;
2. April 12, 2016 – scheduled for 1.5 hours, but Brooke walked out after about 15 minutes, stating she would not participate in any further sessions;
3. November 18, 2016 – scheduled for 1 hour, met for 1 hour, and;
4. December 2, 2016 – scheduled for 2 hours, but adjourned after about one hour upon Brooke's insistence.

It must be noted that this is what transpired after Brooke told Dr. Paglini on several occasions that she does not hate Kirk, she loves Kirk, and she was willing to have sessions with Dr. Ali and Kirk to work out her differences with her father.

5. Kirk Has Lost 203 Custody Days with Brooke between August 12, 2015 and December 12, 2016

Pursuant to the Custody Order, between August 12, 2015 and December 12, 2016, Brooke was to be with Kirk a total of 247 days. Despite the fact the Custody Order was agreed to between the parties and ordered by the Court, Brooke was only "with Kirk" a total of 44 days. Therefore, between August 12, 2015 and December 12, 2015, Kirk has **lost 203 days of**

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custody time with Brooke. During the 44 days Brooke was "with Kirk" she was not really "with Kirk." More specifically, Dr. Paglini noted that when Brooke is at Kirk's home, she remains in her bedroom and is primarily disengaged from Kirk. (46) Brooke acknowledged she has virtually no contact with Kirk when she is in his home. (17) Brooke acknowledged she does not eat any meals with Kirk. (24) Dr. Paglini noted his disagreement with how poorly Brooke treats Kirk. (52) Dr. Paglini specifically found that Brooke has rejected Kirk and is disengaged from him. (46, 50)[2]

We strongly believe that the optimal reunification therapy effort is one that does not focus on the past, is not critical of either parent, and does not blame either parent for the conflict. Such a reunification therapy effort reestablishes in the children their ability for empathy and compassion, and a desire to have a relationship with both parents.

We respectfully move the Court to order Dr. Paglini to make a new recommendation to the Court regarding the best reunification therapy alternative to maximize the probability that Brooke and Kirk can be reunified – "to establish a path by which said relationship could be remedied and repaired." Findings and Orders Re: January 26, 2016 Hearing, filed May 25, 2016. As part of this effort, Dr. Paglini should consult with Dr. Ali to determine the optimal reunification therapy course of action. Dr. Paglini should have the benefit of what Dr. Ali believes will be the best course of action to reunify Brooke with Kirk. This process will also allow Dr. Paglini and Dr. Ali to compare notes as to what Vivian and Brooke represented to Dr. Paglini versus what Brooke represented to Dr. Ali.

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[2] Despite the foregoing, Dr. Paglini noted that Kirk is doing everything he can to remain connected to both Brooke and Rylee. (48) Dr. Paglini also noted that Kirk loves Brooke very much. (51)

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Vivian has successfully thwarted the efforts of Dr. Paglini, Dr. Ali and this Court to reunify Brooke and Kirk, and for Vivian to cause Brooke to comply with the Custody Order, filed July 11, 2012. It is critical that alternative reunification efforts be undertaken at the earliest possible time. In his report, dated January 25, 2016, Dr. Paglini opined that reunification efforts should be undertaken "immediately."

Brooke will be eighteen years old on June 26, 2017 and will be going away for college in the Fall. Therefore, a new recommendation should be sought from Dr. Paglini at the earliest possible time. Dr. Paglini needs sufficient time to consult with Dr. Ali in this effort and to conduct any further examinations he deems necessary. Thereafter, there needs to be sufficient time for whatever reunification therapy Dr. Paglini recommends and this Court orders to take place. The need for successful reunification therapy for Brooke and her father was "immediate" as of January 25, 2016. It is now "urgent" that successful reunification therapy take place at the earliest possible time. Therefore, it is in the best interest of Brooke that this course of action be taken immediately in lieu of the currently ordered discovery and evidentiary hearing days set in March of 2017.

B. The Court Is Urged To Enter Orders to Ensure that Rylee Does Not Go Down the Same Path

The Court, Dr. Paglini, and Dr. Ali have all expressed concern regarding the extent to which the teenage discretion provision has been improperly utilized to wrongfully empower Brooke. Kirk agrees with the Court's view that the teenage discretion provision has been essentially eviscerated in light of the wrongful empowerment of Brooke. Kirk is also alarmed. The Court has previously stated it is concerned about Rylee going down the same path:

> But one thing that **alarmed me** was **the empowerment that Brooke was given through the teenage dis – [discretion]** and it – and – and the way I interpret Dr. Paglini's report is **the intent of that provision was eviscerated** with what happened in terms of empowering Brooke. And I can't – I'm not here to change that. **It concerns me in terms of if the same seeds have been planted with Rylee**.

Hearing Transcript, 1.26.16, p. 8, l. 17-24 (emphasis added).

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We are also alarmed and gravely concerned about Rylee during the next four years. Rylee will be fourteen years old on January 24, 2017.

We respectfully request the Court to order Dr. Paglini to make recommendations to the Court regarding what should be done to prevent the wrongful empowerment of Rylee in the parent/child relationship and to also prevent the alienation of either parent from Rylee in the future. We further request that Dr. Paglini be allowed to consult with Dr. Ali in making these recommendations.

We respectfully suggest that Dr. Paglini, in consultation with Dr. Ali, should consider whether it is in the best interest of Rylee for the Court to nullify the teenage discretion provision to prevent the wrongful empowerment of Rylee in the parent/child relationship. We further respectfully suggest that Dr. Paglini, in consultation with Dr. Ali, also make such further proactive recommendations he believes are necessary to prevent the wrongful empowerment of Rylee in the parent/child relationship and to prevent the alienation of either parent from Rylee. For example, we would hope that Dr. Paglini would consider recommending that Vivian (and Kirk, if necessary) counsel with a therapist to stop any behaviors that have been unsupportive of the relationship between the children and Kirk, and to stress that it is in Rylee's best interest for both parents to have a substantial involvement in her life.

In light of what has happened to Brooke, it would clearly not in the best interest of Rylee to fail to take reasonable and common sense proactive measures now to protect Rylee and to prevent Rylee from going down the same path.

1. Dr. Ali Confirmed that Brooke Has Been Wrongfully Empowered Under the Teenage Discretion Provision for a Long Time

In order for Vivian's severe alienation of Kirk from Brooke to bear fruit, Vivian had to wrongfully empower Brooke under the teenage discretion provision. The hatred of Kirk that Vivian instilled in Brooke was ample motivation for Brooke to exercise that wrongful power.

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The source of Brooke's wrongful empowerment is well known. Brooke told Dr. Paglini that she learned about teenage discretion from her mother. (24) Dr. Ali reported to Dr. Paglini that his first meeting with Brooke was on February 25, 2014. (43) It was noteworthy to Dr. Ali that Brooke talked about teenage discretion at the beginning of that very first meeting. (44) Brooke believed that when she was 16 years old she would be more empowered regarding where she would live. (45) In December of 2014, Brooke told Dr. Ali that when she is 16 years old, she would be able to choose to live with her mom and only visit Kirk. (46) In November of 2015, Vivian told Dr. Paglini that when Brooke turned 14 years old, she could go freely from house to house. (7)

All of this is very consistent with what this Court is already aware. Vivian's counsel, Mr. Silverman, opined, "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. Aff. of Gary R. Silverman, dated September 9, 2013, Exh. S to Vivian's Exhibits, filed September 11, 2013, at 9. Apparently, consistent with his opinion, Mr. Silverman advised Vivian that the teenage discretion provision could be utilized to obtain *defacto* primary custody.

Upon her 14th birthday, Vivian had Brooke convinced she was empowered, under the teenage discretion provision, to live with Vivian full time. Right after Brooke's return to Kirk, on August 3, 2013, crying and emotionally distraught, Brooke announced to Kirk that she was going to live with Vivian full time.

Although this Court held that teenage discretion could not be utilized to alter the agreed joint physical custody and the Nevada Supreme Court affirmed that decision, Vivian has, nonetheless, continued down that same path. *See* Plaintiff's Reply in Support of Motion for an Order to Show Cause, filed 9.30.16, p. 3, l. 8-28; p. 4, l. 1-28.

The Court was absolutely correct in expressing alarm with the empowerment of Brooke through the teenage discretion provision to such an extent the provision has been eviscerated. *See* Hearing Transcript, dated 1.26.16, p. 8, l. 17-24. There is no question Vivian is planting the

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same seeds with Rylee. What Vivian has done to Brooke is tragic. Hopefully, she can be saved. Vivian should not be allowed to do the same thing to Rylee.

2. Unless Something Is Done, Vivian Will Take Rylee Down the Same Path She Took Brooke

Vivian has, indisputably, eviscerated the "teenage discretion" provision and will continue to do so irrespective of the rulings and orders of this Court and the affirmance of those rulings and orders by the Nevada Supreme Court. Vivian simply has no respect for the rulings and orders of this Court or for the affirmance of those rulings and orders by the Nevada Supreme Court. What Vivian is doing is in knowing violation of the joint physical custody provision, the "teenage discretion" provision, the rulings and orders of this Court, and the opinion of the Nevada Supreme Court.

The continued existence of the "teenage discretion" provision, continues to provide the justification to Vivian to continue to callously manipulate Brooke and Rylee, to continue to wrongfully empower Brooke and Rylee in their relationship with their father, and to continue to provide motivation to Vivian to alienate Kirk from Brooke and Rylee. The "teenage discretion" provision is being used by Vivian to emotionally manipulate and harm Brooke and Rylee. The unwillingness of Vivian to abide by the terms, and the inability to enforce material terms, encourages the abuse. It is clearly in the best interest of Rylee for the Court to nullify and void this provision to stop Vivian's emotional damage of these children. This perceived incentive must be nullified. The "teenage discretion" provision and the protections contained in that provision have been so violated and disregarded that the provision has been eviscerated. We ought to care enough about Rylee to avoid a scenario in two years where Rylee has been wrongfully empowered to willfully violate this Court's orders.

It is not in Rylee's best interest to spend the next four years being callously manipulated by Vivian by being wrongfully and unlawfully empowered in her relationship with her father, by Vivian severely alienating Kirk from Rylee based upon such fictitious issues as falsely asserting that Kirk does not care enough about his own children to pay their medical

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bills, and by Vivian convincing Rylee that if she does anything with Kirk she is somehow betraying Vivian or somehow choosing Kirk over Vivian.

Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the "teenage discretion" provision, which has been eviscerated by Vivian's contemptuous actions.

II. CONCLUSION

Unless new reunification efforts are soon ordered and are successful, Kirk will most likely not have any kind of relationship with Brooke for the rest of their lives.[3] Experts generally agree that the severe alienation of her father from Brooke will have devastating effects upon Brooke for the rest of her life.[4]

Vivian was able to alienate Kirk from Brooke by knowingly abusing the teenage discretion provision, beginning on the eve of Brooke's 14th birthday. The wrongful empowerment of Brooke, under this provision, has been well documented during the past approximately three and one-half years.

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[3] *See* Plaintiff's Reply in Support of Motion for Order to Show Caused, filed 9.18.15, p. 23, l. 1-5.

[4] *See* Plaintiff's Reply in Support of Motion for Order to Show Caused, filed 9.18.15, p. 21-22..

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Rylee will be 14 years old on January 24, 2017. Under these circumstances, it is unimaginable that proactive measures will not be taken now to protect Rylee from going down the same path.

DATED this 2nd day of December, 2016.

KAINEN LAW GROUP, PLLC

By: _____

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Attorneys for Plaintiff

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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 12/29/16

Signature of Party or Preparer _____

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CLERK OF THE COURT

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Co-counsel 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: January 18, 2017
Time of Hearing: 1:30 p.m.

PLAINTIFF'S PRE-TRIAL MEMORANDUM

COMES NOW, the Plaintiff, KIRK HARRISON, by and through his attorneys, EDWARD KAINEN, ESQ., of the law firm of KAINEN LAW GROUP, PLLC, and THOMAS J. STANDISH, ESQ., of the law firm STANDISH NAIMI LAW GROUP, and hereby submits his Pre-Trial Memorandum to this Court.

DATED this 17th day of January, 2017.

KAINEN LAW GROUP, PLLC

By: _____
EDWARD KAINEN, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. UNRESOLVED ISSUES

A. Background to the Unresolved Issues

1. Dr. Paglini's Recommendation for Reunification Therapy Was Based Upon Material Misrepresentations to Dr. Paglini by Vivian and Brooke

Dr. Paglini's reunification therapy recommendation was clearly based upon representations to him by Vivian and Brooke that Brooke loves Kirk, does not hate Kirk, and wants a relationship with Kirk. It was also based upon the fact that Brooke represented to Dr. Paglini, on more than one occasion, that she was willing to address the issues she had with Kirk.

Vivian told Dr. Paglini that Brooke loves her father, but it was just to stressful for Brooke to go back and forth from home to home. (7-8)[1] Brooke was later on script when she also told Dr. Paglini that she loves her father, but just wants to live in one home. (25) Based upon Brooke's repeated statements to him that she does not hate Kirk, she loves Kirk, and she wants a relationship with Kirk, Dr. Paglini concluded that Brooke had not pathologically rejected Kirk. (59)

Throughout his report, Dr. Paglini documents the many times that Brooke told him that she does not hate Kirk, that she loves Kirk, and she wants a relationship with Kirk. (7, 10, 12, 17, 25, 35, 51, 59) This was the primary reason Dr. Paglini concluded there had been no alienation. Those representations were also clearly why Dr. Paglini was so optimistic that reunification therapy with Dr. Ali and Kirk would be successful. Dr. Paglini believed there was a very favorable prognosis because Brooke told him she loves Kirk and she was willing to address the issues with Kirk. (59) In his Report, Dr. Paglini specifically noted that the prognosis in this case is favorable because Brooke has a willingness to address issues with Kirk and Brooke loves Kirk. (59)

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[1] Reference to numbered pages in Dr. Paglini's January 25, 2016 report.

B. Vivian Caused Brooke's Failure to Comply with the Court Ordered Weekly Two Hour Sessions with Kirk and Dr. Ali

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."[2] 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 just one weekly two hour session.

As will be clearly shown herein, Vivian immediately resisted the once a week two hour sessions with Brooke, Kirk and Dr. Ali. Vivian had spent years alienating Kirk from Brooke and Rylee, and the last thing Vivian wants is for Brooke and Kirk to be successfully reunified.

In addition, we know by Vivian's own admissions during the hearing on September 22, 2015, that Vivian was debriefing Brooke after each meeting Brooke had with Dr. Ali.[3] Therefore, Vivian knew Brooke had told Dr. Ali her true feelings towards Kirk – that she hates Kirk, does not love him, and does not want a relationship with him.[4] Vivian also knew that Brooke had been telling Dr. Ali, since she was 14 years old, that when Brooke was sixteen years

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[2] Dr. Paglini later emphasized the importance of the relationship between Brooke and her father and the need to reunify that relationship. "[Brooke's] 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." Dr. Paglini letter to Court, dated May 31, 2016.

[3] Hearing Transcript, 9.22.15, p. 30, l. 4-9, 15-21; p. 33, l. 1-2. *See also*, Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 19, l. 1-28; p. 20, l. 1.

[4] Kirk learned during the December 2, 2016 session that Brooke had told Dr. Ali on several occasions that she hates Kirk, does not love him, and does not want a relationship with him.

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old she was empowered under the teenage discretion provision to live with Vivian full-time, which confirmed Vivian's wrongful empowerment of Brooke under the teenage discretion provision for years. Vivian also knew that she had falsely incited Brooke over the medical billing issue to the point that Brooke never wanted to see Kirk again.

Importantly, Vivian knew that what Brooke had been telling Dr. Ali for years was diametrically opposed to what Vivian and Brooke told Dr. Paglini and what Vivian had been representing to this Court for years.

Therefore, once Vivian learned that Dr. Paglini recommended two hour weekly sessions with Dr. Ali, Vivian directly and through Brooke, used every disingenuous ploy possible to prevent those weekly sessions from taking place.

Vivian's and Brooke's false statements to Dr. Paglini had now placed Brooke in the untenable position of having go forward with Vivian's false narrative with the two people whom Brooke knew were fully aware Vivian's false narrative was false. Vivian, alone, is responsible for doing this to Brooke. But for Vivian's enmeshment of Brooke in this false narrative, this would never have happened.

At the time of his report, Dr. Paglini was unaware that Vivian's and Brooke's repeated representations to him that Brooke loves Kirk, does not hate Kirk, wants a relationship with Kirk, etc. were not only false, but diametrically opposed to what Brooke had been telling Dr. Ali.[5] Brooke now faced weekly two hour sessions with Kirk and Dr. Ali, wherein to maintain Vivian's false storyline that the reason she moved to Vivian's house was a matter of "convenience," she would have to do so in front of Dr. Ali, whom she had repeatedly told she hated Kirk, does not love Kirk, and does not want a relationship with Kirk. In addition to Vivian not wanting Brooke to be reunified with her father, this is the reason Vivian and Brooke so strongly resisted the scheduling of the sessions. This is the reason Brooke cancelled sessions that were set. And, importantly, this is the reason the few sessions that did take place were cut short by Brooke. Vivian's enmeshment of Brooke into this false narrative and Brooke's

[5] It was obviously diametrically opposed to what Brooke had been telling Kirk as well.

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continued adherence to this false narrative is what is causing Brooke so much stress. This has been a significant obstacle to Dr. Ali making progress in reunifying Brooke with her father during these sessions.

Vivian and Brooke have both represented that Brooke's class 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 . . .") [6]

As a consequence of Brooke telling Dr. Ali's office that her class schedule did not permit her to meet for 2 hour double sessions 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.

Although Brooke's math tutor did not teach school during the 2014/2015 academic year, he taught school during the 2015/2016 academic 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

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[6] 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 a reunification session 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.

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.

Despite these types of problems, Dr. Ali's office scheduled a standing appointment for 1.5 hours every Tuesday at 11:30 a.m. for the next five months, beginning April 12, 2016.[7] Unfortunately, April 12, 2016 was the second and last session, as Brooke made it very clear to Kirk and Dr. Ali that she would not participate in any more sessions.[8] At that time, Brooke made it very clear that she stopped complying with the Custody Order because of her hatred for Kirk. Brooke said that she hates Kirk and that Kirk is a mean and bad person. Brook said she does not want to spend any time with Kirk.

Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the Court, on May 31, 2016, Brooke, Kirk and Dr. Ali should reasonably have had fifteen or sixteen two hour weekly sessions. Unfortunately, there were only two 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

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[7] After many months of trying to get Brooke's class schedule from Vivian, Brooke, and Vivian's attorneys, Kirk was finally able to get her schedule from the Executive Director of Nevada State High School. Contrary to Vivian's and Brooke's misrepresentations, demands and protests, Brooke had about a five hour block of time every Tuesday and Thursday within which to schedule one 2 hour session each week.

[8] Sometime in early October of 2016, Brooke contacted Dr. Ali's office and Brooke and Dr. Ali met on October 6, 2016. As a consequence of that meeting, Brooke, Kirk and Dr. Ali met for one hour on November 18, 2016, December 2, 2016, and January 6, 2017. The second meeting was scheduled for two hours, but at Brooke's insistence, was adjourned after only about one hour.

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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, dated June 29, 2016.

C. Vivian is Responsible for Kirk's Loss of Custodial Time with Brooke

1. This Court Has Previously Determined, As a Matter of Law, that Vivian Has an Affirmative Obligation to Facilitate Brooke's Visitation with Kirk and that Vivian is Responsible for Brooke's Lack of Time with Kirk.

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).

The Court was emphatic in its position, "So that's the issue of contempt that I have before me that there's been essentially a complete upheaval of the custody arrangement." *Id* at p. 14, l.2-4. And later, "... there's no question that that time has been missed, and ultimately that's on Mom's shoulders." *Id* at p. 49, l. 14-15.

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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).

And later, "Whatever Mom needs to do to make sure that Brooke sees her father." *Id* at 62, l. 7-8. This Court, in paragraph 4 of 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:

> 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).

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.

2. It is Also Clear that Vivian Wrongfully Empowered Brooke Under the Teenage Discretion Provision to Violate the Court's Custody Order

In order for Vivian's severe alienation of Kirk from Brooke to bear fruit, Vivian had to wrongfully empower Brooke under the teenage discretion provision. The hatred of Kirk that Vivian instilled in Brooke was ample motivation for Brooke to exercise that wrongful power.

The source of Brooke's wrongful empowerment is well known. Brooke told Dr. Paglini that she learned about teenage discretion from her mother. (24) Vivian told Dr. Paglini that when Brooke turned 14 years old, she could go freely from house to house. (7)

Dr. Ali reported to Dr. Paglini that his first meeting with Brooke was on February 25, 2014. (43) It was noteworthy to Dr. Ali that Brooke talked about teenage discretion at the beginning of that very first meeting. (44) Brooke was only 14 years old at the time of that meeting. Brooke believed that when she was 16 years old she would be more empowered

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regarding where she would live. (45) In December of 2014, when Brooke was 15 years old, **Brooke told Dr. Ali that when she is 16 years old, she would be able to choose to live with her mom and only visit Kirk.**[9] (46)

Vivian had been planning this move since Brooke was 14 years old. Brooke did not move to Vivian's house full time because of the now purported stress of a "college schedule" or for "convenience" as Vivian now disingenuously represents to the Court. When Brooke was 14 years old, Brooke did not know she was going to have a "college schedule" when she was 16 years old!

All of this is very consistent with what this Court is already aware. Vivian's counsel, Mr. Silverman, opined, "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. Aff. of Gary R. Silverman, dated September 9, 2013, Exh. S to Vivian's Exhibits, filed September 11, 2013, at 9. Apparently, consistent with his opinion, Mr. Silverman advised Vivian that the teenage discretion provision could be utilized to obtain *defacto* primary custody.

Upon her 14th birthday, Vivian had Brooke convinced she was empowered, under the teenage discretion provision, to live with Vivian full time. Right after Brooke's return to Kirk, on August 3, 2013, crying and emotionally distraught, Brooke announced to Kirk that she was going to live with Vivian full time.

Although this Court held that teenage discretion could not be utilized to alter the agreed joint physical custody and the Nevada Supreme Court affirmed that decision, Vivian has, nonetheless, continued down that same path. *See* Plaintiff's Reply in Support of Motion for an Order to Show Cause, filed 9.30.16, p. 3, l. 8-28; p. 4, l. 1-28.

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[9] Compare all of this to Vivian's representation to this Court, "Contrary to Kirk's contention, **I have never told Brooke that she had the right to choose her visitation.**" *See* ¶5 of the Unsworn Declaration of Vivian Harrison, dated September 14, 2015, which is attached to Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause (emphasis added). *See also*, this same opposition, wherein Vivian falsely asserted, "**Vivian has never indicated to Brooke that Brooke is free to choose or alter her custody.**" Opp., p. 3, l. 7-8 (emphasis added). This is truly outrageous.

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3. Contrary to Vivian's Representations to this Court and Brooke's Statement to Dr. Paglini, it is Also Clear Brooke Did Not Want to See Kirk After the Medical Billing Issue

During Dr. Paglini's interviews with Brooke, she downplayed the significance of the medical reimbursement issue. Brooke said her mother had her get on the phone with an insurance rep and give her "her name and date of birth, and that was it." (42)

However, Dr. Ali reported to Dr. Paglini that Brooke took all of her things out of Kirk's home and into her mother's home after the medical billing issue. (44) Dr. Ali also reported to Dr. Paglini that Kirk had told him that Brooke did not want to see her father after the medical billing issue. (44) This fact was also apparent to the Court. During the September 22, 2015 hearing, the Court noted, "Everything does line up and fall into shape, so I do – it does appear, when we look at the fact that Dad gets the email and essentially he's – **Brooke's written Dad off, and she comes in and cleans her closet out while Dad is gone**, all of this coincides with Brooke being on the phone." Hearing Transcript, 9.22.15, p. 12, l. 3-8 (emphasis added). Compare this to Vivian's false representations to this Court. In Vivian's Declaration, dated September 14, 2015, which is attached to Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause, Vivian represented, "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**." ¶11 (emphasis added).

D. Kirk Has Lost 203 Custody Days with Brooke between August 12, 2015 and December 12, 2016

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 the Custody Order, between August 12, 2015 and December 12, 2016, Brooke was to be with Kirk a total of 247 days. Despite the fact the Custody Order was agreed to between the parties and ordered by the Court, Brooke was only "with Kirk" a total of 44 days. Therefore, between August 12, 2015 and December 12, 2015, Kirk has **lost 203 days of custody time with Brooke.** During the 44 days Brooke was "with Kirk" she was not really "with Kirk." More specifically, Dr. Paglini noted that when Brooke is at Kirk's home, she remains in her bedroom and is primarily disengaged from Kirk.

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(46) Brooke acknowledged she has virtually no contact with Kirk when she is in his home. (17) Brooke acknowledged she does not eat any meals with Kirk. (24) Dr. Paglini noted his disagreement with how poorly Brooke treats Kirk. (52) Dr. Paglini specifically found that Brooke has rejected Kirk and is disengaged from him. (46, 50)[10]

The Court in its Order, filed January 3, 2017, took issue with the "verification affidavit" attached to Plaintiff's Motion for an Order to Show Cause. Although the affidavit filed contemporaneously with the Motion for Order to Show Cause was a "verification affidavit," an extensive and detailed affidavit was filed in support of the Motion for Order to Show Cause on October 19, 2016, which was prior to the then scheduled hearing. This affidavit contains fifty separate paragraphs and is twenty-one pages in length. This affidavit more than satisfies the requirements of *Awad v. Wright,* 106 407, 794 P.2d 713 (1990).

E. The Evisceration of the Teenage Discretion Provision and the Need to Protect Rylee From Going Down the Same Path

The Court, Dr. Paglini, and Dr. Ali have all expressed concern regarding the extent to which the teenage discretion provision has been improperly utilized to wrongfully empower Brooke. Kirk agrees with the Court's view that the teenage discretion provision has been essentially eviscerated in light of the wrongful empowerment of Brooke. Kirk is also alarmed. The Court has previously stated it is concerned about Rylee going down the same path:

> But one thing that **alarmed me** was **the empowerment that Brooke was given through the teenage dis – [discretion]** and it – and – and the way I interpret Dr. Paglini's report is **the intent of that provision was eviscerated** with what happened in terms of empowering Brooke.
> And I can't – I'm not here to change that. **It concerns me in terms of if the same seeds have been planted with Rylee**.

Hearing Transcript, 1.26.16, p. 8, l. 17-24 (emphasis added).

There is no question Vivian is planting the same seeds with Rylee. What Vivian has done to Brooke is tragic. Hopefully, she can be saved. Vivian should not be allowed to do the same thing to Rylee.

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[10] Despite the foregoing, Dr. Paglini noted that Kirk is doing everything he can to remain connected to both Brooke and Rylee. (48) Dr. Paglini also noted that Kirk loves Brooke very much. (51)

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We are also alarmed and gravely concerned about Rylee during the next four years. Rylee will be fourteen years old on January 24, 2017.

In light of what has happened to Brooke, it would clearly not in the best interest of Rylee to fail to take reasonable and common sense proactive measures now to protect Rylee and to prevent Rylee from going down the same path.

1. Unless Something Is Done, Vivian Will Take Rylee Down the Same Path She Took Brooke

Vivian has, indisputably, eviscerated the "teenage discretion" provision and will continue to do so irrespective of the rulings and orders of this Court and the affirmance of those rulings and orders by the Nevada Supreme Court. Vivian simply has no respect for the rulings and orders of this Court or for the affirmance of those rulings and orders by the Nevada Supreme Court. What Vivian is doing is in knowing violation of the joint physical custody provision, the "teenage discretion" provision, the rulings and orders of this Court, and the opinion of the Nevada Supreme Court.

The continued existence of the "teenage discretion" provision, continues to provide the justification to Vivian to continue to callously manipulate Brooke and Rylee, to continue to wrongfully empower Brooke and Rylee in their relationship with their father, and to continue to provide motivation to Vivian to alienate Kirk from Brooke and Rylee. The "teenage discretion" provision is being used by Vivian to emotionally manipulate and harm Brooke and Rylee. The unwillingness of Vivian to abide by the terms, and the inability to enforce material terms, encourages the abuse. It is clearly in the best interest of Rylee for the Court to nullify and void this provision to stop Vivian's emotional damage of these children. This perceived incentive must be nullified. The "teenage discretion" provision and the protections contained in that provision have been so violated and disregarded that the provision has been eviscerated. We ought to care enough about Rylee to avoid a scenario in two years where Rylee has been wrongfully empowered to also willfully violate this Court's orders.

It is not in Rylee's best interest to spend the next four years being callously manipulated by Vivian by being wrongfully and unlawfully empowered in her relationship with

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her father, by Vivian severely alienating Kirk from Rylee based upon such fictitious issues as falsely asserting that Kirk does not care enough about his own children to pay their medical bills,[11] and by Vivian convincing Rylee that if she does anything with Kirk she is somehow betraying Vivian or somehow choosing Kirk over Vivian.

Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the "teenage discretion" provision, which has been eviscerated by Vivian's contemptuous actions.

II. LIST OF WITNESSES

1. Amanda Thorpe
2. Dr. Jamil Ali
3. Dr. John Paglini
4. Vivian Harrison
5. Kirk Harrison
6. Rebuttal witnesses as necessary.

III. PLAINTIFF'S LIST OF EVIDENTIARY HEARING EXHIBITS

1. Dr. Paglini Report, dated January 25, 2016 (will be provided at hearing);
2. Vivian Harrison email to Dr. Paglini, dated 2.27.16, regarding alleged schedule demands;
3. Brooke Harrison email to Dr. Paglini, dated 2.27.16, regarding alleged schedule demands;
4. Dr. Paglini letter to the Court, dated May 31, 2016;
5. Dr. Ali letter to the Court, dated June 29, 2016 (will be provided at hearing);
6. Email, dated April 1, 2016, from Carina Deras of Nevada State High School to Kirk Harrison that "due to your information not being in our records as a legal

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[11] "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. (Harper 2010), p. 8

parent/guardian I canot send you Emma's schedule via email";

7. Brooke Harrison's Enrollment Form for Nevada State High School completed by Vivian Harrison, dated August 10, 2016;

8. Brooke Harrison's class schedule;

9. Brook Harrison's dance schedule [set forth in Paragraph 22 of the Affidavit of Kirk Harrison filed in support of the Motion for Order to Show Cause (Filed 8.30.16), filed 10.19.16

10. Comparison of Agreed to and Court Ordered Custody Time Periods with Actual Custody Time Periods from August 12, 2015 through December 12, 2016, and;

11. Rebuttal and/or impeachment exhibits as necessary.

IV. CONCLUSION

What has occurred during the last three and one-half years has clearly been established. By the eve of Brooke's fourteenth birthday, Vivian wrongfully utilized the teenage discretion provision to empower Brooke to decide to live with Vivian full time and to leave Kirk, which by doing so would mean Brooke would be leaving her little sister Rylee for one-half the time. However, in clear and unequivocal terms, this Court said no.

Undaunted by the ruling of this Court, it has been clearly established that within just a few months of this Court's ruling and while Brooke was still only fourteen years old, Vivian convinced Brooke that when she was sixteen years old, Brooke would be empowered by the teenage discretion provision to live with Vivian full time. Vivian continued the evisceration of the teenage discretion provision, when Brooke was fifteen years old, by continuing to convince Brooke that she would be fully empowered when sixteen years old to live with Vivian full time.

However, wrongfully empowering Brooke under the teenage discretion provision was not enough, Vivian had to incite Brooke to the point that she hated Kirk so much she never wanted to see him again. Vivian had to convince Brooke that Kirk is a bad and mean person. Vivian had to incite Brooke so much that she would be willing to leave her little sister for one-half the time. Vivian created the false medical billing issue to accomplish this purpose.

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We know that by Vivian's own admissions during the hearing on September 22, 2015, that Vivian was debriefing Brooke after each meeting Brooke had with Dr. Ali. Therefore, Vivian knew that Brooke had been telling Dr. Ali for years that when Brooke was sixteen years old she was empowered under the teenage discretion provision to live with Vivian full-time. Vivian also knew that Brooke had told Dr. Ali that she hated Kirk, does not love Kirk, and does not want a relationship with Kirk.

Importantly, Vivian knew that what Brooke had been telling Dr. Ali for years was diametrically opposed to what Vivian and Brooke told Dr. Paglini and what Vivian had been representing to this Court for years. Therefore, once Vivian learned that Dr. Paglini recommended two hour weekly sessions with Dr. Ali, Vivian directly and through Brooke, used every disingenuous ploy possible to prevent those weekly sessions from taking place.

Unless new reunification efforts are soon ordered and are successful, Kirk will most likely not have any kind of relationship with Brooke for the rest of their lives.[12] More importantly, experts generally agree that the severe alienation of her father from Brooke will likely have devastating effects upon Brooke for the rest of her life.[13] We strongly believe that the optimal reunification therapy effort is one that does not focus on the past, is not critical of either parent, and does not blame either parent for the conflict. Such a reunification therapy effort reestablishes in the children their ability for empathy and compassion, and a desire to have a relationship with both parents.

Vivian has used every scheme and lie imaginable to alienate Kirk from Brooke and Rylee since the filing of the Motion for Temporary Custody in September of 2011.[14] Vivian was able

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[12] *See* Plaintiff's Reply in Support of Motion for Order to Show Caused, filed 9.18.15, p. 23, l. 1-5; Chaim Steinberger, *Father? What Father? Parental Alienation and its Effect on Children, Part Two* (NYSBA Family Law Review 2006) at 9.

[13] *See* Plaintiff's Reply in Support of Motion for Order to Show Caused, filed 9.18.15, p. 21-22; Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage,* 2nd Ed. *(*ABA 2nd 2013), p. 392-394; Demosthenes Lorandos et al, *Parental Alienation – The Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013), p. 18-20.

[14] *See* Plaintiff's Opposition to Defendant's Motion for Clarification, filed 11.2.15, p. 6-24.

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to use the false medical billing issue to push Brooke over the edge – Brooke now hated Kirk so much she never wanted to see him again and was willing to leave Rylee for one-half the time.

The teenage discretion provision has provided the incentive to Vivian to alienate Kirk from Brooke and Rylee. That is why Vivian has been wrongfully empowering Brooke under the teenage discretion provision since before Brooke's 14th birthday. The wrongful empowerment of Brooke, under this provision, has been well documented during the past approximately three and one-half years.

Rylee will be 14 years old on January 24, 2017. Under these circumstances, it is unimaginable that proactive measures will not be taken now to protect Rylee from being taken down the same path.

DATED this 17th day January, 2016.

KAINEN LAW GROUP, PLLC

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of January, 2017, I caused to be served the ***Plaintiff's Pre-Trial Memorandum*** 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):

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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 DIVISION

PREHEARING MEMORANDUM

DATE OF HEARING: January 18, 2017
TIME OF HEARING: 10:00 a.m.

I.

STATEMENT OF FACTS

From the time of the parties' divorce action in 2012, the parties' daughter Brooke has stated her continued desire to spend more time with Vivian, and less time with Kirk. *See*, Report of Dr. John Paglini, dated January 25, 2016. The resolution of the parties' prolonged child custody dispute in 2012 was designed to address that fact. The parties developed a system of parenting coordination, therapy, and teenage discretion to address either child's preference to spend more time with one parent or the other.

Ironically, the system was designed to avoid litigation, and instead address the behaviors of either party that may form the basis of a child's preference. *See* Stipulation and Order entered July 11, 2012 (hereinafter "Parenting Plan"). The underlying goal was to maintain a consistent schedule for the children, and address the alleged behaviors of the parties that had filled phonebook sized pleadings before the resolution.

Kirk fought the system he agreed to almost immediately. He first claimed that the parenting coordinator should have virtually no power of recommendation. After the Court's order setting forth the powers of the mediator (which were largely consistent with the limited role Kirk demanded), for approximately a year Kirk refused to name a proposed parenting coordinator as required by the Court's order. He then appealed the notion of parenting coordinators in general, and the specific order the Court granted. He lost that appeal when the Supreme Court, sitting *en banc*, rejected his arguments, and preserved the Nevada trial court's ability to appoint parenting coordinators. *See, Harrison v. Harrison,* 132 Nev. Adv.Op. 56 (July 28, 2016).

Kirk also attempted to undermine the therapy for the children Vivian deemed essential. Vivian's concern was that Kirk would continue to suggest, both directly and indirectly, that there was something wrong with Vivian, and that Vivian would harm the children. Vivian named a proposed therapist as required by the order, but Kirk again waited over a year to do so. When the therapist, Jamal Ali, was finally appointed, Vivian took the children to Dr. Ali consistent with the stipulated Parenting Plan.

The plan reads in relevant part:

> *Therapist for the Minor Children*: The parents agree that the minor children shall engage in therapeutic sessions with a mutually agreed-upon child psychologist or psychiatrist upon the request of either party. The psychologist or psychiatrist shall be chosen jointly by the parties. If the parties are unable to agree upon a psychiatrist or psychologist within 30 days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual. The determination of the need for the children to engage in and/or continue with 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 this**

case in the absence of an issue requiring mandatory reporting under NRS 432B.220. In the absence of such a mandatory reporting issue, the therapist shall be immune from process in this matter, and shall not be called to testify. The therapist's role would be entirely therapeutic and one to which the children would address any issues or problems for peaceful resolution. For any instance where the therapist believes that the behavior of either parent should be addressed, and the child provides consent to the therapist to address the issue, 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.

Upon information and belief, in violation of that order, Kirk requested, and upon Dr. Ali's acquiescence, attended a meeting with Dr. Ali outside of Vivian's presence or knowledge at some point after Brooke had gone to therapy with Dr. Ali. Moreover, Kirk has indicated that it his intent to call Dr. Ali as a witness in this matter, but has not identified the scope of his testimony.

Commencing in August, 2015, Kirk filed three separate motions to hold Vivian in contempt. Kirk reluctantly agreed to a child interview and assessment only after counsel for Vivian and the Court suggested it. The Court appointed Dr. Paglini as the person to conduct the interview and assessment by order dated October 6, 2015. Though Kirk denounced what he alleges was *Vivian*'s alienation of Brooke that led to Brooke's choice of schedule, in a session with Dr. Paglini, *Kirk* hypocritically (with knowing disregard of EDCR 5.03) told Brooke about claims he made in the divorce action regarding Vivian's psychological health and actions. He also, in a transparent attempt to cast Vivian in a poor light, lied to Brooke by alleging that Vivian had commenced the custody action. It was Kirk's attempts at alienation that were evidenced by Dr. Paglini's assessment; Dr. Paglini found with emphasis that Vivian had not alienated Brooke from Kirk.

Kirk later withdrew his actions for contempt against Vivian after Dr. Paglini's report finding that Vivian did not have a role in Brooke's decision to stop transferring over to Kirk's home as regularly as required by the parenting plan. Dr. Paglini warned that if Kirk continued to insist that it was Vivian's alienation that was causing his issues with Brooke (an allegation that he repeated or implied to Brooke),

he would harm his relationship with Brooke. Kirk has, by his present motion, insisted that Vivian's alienation is causing issues between he and Brooke.

At the January 15, 2016 hearing, the Court and Kirk adopted Dr. Paglini's recommendation that Kirk and Brooke attend family therapy.[1] As identified in its January 3, 2017 Order, the parties and Brooke have different explanations why Brooke did not attend more counseling sessions with Kirk prior to August 31, 2016.

In August, 2016 Kirk subsequently filed a motion to nullify Dr. Paglini's report, and a motion seeking to hold Vivian in contempt. His premise for the latter motion was ostensibly that Vivian, by action or omission, interfered with the Court's order of therapy. How or what she did was not clear in his motion, or even his subsequently filed affidavit. Vivian opposed both motions, and countermoved for sanctions and fees because: 1) the Motion to Nullify Dr. Paglini's January 26, 2016 report was false in its premise, and inadequately investigated by Kirk (there was no attempt by Kirk or his counsel to verify his false claim that Vivian's counsel had *ex parte* contact with Dr. Paglini in 2012); and, 2) his Motion for Order to Show Cause did not contain the required affidavit identifying Vivian's acts or omissions constituting contempt. At the hearing of November 7, 2016, the Court stated its intent to deny Kirk's Motion to Nullify, but to grant Kirk's request for an Order to Show Cause. On January 3, 2017, the Court issued its Order confirming its denial of the former, but also stating that it was denying Kirk's Motion Order to Show Cause based upon his failure to file a sufficient affidavit.[2]

Since the Court's order of May 25, 2016 directing that Kirk and Brooke attend family counseling with Dr. Ali, Kirk has repeatedly quoted statements he attributes to Brooke and Dr. Ali in the context of

[1] Vivian was not able to adopt or agree with the recommendations at the time of that hearing because she had not had a chance to review Dr. Paglini's report.

[2] After 5:00 p.m. on December 29, 2016, one business day before the filing of the Court's January 3, 2017 order, Kirk filed a motion requesting that: 1) the hearing be vacated; 2) that Brooke not testify; and, 3) that Dr. Paglini issue a new finding. That motion is set for hearing on January 31, 2017. Shortly after the filing of that Motion, the Court set the present motions and countermotions for expedited hearing on January 18, thus rendering that Motion moot.

family therapy. *See, e.g.*, 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 Sections 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015 filed August 30, 2016; filed on October 19, 2016.

In its January 3, 2017 Order, the Court limited the current hearing to "determining whether there is a basis to enter enforcement orders consistent with [its May 25, 2016 Order]." That finding is somewhat cryptic – the May 25 Order's only direction was, "The continuation of further contempt proceedings would be deleterious and counterproductive to Brooke's best interest. Thus, 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." May 25, 2016 Order, page 3, lines 22-27. Vivian's understanding is that the Court will assess by the evidence adduced at hearing whether the parties have promoted or hindered the family counseling by Dr. Ali, and whether any actions by the parties, or the state of that counseling, would justify an order directing Brooke to spend more time with Kirk than allotted under the current ordered timeshare.

II.

THE STATEMENTS BY BROOKE IN INDIVIDUAL THERAPY, AND HER STATEMENTS IN THE CONTEXT OF FAMILY THERAPY ARE PRIVILEGED

Vivian's is not concerned about the Court addressing the scheduling of sessions with Dr. Ali, but is concerned about Kirk's attempt to brand Brooke as psychologically damaged, or, as he did at the last hearing, attempt to prove she has lied to Dr. Paglini, and is the subject of "pathogenic parenting." Kirk's claims of "enforcement," are peppered with his contention that Brooke has been harmed by Vivian, and that she needs to be ordered to be away from Vivian so that Kirk and others can fix her. Vivian submits there is nothing wrong with Brooke, and her decisions about where she has spent or will spend her time were and are based upon her goals and focus on achievement.

Kirk has never been able to prove the Vivian has attempted to alienate the children, and Dr. Paglini so found in his report of January 26, 2016. Kirk first attempted to avoid those findings by filing a motion to strike them, but the Court denied Kirk's request. *See* Order filed January 3, 2017. Unable to strike the report, he now contends that it was based upon false information, and that Brooke lied to Dr. Paglini. Kirk has attempted to show that Brooke lied, and support his diagnosis of pathogenic parenting, through words he attributes to Brooke in confidential therapy sessions.

There is, and will be, no competent evidence supporting Kirk's contentions of alienation or pathogenic parenting at hearing, but history tells us that this will not stop Kirk from alleging psychological issues and attempting to insert them into these proceedings. The best example of this is that though the Court expressly found there was no competent evidence of Vivian suffering from a psychological disorder, that has not stopped Kirk from alleging that she does. Vivian is concerned that Kirk's habit of turning all hearings into an indictment of Vivian's, and now Brooke's, mental health will lead to him trying to present testimony through Brooke and Dr. Ali about the confidential therapy sessions first agreed by the partics for the children, and then ordered by the Court after Dr. Paglini's January 25, 2016 report.

NRS 49.209 states:

> A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between the patient and the patient's psychologist or any other person who is participating in the diagnosis or treatment under the direction of the psychologist, including a member of the patient's family.

Also, the ethical guidelines of the American Psychological Associations, at section 4.02, reads in relevant part:

> 4.02 Discussing the Limits of Confidentiality
>
> (a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the

> relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities.
>
> (b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

The language of NRS 49.209 does not distinguish parents and children, and specifically addresses "member of the patient's family." Counsel could find no other Nevada statute or case that addresses a child's privileges arising from therapy in a contested divorce action.

Other states addressing this issue have held that a child's therapist/patient privilege cannot be waived by a parent. *See, e.g., In re Berg,* 886 A.2d 980 (N.H 2005)(a copy of which is attached for the convenience of the Court and counsel). *See also, Attorney ad Litem v. Parents of D.K.*, 780 So. 2d 301, 307 (Fla. Dist. Ct. App. 2001) ("Where the parents are involved in litigation themselves over the best interests of the child, the parents may not either assert or waive the privilege on their child's behalf."); *Bond v. Bond*, 887 S.W.2d 558, 561 (Ky. Ct. App. 1994) ("custodial parent may not invoke the psychotherapist-patient privilege for a child in custody litigation"); *In re Adoption of Diane*, 400 Mass. 196, 508 N.E.2d 837, 840 (Mass. 1987) ("In a case such as this, where the parent and child may well have conflicting interests, and where the nature of the proceeding itself implies uncertainty concerning the parent's ability to further the child's best interests, it would be anomalous to allow the parent to exercise the privilege on the child's behalf."); *State ex rel. Wilfong v. Schaeperkoetter*, 933 S.W.2d 407, 409 (Mo. 1996) (where the privilege is claimed on behalf of the parent rather than the child, and the welfare and interest of the child would not be protected by the parent, the parent should not be permitted to assert or waive the privilege).

Under the law and the specific orders of this Court regarding therapy, the statements of the children in individual and family therapy are confidential and privileged. Kirk has violated that law, and the court's orders, repeatedly in his briefs and affidavits leading up to the hearing now expedited to

January 18, 2016. Vivian requests that the Court restrict and prohibit either party or third party witness from revealing the content of any individual counseling or family therapy involving either Brooke or Rylee. Further, consistent with her countermotions on file, Vivian requests that the Court sanction Kirk for his continued violation of law and the court's orders. *See,* EDCR 7.60.

III.

THE COURT SHOULD NOT PERMIT DR. ALI, AS A TREATING PSYCHOLOGIST, TO TESTIFY AS A FORENSIC PSYCHOLOGIST

The Court should restrict and preclude any testimony by Dr. Jamal Ali that amounts to any form of forensic assessment of the psychological condition or care of Brooke or Rylee. The American Psychological Association specifically prohibits a treating therapist from acting as a forensic therapist. *See* http://www.apa.org/ethics/code/. Here, Kirk has requested that Dr. Ali state opinions as the psychological condition of Brooke, and the affect of Brooke's psychological condition on the determination of her custodial care. That is the role of a forensic psychologist, requires the subject of the assessment have knowledge of non-confidentiality from the beginning of the assessment, requires a written report 60 days prior to the conduct of the evidentiary hearing or trial in which the expert is to testify, and requires the opportunity for the parties affected by the report to hire a rebuttal expert. None of that is present here, and permitting psychological assessment by the treating therapist, Dr. Ali, would result in a denial of Vivian's and Brooke's denial of due process.

IV.

IF THE COURT IS INCLINED TO ALLOW KIRK AND DR. ALI TO TESTIFY AS TO CONFIDENTIAL COMMUNICATIONS, IT SHOULD AFFORD BROOKE INDEPENDENT COUNSEL

Brooke will be 18 in five months, and has demonstrated maturity in her decisions and actions. She has indicated that her choice to spend more time at her mother's home was because of her nearly full school and extracurricular schedule. During the time that she has not followed the plan schedule, she has

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

KIRK ROSS HARRISON,

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

_____/

NO. 72880

CHILD CUSTODY FAST TRACK STATEMENT

APPENDIX – VOLUME 10

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ATTORNEYS FOR APPELLANT

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

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[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-11-443611-D
DEPT NO: Q

Date of Hearing: 09/28/16
Time of Hearing: 10:00 am

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 Points and Authorities submitted herewith, Plaintiff's affidavit in support thereof, and oral argument of counsel at the time of hearing.

DATED this 30th day of August, 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 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, PLC

By: _____
EDWARD L. KAINEN, ESQ.
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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 August 26, 2016, Brooke was supposed to be with Kirk a total of **192 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 **38 days** during that time period. Therefore, between August 12, 2015 and August 26, 2016, Kirk has lost a total of **154 days** of custodial time with Brooke. 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.

Section 5 of the Stipulation and Custody Order of this Court, dated July 11, 2012, ("Custody Order") 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.

This Court, in its Order, filed October 1, 2015, made it very clear to Vivian that it is her responsibility to facilitate Brooke's visitation with Kirk:

---

[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.

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> 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).

Vivian is in violation of both the Custody Order and this Court's Order, filed October 1, 2015.

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"

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hereto and hereby incorporated herein.[3]

Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the Court, on May 31, 2016,[4] 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

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[3] 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.

[4] Dr. Paglini's letter to the Court, dated May 31, 2016, is attached hereto as Exhibit "2" and by this reference incorporated herein.

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 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.[5] 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.[6]

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

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[5] 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."

[6] 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.

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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 Kirk.[7] 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.[8]

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.[9]

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

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[7] 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.

[8] 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.

[9] 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.

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. 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).

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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 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 August 26, 2016, Brooke was supposed to be with Kirk a total of **192 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 192 days

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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 **154 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 a two month period**, Brooke spent **less than one day** in Kirk's physical custody.[10] 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

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[10] 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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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 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

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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 exclude Kirk, Brooke's father, from Brooke's academic records.[11] 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

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[11] 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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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.

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

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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. 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

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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.[12]

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

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[12] *See* Missouri Statutes 452.400 providing 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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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 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.[13] 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

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[13] 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.

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personal agenda. Vivian does not have that ability or she would not do what she is doing. [14] 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

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[14] 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 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).

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 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.

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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 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.

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> 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 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."

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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 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

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four years of parental alienation by Vivian.[15] *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.

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

---

[15] 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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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.

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

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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 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,[16] to enroll the

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[16] "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." CHILDREN HELD HOSTAGE, p. 229.

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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, 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:

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

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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 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.

Kirk respectfully requests the following relief:

(1) Kirk respectfully urges the Court to once again issue an order for Vivian 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.

(2) Kirk has lost 154 days of custodial time with Brooke.[17] Those were 154 days when Brooke should have been with Rylee as well, but was not. If Kirk were to request and this Court were to order these 154 days be made up, then that would be another 154 days when Rylee is separated from Brooke. Therefore, in lieu of making up the 154 days, Kirk respectfully requests that he is given temporary exclusive physical custody of Brooke and Rylee for a period of 90 days. Under this request, Kirk will be recouping only 45 days of the 154 days of lost custodial time with Brooke. He will be obtaining an additional 45 days of custodial time with Rylee.

(3) Before and after this 90 day period and any extensions thereof, Vivian shall ensure the minor children's full compliance and strict adherence to Paragraph 5 of the Custody Order, filed July 11, 2012.

(4) During this 90 day temporary exclusive physical custody period, Kirk is authorized to enroll Brooke, Rylee and Kirk in a four day reunification

[17] As noted previously, since August 12, 2015, Kirk has lost **154** custody days with Brooke.

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program.[18]

(5) Vivian shall 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.[19] Vivian shall work with the reunification program in drafting this letter.

(6) Vivian shall be responsible for transporting Brooke and Rylee to the location of the reunification program and Vivian shall initially meet with the person at the reunification program in charge of the reunification effort.

(7) The 90 day temporary exclusive custody period shall begin the day after Vivian takes Brooke and Rylee to the reunification program.

(8) During the 90 day temporary exclusive physical custody period, Vivian shall have no contact whatsoever with Brooke and Rylee. This must include all 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.

(9) In the event Vivian violates the foregoing no contact provision or fails to support Kirk's relationship with Brooke and Rylee, the Court will extend the 90 day temporary exclusive custody period and the 90 day period of no-contact. Either the reunification program or Dr. Ali will make a recommendation to the Court regarding making such extension and the duration of such extension.

(10) Vivian shall have parent education services with the reunification firm.

(11) Vivian shall counsel with Dr. Ali to address any behaviors that have been unsupportive of the relationship between the children and Kirk, and to recognize that it is in Brooke's and Rylee's best interests for both parents to be in their lives.

(12) Vivian shall pay for all costs incurred for the reunification program and Vivian's therapy.[20]

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[18] Vivian has already agreed that Kirk and Brooke can jointly meet with a therapist. Hearing Transcript, 9.22.15, p. 72, l. 18-24; p. 73, l. 1-23.

[19] The Court has previously noted Vivian's responsibility for fostering the relationship between Kirk and the children. Hearing Transcript, 9.22.15, p. 13, l. 2-5.

[20] 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. *See also* Missouri Statutes 452.400 provides that when a parent

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(13) Vivian and Kirk shall jointly meet with Dr. Ali on a periodic basis after the reunification program therapy in an effort to avoid any relapse or regression on the part of Brooke and Rylee.

DATED this 30th day of August, 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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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."

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 30th day of August, 2016, by Kirk Harrison.

NOTARY PUBLIC in and for said
County and State

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

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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.

A.App. 2128

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"

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:

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

*◆EDWARD KAINEN ■ NEIL M. MULLINS
*ANDREW L. KYNASTON ■ RACHEAL H. MASTEL
The Kainen Law Building ■ 3303 Novat Street, Suite 200 Las Vegas, NV 89129 ■ T: 702.823.4900 F: 702.823.4488 ■ www.KainenLawGroup.com
*Nevada Board Certified Family Law Specialist ◆Fellow of the American Academy of Matrimonial Lawyers

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.

TRANSMISSION VERIFICATION REPORT

TIME : 12/14/2015 12:59
NAME : KAINEN LAW GROUP
FAX : 8234488
TEL : 7028234900
SER.# : CIN995789

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

A.App. 2139

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 Harrison 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.

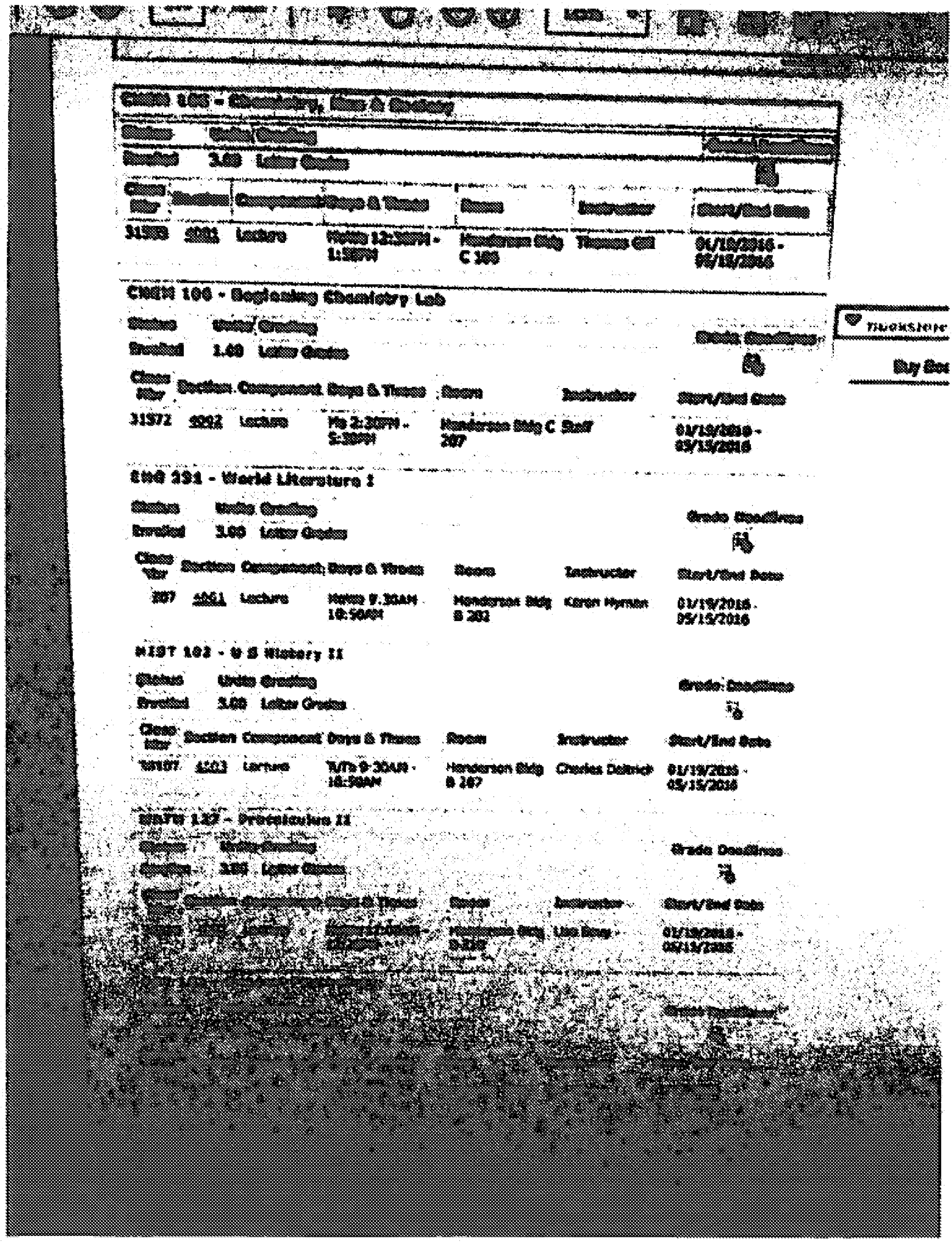
Social Security Number: ____		___ (write number here).
Student Email:		Emmabharrison@aol.com
Legal Name:		Emma Brooke Harrison
Student Cell and Home Phone:		7022757655 7022946000
Date of Birth, USA Entry, and Place:		Jun 26, 1999, Jun 26, 1999,
US United States Boulder City NV		
Gender:		Female
Ethnicity, 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: 7022750000		Vivian Lee Harrison
Guardian1 Mother Email:		vivianlharrison@aol.com
Guardian2 Father Full Name and Cell:		
Emergency Contact Full Name and Cell: 7022964118		Heather Atkinson
Previous School Name and ID#: 522410		Boulder City High School
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 100 - Beginning Chemistry Lab

Class Nbr	Section	Component	Days & Times	Room	Instructor	Start/End Date
31372	5202	Lecture	Mo 2:30PM - 5:30PM	Henderson Bldg C 207	Staff	01/19/2016 - 05/15/2016

ENG 231 - World Literature I

Class Nbr	Section	Component	Days & Times	Room	Instructor	Start/End Date
207	5051	Lecture	Mon W 9:30AM - 10:50AM	Henderson Bldg B 203	Karen Hyrnken	01/19/2016 - 05/15/2016

HIST 102 - U S History II

Class Nbr	Section	Component	Days & Times	Room	Instructor	Start/End Date
30107	5103	Lecture	TuTh 9:30AM - 10:50AM	Henderson Bldg B 207	Charles Dolnick	01/19/2016 - 05/15/2016

MATH 127 - Precalculus II

Class Nbr	Section	Component	Days & Times	Room	Instructor	Start/End Date
[illegible]	[illegible]	Lecture	[illegible]	Henderson Bldg B 203	Lisa Berg	01/19/2016 - 05/13/2016

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

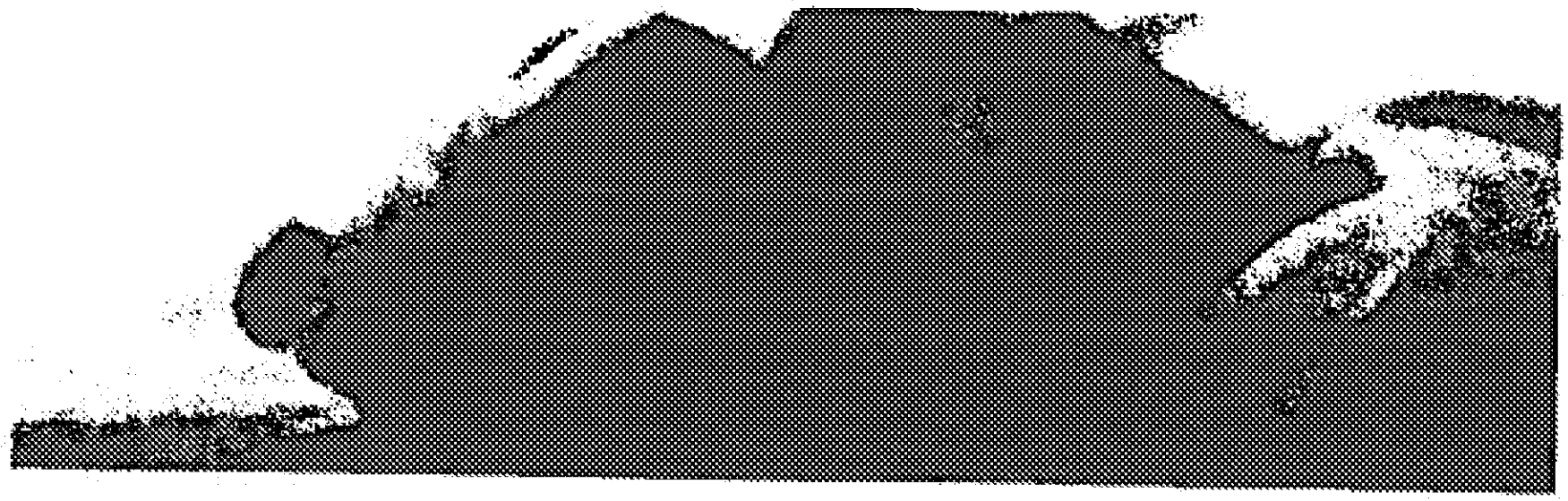
On Mar 27, 2016, at 7:49 PM, Kirk Harrison <kharrison@harrisonresolution.com> wrote:

> 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

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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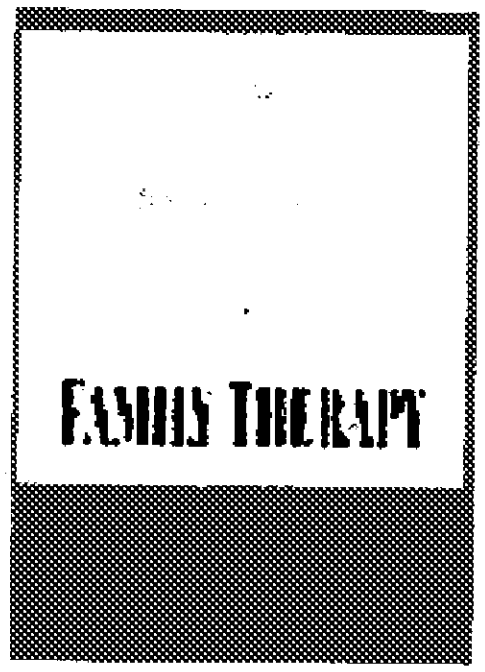
EXHIBIT “9”



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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

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.

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).

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.

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;

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

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

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,

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.)

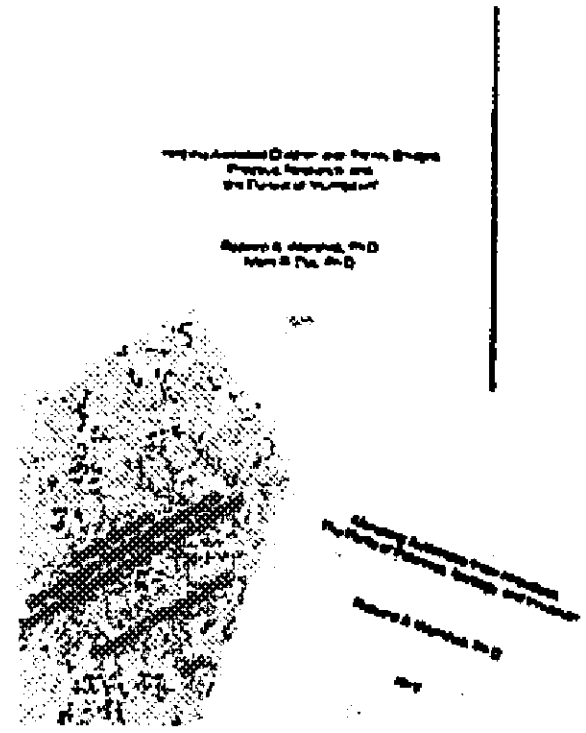
ALL SESSIONS ARE VIDEO RECORDED AND ARE SUBJECT TO HIPAA PROTECTION

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:



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.**

"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.

"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."

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRKPOSS 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 _____

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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

FAMILY DIVISION

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

DATE OF HEARING: September 28, 2016
TIME OF HEARING: 10:00 a.m.

COMES NOW Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), by and through her attorney Radford J. Smith, Esq. and Garima Varshney, Esq. of the firm of Radford J. Smith, Chartered, and submits the following points and authorities in Opposition to Plaintiff, KIRK ROSS HARRISON's ("Kirk") Motion for an Order to Show Cause, and requests that the Court deny Kirk's Motion in its entirety

This Opposition is based upon the points and authorities attached hereto, the evidence provided in the form of Exhibits to the Opposition, all pleadings and papers on file in this matter, and any oral argument adduced at the time of the hearing of this matter.

DATED this 23 day of September, 2016.

RADFORD J. SMITH, CHARTERED

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I.

THE COURT LACKS JURISDICTION TO HEAR KIRK'S MOTION FOR AN ORDER TO SHOW CAUSE

Kirk's Motion for an Order to Show Cause is defective on its face. Before a district court can assume jurisdiction to hold a person in contempt, an affidavit must be filed. NRS 22.030(2); *Awad v. Wright*, 106 Nev. 407, 794 P.2d 713 (1990)

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, or a statement of the facts by the masters or arbitrators.

Kirk's Motion for an Order to Show Cause, filed August 30, 2016, is supported Kirk's affidavit that claims that the facts contained in the motion are true. It does not incorporate facts in the affidavit, and even if it had, it would be difficult to discern what "facts," as opposed to the opinions and insults contained in the motion, constitute his stated grounds for contempt. For example, the statements that form the basis of his motion, "Vivian is doing everything she can to exclude Kirk from Brooke's life," (page 3) "Vivian is also successfully separating Brooke from her siblings," (page 4) "there is no

question that Vivian has severely alienated Kirk from Brooke;" (page 4) "Vivian has enmeshed her agenda to alienate Kirk from Brooke" (p.10) etc. are all opinions or insults not facts. "[W]hen the affidavit fails to allege all essential material facts, the deficiency cannot be cured by proof at a hearing. *Awad*, 106 Nev. at 410, 794 P.2d at 715, quoting *Jones v. Jones* 91 Idaho 578, 428 P.2d 497 (1967).

Kirk's affidavit does not allege all essential material facts that constitute his motion to hold Vivian in contempt. He has not identified specific behaviors that constitute the basis of his motion, and his affidavit does not state or incorporate facts at all. The Court should summarily deny Kirk's motion.

II.

THE REMEDIES KIRK SEEKS ARE NOT AVAILABLE AS A REMEDY IN AN ACTION FOR CONTEMPT

Kirk has sought an issuance of an order to show cause why Vivian should not be held in contempt. The penalties for contempt are delineated at NRS 22.100, and include fines and jail time. They do not include a significant change in the custodial schedule of minors.

III.

DR. PAGLINI'S REPORT DOES NOT SUPPORT KIRK'S CONTENTIONS IN HIS MOTION

There is little new in Kirk's latest round of Motions. When he met with Dr. Paglini as part of Dr. Paglini's analysis set forth in his Child Interview report dated January 25, 2016), he provided books, copies of pleadings, and other documents to convince Dr. Paglini that Vivian had alienated Brooke, and that was the reason Brooke desired a more limited schedule with Kirk. Dr. Paglini specifically found, with emphasis, that Kirk's allegations that Vivian had alienated Brooke was not supported by the interviews of the parties and Brooke, the joint sessions of the parents and Brooke together, or the extensive documentation he reviewed as part of the interview / analysis.

Dr. Paglini addressed and dismissed Kirk's general claim that Vivian had alienated Brooke, and also Kirk's specific claim that was contained in his then pending motion to hold Vivian in contempt, the

insurance issue. Dr. Paglini disputed Kirk's contention that Vivian had involved Brooke in the issue, and found that it was not the basis for Brooke's desire to spend more time at one home, rather than equal time at two homes.

In his report, Dr. Paglini recounted his interview with Brooke in 2012 in which even at that time Brooke has expressed a desire to spend more time with Vivian. Dr. Paglini perceived Brooke's present desires to be consistent with her wishes in 2012, and Dr. Paglini found that she had not now expressed her desires more forcefully without prompting by Vivian.

After his inteviews of the parties and Brooke in late 2105 and early 2016, Dr. Paglini, in sum, recognized Brooke's close relationship with Vivian arises from numerous emotional connection points. Also, her recognized Brooke's comfort in residing in her childhood residence in which Vivian still resides. He described Brooke's relationship with Kirk as different. He identified that Brooke and Kirk do not have many emotional connecting points, and that she is disengaged from him by his thinly veiled attempts to convince her that Vivian was putting thoughts in her head (essentially the claim underlying all of his recent motions).

Further, Dr. Paglini describes a joint session between Kirk and Brooke in which Kirk inappropriately (and in violation of EDCR 5.03) confronted Brooke with issues from the divorce action, and then apologized for doing so. What should be significantly troubling from Dr. Paglini's recitation of Kirk's statements is that Kirk contended to Brooke that Vivian filed the divorce action. There is no more plain demonstration of misrepresentation designed to alienate Brooke from Vivian.

Most relevant to Kirk's present motion, Dr. Paglini warned that if Kirk persisted in his line of thinking that Brooke's desire grew out of severe parental alienation, he would likely damage her relationship with her. A fair reading of Dr. Paglini's report is that Kirk's hatred of Vivian, and his disparagement of her, is a significant part of Brooke's choice to spend less time with him.

IV.

KIRK HAS NOT DEMONSTRATED ADEQUATE CAUSE FOR HEARING TO SUBSTANTIALLY MODIFY THE CUSTODIAL SCHEDULE

Most of the behavior Kirk has identified in his motion is Brooke's. He has not identified any specific behavior that suggests Vivian has caused Brooke to not comply with the Court's order. Contrary to Kirk's contention, Dr. Paglini was crystal clear in his report that this was not a case involving alienation.

The matter of what action Vivian should be required to take to be in compliance with the Court's custody order with a now 17 year, 3 month old minor, is a subject of Vivian's current appeal. To Vivian's knowledge, Brooke spends alternating weekends and one night per week at Kirk's home. She recently spent three weeks at his home. Kirk has not identified any behaviors or statements by Rylee that would suggest she is alienated from Kirk.

The Court has previously stated that the mere fact that Brooke is not complying with the custodial schedule is a contempt. It is difficult to understand how Vivian has shown "disobedience or resistance" to the court's order. *See,* NRS 22.010(3) defining acts or omissions constituting contempt. Vivian has done nothing to discourage Brooke from going with Kirk, nor has she prevented her from going with or to Kirk's home, and Dr. Paglini so found. Vivian submits that she cannot be held in contempt for omissions, because there is no reasonable definition of the acts that she must take to cause Brooke to spend more time with Kirk. The concept of an "omission" in this context implies there is known behavior that Vivian must engage in to facilitate Kirk's contact with Brooke. For an accomplished 17 year old there is not clear remedy. She could call the Police, but would that be in Brooke's best interest. Should she take away privileges? She has done that in the past to no effect.

Further, if there are behaviors to cause Brooke's compliance, why hasn't Kirk engaged in that behavior? Doesn't Kirk have equal responsibility to ensure that the schedule is followed? Kirk's idea to improve his relationship with Brooke is to continue to disparage Vivian to her. It is not working.

Contrary to Kirk's statement, to Vivian's knowledge Brooke suggested that she and Kirk meet with Dr. Ali on alternate Thursdays, but it was Dr. Ali's schedule that prevented that.

V.

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

The Court correctly analyzed Kirk's motion and found that the child custody issues raised by way of Plaintiff's Motion were not collateral to the issues raised by Vivian's appeal of the custodial issues, including custody of Brooke and the right to an evidentiary hearing, that are currently before the Supreme Court. While Kirk has couched his motion as an "emergency," the court would have to find that there is adequate cause for hearing on the issue of custody to significantly change the custodial timeshare as Kirk requests. A court decision regarding visitation is a "custody determination." NRS 125A.045. Significant changes in visitation require the taking of evidence and argument at hearing *Wallace v. Wallace*, 112 Nev. 1015, 992 P.2d 541 (1996)(Grant of seven weeks of visitation for relocating father in Atlanta contrary to mother's objection required "accepting evidence and hearing argument on the ramifications of such visitation.").

Even if the Court were to find a basis for jurisdiction, the report of Dr. Paglini demonstrates that this is not an emergency, but instead a natural byproduct of Kirk's continual disparagement of Vivian to Brooke. In order to seek a revision of the custodial schedule as dramatic as keeping these, two, happy, high performing, exceptional students with no behavioral problems whatsoever away from their mother for 90 days requires an evidentiary hearing, Kirk has not demonstrated "adequate cause" for hearing on

a change of custody or a significant change in the custodial schedule. *Rooney v. Rooney*, 109 Nev 540, 853 P.2d 123 (1993). The Court should deny Kirk's motions for lack of jurisdiction, or lack of adequate cause.

VI.

SANCTIONS

EDCR 7.60 permits this court to impose sanctions if a motion is frivolous, or unnecessarily multiplies the proceedings in at case. Here, the Kirk's motion is frivolous and unnecessarily multiplies the proceedings because it lacks the jurisdictional requirements of a motion for an order to show cause, and seeks remedies not available under law.

VII.

CONCLUSION

Based on the foregoing, the Court should deny Kirk's Motion in its entirety and sanction him pursuant to EDCR 7.60.

Dated this 23 day of September, 2016.

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

UNSWORN DECLARATION OF VIVIAN HARRISON

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

I, VIVIAN HARRISON., declares and says as follows:

1. I am the Defendant in the above-entitled matter.

2. 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.

3. I have personal knowledge of the facts contained herein, and I am competent to testify thereto. I have reviewed the foregoing Plaintiff's Opposition to Defendant's Motion for Order to Show Cause, 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.

TO BE SUPPLEMENTED
VIVIAN HARRISON

DATE: _____

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 OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE on this 23rd day of September, 2016, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

Edward Kainen, Esq.
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129

Thomas J. Standish, Esq.
STANDISH NAIMI LAW GROUP
1635 Village Center Circle, #180
Las Vegas, Nevada 89134

Attorneys for Plaintiff

An Employee of Radford J. Smith, Chartered

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) MSV - Paid

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☒ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

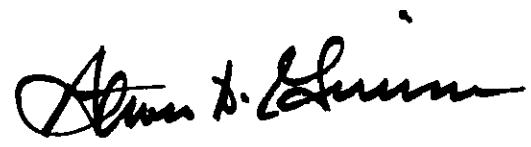
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☐**$0** ☐**$25** ☐**$57** ☐**$82** ☐**$129** ☐**$154**

Party filing Motion/Opposition: Defendant Date 9/23/14

Signature of Party or Preparer K. Meeks

Electronically Filed
09/28/2016 03:55:00 PM



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: 11/01/2016
Time of Hearing: 10:00am

ORAL ARGUMENT REQUESTED:
YES XX NO ___

PLAINTIFF'S MOTION FOR AN ORDER TO NULLIFY AND VOID EXPERT REPORT

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 moves this Court to nullify and void the January 25, 2016 expert report on the basis that the independence of the expert had been compromised at the time the report was prepared.

. . .

. . .

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, the affidavits in support thereof, and oral argument of counsel at the time of hearing.

DATED this 28th day of September, 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 01 day of November, 2016, at the hour of 10:00 A.m., or as soon thereafter as counsel may be heard.

DATED this 28th day of September, 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. STATEMENT OF FACTS

A. Dr. Paglini was Appointed by the Court in 2012 as an Independent Expert for the Court

The Court will recall that Dr. Paglini's appointment in 2012 as the Court's independent expert was in response to Kirk's request for the appointment of an independent expert on February 1, 2012, which was opposed by Vivian.

B. Kirk Concluded It Was Necessary to Settle Custody Prior to Dr. Paglini Issuing His Report to the Court

Importantly, only Kirk agreed to be bound by Dr. Paglini's findings and recommendations to the Court. Vivian did not. *See* Plaintiff's Reply Brief re Attorney's Fees, filed 10.21.13, p. 23. Kirk realized that if Dr. Paglini found that Vivian had a narcissistic personality disorder or another malady, Vivian's attorneys would convince Vivian she had to be vindicated, and he believed that Vivian's attorneys were determined to put their family through extended discovery and an emotional trial. When Dr. Roitman warned Kirk that Brooke and Rylee were at risk from the continuation of the already protracted divorce proceeding, Kirk concluded it would be better to settle custody prior to Dr. Paglini's findings when there would be perceived risk by Vivian, which she would want to avoid. *See* Exhibits to Plaintiff's Opposition to Motion for Attorney's Fees, filed 5.28.13, Exh. 1, ¶20; Plaintiff's Reply Brief re Attorney's Fees, filed 10.21.13, p. 23-24

Kirk believed that if he waited for Dr. Paglini's findings, one of three outcomes were most likely. *See* Plaintiff's Reply Brief re Attorney's Fees, filed 10.21.13, p. 24. First, if Dr. Paglini found Vivian had narcissistic personality disorder (NPD), with the encouragement of her attorneys, as just noted, Vivian would feel she needed to be vindicated in a full blown trial, preceded by the depositions of all of parties' adult children and all of the legion of experts retained in the case. *Id.* Second, if Dr. Paglini found there was another cause to Vivian's years of aberrant and delusional behavior, Vivian would need to be similarly vindicated. *Id.* And third, if Dr. Paglini ignored the years of aberrant and delusional behavior by Vivian and found

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Vivian did not have NPD or any other malady, it was becoming obvious to Kirk and his counsel that it would also be impossible to settle custody with joint physical custody without extensive discovery and a very expensive and emotionally horrific trial. *See* Exhibits to Plaintiff's Opposition to Motion for Attorney's Fees, filed 5.28.13, Exh. 1, ¶23-24; Plaintiff's Reply Brief re Attorney's Fees, filed 10.21.13, p. 24.

Regardless of Dr. Paglini's findings, there was not a likely scenario that was going to be good for Brooke and Rylee or any other member of the family, including Vivian. The depositions of the adult children and a full blown trial seemed inevitable. *See* Plaintiff's Reply Brief re Attorney's Fees, filed 10.21.13, p. 24.

Therefore, the only viable option Kirk had to expeditiously settle custody for the best interests of his children was to follow the advice of Dr. Roitman and settle custody prior to Dr. Paglini making his determination. *Id.*

At no time, including through the present, has Dr. Paglini ever told Kirk what he was likely going to recommend to the Court. At no time has Dr. Paglini ever discussed with Kirk "his findings and report." At no time during the custody settlement negotiations on July 10, 2012, was Kirk ever informed that Dr. Paglini had met with anyone and discussed his findings and report – there was no report. Kirk Aff. ¶9-10.[1]

C. The Truthful Sequence of Events

The first day of Kirk's deposition was on May 2, 2012.[2]

On Tuesday, July 3, 2012, at 3:59 p.m., Kirk received the following text from Vivian: "I need to take girls to see Paglini at 2 on Fri. If ur going out of town we need to reschedule. **Dr P needs to see girls** once with me and once with u sometime before the 18th court date." Kirk Aff. ¶2 (Emphasis added). The "Fri" referenced in the text was Friday, July 6, 2012.

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[1] The affidavits of Tom Standish, Ed Kainen and Kirk are attached hereto, respectively, as **Exhibits 1, 2 & 3**, and by this reference are incorporated herein.

[2] *See* Standish billing entry of that date, Exh. 18 to Exhibits to Plaintiff's Opposition and Countermotion re attorney's fees, filed May 28, 2013 [PLTF10945]

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Then on July 5, 2012, at 1:04 p.m., Kirk received another text from Vivian, "Dr. Pagliani has appt scheduled to meet with girls & I 2morrow. R u planning 2be in town? Can I pick them up at one?" Kirk sent a text in response, "I have a mediation tomorrow. I was assuming you would get them at 10:00 a.m. If you prefer, they can stay with Joseph until 1 p.m." Vivian confirmed she would pick them up at 1:00 p.m. on Friday in her text, "I will pick them up at 1 and return to ur house after appt." Kirk Aff. ¶3.

At the time Kirk received Vivian's first text on July 3, 2012, he had not met with Dr. Paglini for quite some time, perhaps several weeks. Kirk Aff. ¶8. Kirk had a mediation on Friday, July 6, 2012 and spent time preparing for the mediation on July 4 & 5, 2012. Kirk spent July 7 &8, 2012, loading a U-Haul trailer with Tahnee's furniture and boxes, driving to California with Tahnee, Brooke and Rylee, and moving Tahnee into her new apartment. Kirk spent July 9, 2012 at Universal Studios with Tahnee, Brooke and Rylee, and then driving home with Brooke and Rylee. Kirk Aff. ¶4-6. The parties and attorneys spent July 10, 2012 negotiating and settling the custody issues.[3] Therefore, Kirk never took Brooke and Rylee to meet with Dr. Paglini.[4] At no time did Kirk ever meet with Dr. Paglini to discuss his findings and report. Kirk Aff. ¶6-7, 9.

On July 11, 2012, Tom Standish's billing entry provides, "Telephone call **from Dr. Paglini** confirming he will stop preparation of his evaluation report; Telephone call **from** opposing counsel **Smith** regarding his client's insistence that Dr. Paglini finish his evaluation report for advisory purposes " [5] Standish Aff. ¶6. Based upon the foregoing entries, it is a fair

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[3] Standish billing entry of that date and Kainen billing entry of that date, Exh. 18 and Exh. 19, respectively, to Exhibits to Plaintiff's Opposition and Countermotion re attorney's fees, filed May 28, 2013 [PLTF10959 & PLTF10865]

[4] After Vivian's text of July 3, 2012, the first time Kirk met with Dr. Paglini was after he was retained a second time by the Court as a Court appointed independent expert in connection with the Court's effort to reunify Brooke and Kirk.

[5] Standish billing entry of that date, Exh. 18 to Exhibits to Plaintiff's Opposition and Countermotion re attorney's fees, filed May 28, 2013 [PLTF10959] A true and correct copy of Mr. Standish's redacted invoice from July 2, 2012 through July 13, 2012 is attached hereto as **Exhibit "4."**

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conclusion that Mr. Smith and Dr. Paglini had spoken before Dr. Paglini telephoned Tom Standish and before Mr. Smith telephoned Tom Standish. On July 12, 2012, there is another entry, "Conference call with opposing counsel **Smith** and Dr. Paglini to discuss situation." Exh. 18[PLTF10959]; Standish Aff. ¶7 (emphasis added).

D. Request for Completion of Report During the Hearing on July 18, 2012, After Custody was Resolved

The hearing on July 18, 2012 was set for a Case Management Conference. Despite custody having been settled and an order having been entered by the Court on July 11, 2012, during that hearing Mr. Smith requested that Dr. Paglini finish his report under the guise it would be helpful to the Parenting Coordinator and the therapist. Hearing Transcript, 7.18.12, p. 6, l. 22-24; p. 7, l. 1-8.[6] It was very evident to Mr. Standish, Mr. Kainen and Kirk that Mr. Smith was privy to information from the Court appointed independent expert, to which none of them were privy.[7] Standish Aff. ¶9; Kainen Aff. ¶6; Kirk Aff. ¶11. It was obvious that after custody had been resolved, there had been an inappropriate communication by the other side (most likely by Mr. Smith) with Dr. Paglini. Accordingly, Mr. Standish and Mr. Kainen strongly opposed the request that Dr. Paglini finish his report. This inappropriate communication, by only one side, provided "inside information" to the other side, which information was unknown to Kirk or his attorneys. Such "inside information" was then inappropriately used to the disadvantage of Kirk and the Court. This inappropriate communication and the ex parte acquisition of said information, compromised the ability of the Court to obtain truly independent information.

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[6] A true and correct copy of the Hearing Transcript of the July 18, 2012 hearing is attached hereto as **Exhibit "5."**

[7] It is not suggested that Dr. Paglini acted unethically, rather it is believed that he was induced to share his thoughts, *since the case was already settled and it would be of no apparent consequence.* The subsequent inappropriate use of that knowledge by the other side has created the unfortunate situation discussed herein.

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In addition, during the hearing on July 18, 2012, Mr. Kainen represented to the Court that the completion of Dr. Paglini's report would not be possible without additional input from Kirk. Findings, Conclusions, and Orders, filed 2.10.14, p. 18, Footnote 18. Mr. Kainen specifically referenced a 20 to 25 page single-spaced memorandum, which had been prepared to provide to Dr. Paglini. Dr. Paglini was aware of the existence of this memorandum. This memorandum was withheld pending the custody negotiations. Hearing Transcript, 7.18.12, p. 11, l. 23-24; p. 12, l. 1-24, p. 13, l. 1-14; Kainen Aff. ¶3; Kirk Aff. ¶8.

On July 18, 2012, the court ordered: "Given the arguments presented today and given the fact that custody issues have been resolved, the court no longer needs any input from Dr. Paglini as he was initially appointed to assist the Court. Dr. Paglini is NOT to issue a report and his services are considered complete at this time." Court Minutes, July 18, 2016.

As of July 18, 2012, it appeared that since custody had been resolved, it did not make sense to the Court that Dr. Paglini should complete his report. However, the Court's perspective appeared to later dramatically change. In footnote 19 of the Court's Findings, Conclusions and Orders, filed February 10, 2014, the Court was highly critical of Kirk's opposition to Mr. Smith's request that Dr. Paglini finish his report.

It is respectfully submitted that the Court's perspective changed because of a later material misrepresentation of fact by Vivian to the Court. In Defendant's Motion for Attorney's Fees and Sanctions, filed April 3, 2013, Vivian made the following material misrepresentation to the Court, "Just a few days **before** the parties settled the case (on the second day of Kirk's deposition), **Dr. Paglini met with each party to discuss his findings and report.**"[8] Defendant's Motion at 14. (Emphasis added). That statement, while untrue, has had significant consequences.

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[8] It's a fair conclusion that whoever made the ill-conceived decision to make this misrepresentation to the Court, was unaware of the contemporaneous texts from Vivian to Kirk on July 3, 2012 and July 5, 2012 memorializing the fact that Dr. Paglini wanted to meet with Brooke and Rylee twice, unaware that Dr. Paglini never met with Kirk during this time period, and unaware that Dr. Paglini knew there was a 25 page memorandum, which was being withheld pending settlement negotiations.

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III. ARGUMENT

A. Vivian's Representation to the Court that, "Just a few days before the parties settled the case (on the second day of Kirk's deposition), Dr. Paglini met with each party to discuss his findings and report" is Absolutely False

The material representation that "Just a few days before the parties settled the case (on the second day of Kirk's deposition) Dr. Paglini met with each party to discuss his findings and report" is absolutely false. Kirk never met with Dr. Paglini during this time period. Dr. Paglini has never met with Kirk at any time "to discuss his findings and report." Kirk Aff. ¶9. The purpose of Dr. Paglini's meeting on Friday, July 6, 2012, was to meet with Brooke and Rylee, not to "discuss his findings and report" with Vivian. If that was his purpose, there was no need for him to meet with Brooke and Rylee on that day.

Although this Court and Kirk will likely never know specifically what was discussed between Mr. Smith and Dr. Paglini to, it is evident that such communication took place after the negotiation and settlement of the custody issues on July 10, 2016. The reasons for this are obvious.

First, at no time during the negotiations of the custody issues on July 10, 2012 did Mr. Smith, Mr. Silverman, or Vivian ever inform Tom Standish , Ed Kainen or Kirk that Dr. Paglini had indicated to Vivian or her counsel that his report would have been likely favorable to Vivian or that Dr. Paglini had discussed "his findings and report" with Vivian, Mr. Smith or Mr. Silverman. Standish Aff. 5; Kainen Aff. ¶5; Kirk Aff. ¶9-10. If Vivian and her counsel were privy to such information before those negotiations, that information would undoubtedly have been disclosed or used in an effort to obtain terms more favorable to Vivian.

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Second, in Vivian's texts to Kirk on July 3, 2012 and July 5, 2012, Vivian indicated that Dr. Paglini wanted to meet with Brooke and Rylee -- once with Vivian and once with Kirk. If Dr. Paglini was so far along in the preparation of his report, that the purpose of wanting to meet separately with Vivian and Kirk was to "discuss his findings and report," then he would not have requested that he meet twice with Brooke and Rylee . Dr. Paglini was also aware of the existence of an approximately 25 page memorandum, which would otherwise have been provided to him but was being withheld during the pending settlement negotiations.

Third, Dr. Paglini was chosen by the Court as an independent expert for the Court. He was retained to prepare an independent report for the Court. Under such circumstances, it would be highly inappropriate for Mr. Smith to "discuss the findings and report" with Dr. Paglini, before the report was completed and provided to the Court. It would be equally inappropriate for Mr. Smith to later use that inside information under patently false pretenses.

Fourth, it does not make sense that Dr. Paglini would meet with Brooke and Rylee with Vivian on July 6, 2012 and then meet Vivian again alone between July 6, 2012 and July 10, 2012, as July 7, 2012 and July 8, 2012, were a Saturday and a Sunday.

Fifth, knowing that Dr. Paglini knew the custody issues had been settled as of July 11, 2016, it does not make any sense whatsoever that he would meet with Vivian after that time.

All of this leads to the conclusion that sometime between when custody was resolved on July 10, 2012, and the date of the hearing on July 18, 2012, there was ex parte communication between Mr. Smith and Dr. Paglini, who was supposed to be the Court's independent expert. As evidenced by Tom Standish's billing entry on July 11, 2012, Dr. Paglini knew custody was resolved and he was not to complete his report. The communication with Mr. Smith likely took place prior to Dr. Paglini's telephone call to Tom Standish. However, that fact does not justify Mr. Smith obtaining information about Dr. Paglini's "findings and report".

The far greater concern, however, is the fact that once Vivian's counsel possessed, what he knew was ill-gotten fruit, he then tried to capitalize on having that ill-gotten fruit by making what, under the circumstances, was a highly inappropriate request on July 18, 2016.

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Most importantly, the Court will note that at no time during Mr. Smith's requests to the Court, during the hearing on July 18, 2012, that the Court order Dr. Paglini to finish his report, did Mr. Smith ever disclose to the Court that Dr. Paglini had already discussed "his findings and report" with Mr. Smith or that Mr. Smith had acquired inside information as to the "findings and report".[9] That is significant. Obviously, such a disclosure could not be made as the ex parte communication with the "independent" expert was inappropriate and, more importantly, indisputably, would have revealed that "independent" expert had been compromised by opposing counsel and could no longer be utilized as an independent expert.

Moreover, during the hearing on July 18, 2012, Mr. Smith also could not represent that Dr. Paglini had met with Vivian and Kirk and discussed "his findings and report," as such a false representation supposedly only occurring a week before would have readily been known to be false and vehemently denied by Kirk at that time.

B. The Representations Made to the Court During the July 18, 2012 Hearing Regarding Mr. Smith's Communications with Dr. Paglini and Mr. Silverman's Communications with Dr. Paglini Are Inconsistent with Contemporaneous Billing Entries

Tom Standish's billing entries on Wednesday, July 11, 2012, establish that he received a telephone call from Dr. Paglini and then he later received a telephone call from Mr. Smith advising that he wanted Dr. Paglini to complete his report. *See* Exhibit 4 (Standish redacted invoice). Mr. Smith's prior communication with Dr. Paglini, undoubtedly, prompted Dr. Paglini's call to Mr. Standish. Similarly, Mr. Smith's prior communication with Dr. Paglini, also, undoubtedly, prompted Mr. Smith's telephone call to Mr. Standish. The next day, Mr. Smith and Mr. Standish have a conference call with Dr. Paglini "to discuss situation." The "situation" was Mr. Smith's desire to have Dr. Paglini finish his report. Standish Aff. ¶7; Exhibit 4.

. . .

[9] In fairness to Dr. Paglini, we only have Vivian's representation to the Court describing what information was conveyed – Dr. Paglini discussed "his findings and report."

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However, during the hearing on July 18, 2012, Mr. Smith and Mr. Silverman attempt to lead the Court to believe that Mr. Silverman – not Mr. Smith – was communicating with Dr. Paglini. Mr. Smith stated:

> So from our – our point of view – oh, it – and Gary reminds that in a conversation **I guess I wasn't involved with** but he – **they** had with Dr. Paglini, Dr. Paglini indicated he was about 85% done, so a substantial –

Hearing Transcript, 7.18.12, p. 8, l. 4-6 (emphasis added).

Mr. Silverman then corroborates the representation by stating:

> With all – he didn't say – with all his efforts. He's 85 – he is 15 percent away from completion.

Hearing Transcript, 7.18.12, p. 8, l. 14-16.

There are a couple of problems with these representations. First, with respect to the "they had" conversation with Dr. Paglini, the "they" were Mr. Standish and Mr. Smith on July 12, 2012. Second, Mr. Silverman's billing entries, although somewhat redacted on some days, reveal no communications between Dr. Paglini and Mr. Silverman between July 8, 2012 and the date of the hearing, on July 18, 2012. Most notably, on July 11, 2012, when Mr. Standish first gets a telephone call from Dr. Paglini and then gets a telephone call from Mr. Smith, the only entry Mr. Silverman has for the day is, "Letter to Kainen re: ranch call. 0.25"[10] Similarly, on July 12, 2012, when Mr. Standish and Mr. Smith had the conference call with Dr. Paglini "to discuss situation," there is no reference in Mr. Silverman's billings to any communication with Dr. Paglini. It was Mr. Smith who was communicating with Dr. Paglini – not Mr. Silverman. A review of Mr. Silverman's invoices during this time period, reveal his lack of involvement with any communications with Dr. Paglini. *See* Exhibit 6 (Silverman redacted invoice).

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[10] Silverman billing entry on July 11, 2012, Exh. 15 to Exhibits to Plaintiff's Opposition and Countermotion re attorney's fees, filed May 28, 2013. A true and correct copy of Mr. Silverman's redacted invoice from July 8, 2012 through July 27, 2012 is attached hereto as **Exhibit "6."**

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C. It Was Highly Inappropriate for Vivian's Counsel to discuss with Dr. Paglini "his findings and report" and doing so Compromised Dr. Paglini's Position as the Court's Independent Expert

The Court's Minutes, dated February 24, 2012 provided, "Dr. Paglini may communicate with counsel should he deem it necessary." Such a provision clearly contemplates that Dr. Paglini might determine in the preparation of his report that he needs information or documentation and this provides an expeditious way for Dr. Paglini to obtain that information. It clearly did not contemplate that only one party's attorney would have an ex parte communication with Dr. Paglini regarding what Dr. Paglini's findings and recommendations might have been had he finished his report. It clearly did not contemplate that only one party's attorney would be able to discuss the "findings and report" with Dr. Paglini after custody was settled. Further, such a provision does not thereafter allow for the inappropriate use of such information by opposing counsel.

Mr. Smith indisputably compromised Dr. Paglini's impartiality as a court appointed independent expert. As an officer of the court, Mr. Smith absolutely knew such communication was forbidden. It is respectfully suggested that is why the ex parte communication was ultimately falsely described as being between Dr. Paglini and "the parties" – Vivian and Kirk.

In *G.K. Las Vegas Limited Partnership v. Simon Property Group, Inc.*, 671 F. Supp.2d 1203 (D. Nev. 2009), the court ordered an independent expert to conduct a forensic examination. The issue before the court was whether one side's attorneys' ex parte communications with the court appointed independent expert compromised the ability of the independent expert to function as a truly independent expert. The court concluded that the ex parte communication by one party's attorneys with the court appointed independent expert was improper and the court could no longer rely upon on an independent analysis by the "independent expert." 671 F. Supp.2d at 1207. The court ultimately found, "That expert has now been compromised." F. Supp.2d at 1216.

There is no question that under the circumstances here, that Mr. Smith's actions compromised Dr. Paglini. One party's attorney discussing the "findings and report" with the Court appointed expert, after custody was resolved but before he had completed his

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investigation, (i.e., meeting with Brooke and Rylee with Kirk and reviewing the 25 page memorandum of which he was aware of the existence), undeniably compromised the expert and removed any ability for the expert to thereafter be "independent".

D. As a Consequence of Vivian's Counsel Ex Parte Communication with Dr. Paglini's After Custody was Resolved, Kirk Opposed the Retention of Dr. Paglini As An Independent Expert for His Current Assignment

It was because Dr. Paglini had been compromised and tainted during his prior retention as an independent expert for the Court, that Kirk opposed his retention a second time as an "independent" expert for the Court. Hearing Transcript, 9.22.15, p. 39, l. 17-22; p. 40, l. 12-15.

The communication between Mr. Smith and Dr. Paglini after custody was resolved was inappropriate. More importantly, under the circumstances, it is clear evidence of the expert being tainted by counsel and no longer being able to serve as an independent expert for the Court. For one party's counsel to discuss the findings and report with the Court's independent expert, without opposing counsel being a party to those conversations, undeniably removes the ability of that expert to be the Court's independent expert.

Under such circumstances, it was highly inappropriate for Mr. Smith to urge the Court to appoint Dr. Paglini as a Court appointed **independent** expert a second time. Hearing Transcript 9.22.15, p. 50, l. 16-22. Mr. Smith was well aware of the taint and was again trying to obtain an unfair advantage from his ill-gotten fruit.

It was for this reason that Kirk opposed the appointment of Dr. Paglini as an independent expert for the Court regarding the Court's efforts to reunify Brooke with Kirk. During the hearing on September 22, 2015, Kirk made his concern very clear: "Well, I'm not comfortable with Dr. Paglini because of what happened last time. He never said anything to me about, you know, what he wanted to do. He obviously talked to them. And I don't – I'm not comfortable in a situation where [he] had talked to them and apparently given them some preliminary - -" *See* 9.22.15 transcript, p. 39. Ed Kainen echoed Kirk's concern, "Now, I happen to like Dr. Paglini, but I've never been in a situation where the other side had real insight into exactly what [w]as going to be in a report and we had nothing. So that's my concern." *See* 9.22.15 transcript, p. 49.

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Respectfully, Dr. Paglini's thought process on these issues was apparent in his report, dated January 25, 2016, which was something Vivian and her attorneys knew in advance. Even the Court was surprised at how far Dr. Paglini went. In this Court's Findings and Orders Re: January 26, 2016 Hearing, filed May 25, 2016, this Court indeed specifically noted: "During the course of these proceedings, Dr. John Paglini, Psy.D. 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."

The Court's assignment to Dr. Paglini was more limited than Dr. Paglini's report would suggest. It is respectfully suggested the reason Dr. Paglini went out of his way to do what he did in his report is because of not only his position in favor of the opposition (only known to Vivian's attorneys), but because, apparently, his preliminary finding (which was only disclosed to Vivian's attorney) was that he did not believe that Vivian has a deficiency in her psychological makeup. This is significant because the experts in parental alienation have found that parents who severely alienate the other parent from their children frequently have these types of deficiencies. Alienating parents frequently have a deficiency in their psychological makeup:

> Many researchers explain that alienating parents tend to be rigidly defended and moralistic. These alienators perceive themselves to be flawless, and virtuous, and they externalize responsibility onto others. They lack insight into their own behavior and the impact their behavior has on others. Research literature consistently documents that psychopathology and personality disorders are present in a significant proportion of high-conflict parents litigating over custody or access. Psychological disturbance-including histrionic, paranoid, borderline, and narcissistic personality disorders or characteristics as well as psychosis, suicidal behavior, and substance abuse – are common among alienating parents.

DEMOSTENENES LORANDOS et al, PARENTAL ALIENATION – THE HANDBOOK FOR MENTAL HEALTH AND LEGAL PROFESSIONALS (Charles C. Thomas 2013), p. 11-12 (citations omitted).

And as noted in a prior motion, "Today, most scholars believe that parental alienation is caused by some deficiency in the psychological makeup of the alienator parent. Some of

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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,[11] *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113 (2011) (citations omitted).

When Vivian's counsel had a discussion with Dr. Paglini about the "findings and report" he compromised Dr. Paglini's independence. Moreover, Dr. Paglini's, apparent, preliminary finding is inconsistent with the fact that alienator parents frequently have a deficiency in their psychological makeup. With all this in mind, during the hearing on January 26, 2016, Ed Kainen explained why Dr. Paglini's findings the second time he was retained were a foregone conclusion based upon what happened the first time:

> I have some real concerns. In other words, I think given some history in this case which probably today is not the time to go through, what Dr. Paglini was going to decide in this case was a foregone conclusion once Dr. Paglini was the expert and was chosen in my mind.

Hearing Transcript, 1.26.16, p. 12, l. 21-24; p. 13, l. 1-2.

Based upon all of the foregoing, we respectfully request this Court to issue an order nullifying and voiding, *ab initio*, the January 25, 2016 report, and further order that all copies in each counsel's position be returned immediately to the Court's chambers for destruction.

III. CONCLUSION

This Court and Kirk will never know for sure precisely what was said by between Mr. Smith and Dr. Paglini on July 11, 2012. According to Vivian, Dr. Paglini "discussed his findings and report." It is very clear this communication prompted Mr. Smith to later telephone Mr. Standish that same day "regarding his client's insistence that Dr. Paglini finish his evaluation report for advisory purposes."

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[11] Professor Varnado is Assistant Professor of Law, Loyola University New Orleans College of Law.

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Dr. Paglini was appointed by the Court as an **independent** expert in 2012. As an independent expert, who was appointed by the Court, Mr. Smith should not have solicited information from Dr. Paglini, and Mr. Smith should not have learned from Dr. Paglini what his opinions probably would have been or might have been had he completed his report. This is true while the preparation of his report was pending and it is absolutely true once informed the parties had settled custody. Under no circumstances is it appropriate for that information to be in the hands of **only one party's attorney**! Once Mr. Smith obtained that information, his actions compromised Dr. Paglini's independence, and removed his ability to be an independent expert.

Parental alienation experts generally agree that there is something wrong with parents who damage their children by severely alienating them from the other parent. Based upon what Mr. Smith apparently learned from Dr. Paglini, on July 11, 2012, Dr. Paglini was compromised going into his most recent appointment as an "independent" expert.

The attorney who obtained this ill-gotten and illicit information should not have tried to capitalize upon this ill-gotten fruit by going to the Court, after the fact, with the hollow representation that Vivian wanted Dr. Paglini to complete his report because it would assist the Parenting Coordinator and the therapist. This is so outrageous. When this request was made to the Court after custody had been resolved, both Kirk's counsel and Kirk, immediately believed there had been foul play. It was obvious that Mr. Smith believed he knew something that none of them did. That reason alone was sufficient reason to oppose the request. In addition, custody had already been resolved, Dr. Paglini did not have the benefit of reviewing the extensive memorandum that had been prepared, Dr. Paglini had not met with Brooke and Rylee with Kirk, and the other reasons articulated during the hearing.

It was not until many months later, during the briefing of the motion and countermotion for attorney's fees that Kirk and his counsel's beliefs and suspicions were confirmed. There was an ex parte communication between the other side and Dr. Paglini. That ex parte communication was not made when alleged and it was never made to Kirk. There was an inappropriate communication between Mr. Smith and Dr. Paglini. However, Vivian did not

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admit to a communication between Dr. Paglini and her counsel, but rather, knowingly and falsely alleged that "**Just a few days before the parties settled the case (on the second day of Kirk's deposition), Dr. Paglini met with each party to discuss his findings and report**."

Vivian's assertion that Kirk opposed Dr. Paglini completing his report after Dr. Paglini discussed "his findings and report" with the parties is a knowing false representation, which was intended to mislead the Court. At no time did Dr. Paglini discuss the results of his assessment with Kirk. Kirk's recollection is that he had not met with Dr. Paglini for quite some time prior to July 10, 2012. There was no reason for Kirk to meet with Dr. Paglini after custody was resolved. To this day, Dr. Paglini has never told Kirk what is assessment or recommendations might have been had he completed his report.

It is important to note that during the hearing on July 18, 2012, Mr. Smith never informed the Court that Dr. Paglini shared his preliminary assessment with anyone. Mr. Smith waited until the following April to attempt to cover the illicit communication when, with the passage of time and the lack of context, the outrageousness of the ex parte communication was less obvious.

Based upon all of the foregoing, Dr. Paglini's report, dated January 25, 2016, should be ordered by the Court to be null and void, *ab initio*. Dr. Paglini, at the time he prepared this report, was compromised and tainted as a result of the actions of Vivian's counsel. The report is a product of that compromise and taint. Each counsel should promptly return his copy to the Court's chambers for immediate destruction.

DATED this 18th day of September, 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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EXHIBIT “1”

AFFIDAVIT OF THOMAS J. STANDISH, ESQ.
filed in Support of Plaintiff's Motion for an Order to Nullify and Void Expert Report

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 Naimi 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. All counsel and the parties were present at Radford J. Smith's office for the scheduled second day of Kirk Harrison's deposition on July 10, 2012. However, the day was spent negotiating and settling custody.

5. At no time during the negotiation of custody did anyone advise me that Dr. Paglini had already discussed his findings and report with anyone. At no time did Radford Smith, Gary Silverman, or Vivian Harrison indicate in any way that Dr. Paglini had already communicated to them what his recommendations to the Court would likely be.

6. On Wednesday, July 11, 2012, I received a telephone call from Dr. Paglini. I memorialized this call in my invoice to Kirk Harrison with the entry, "Telephone call from Dr. Paglini confirming he will stop preparation of his evaluation report." Dr. Paglini advised me during that telephone call that Mr. Smith had advised him the parties had resolved custody. Later that day, I received a telephone call from Radford Smith, wherein Mr. Smith advised that he wanted Dr. Paglini to finish his report, and memorialized that telephone call with the following billing entry, "Telephone call from opposing counsel Smith regarding his client's insistence that Dr. Paglini finish his evaluation report for advisory purposes."

7. On Thursday, July 12, 2012, I had a conference call with Dr. Paglini and Mr. Smith regarding Mr. Smith's desire to have Dr. Paglini complete his report. I memorialized this conference call with the following billing entry, "Conference call with opposing counsel Smith and Dr. Paglini to discuss situation." The "situation" was Mr. Smith's desire to have Dr. Paglini finish his report. During that conference call, Dr. Paglini did not take a position on anything. The only conference call I had with Dr. Paglini after the custody settlement was the one on July 12, 2012 with Mr. Smith.

8. At no time has Dr. Paglini ever "discussed his findings and report" with me. At no time has Dr. Paglini ever indicated to me what his findings or recommendations would likely have been had he been given the opportunity to finish his report.

9. During the hearing on July 18, 2012, Radford Smith requested the Court to have Dr. Paglini finish his report, despite the fact that custody had already been resolved. It was my distinct impression that Mr. Smith was privy to information, which I was not. Ed Kainen and Kirk Harrison had the same reaction and were of the same opinion. It was for this reason, the

fact that custody had already been resolved, and the other reasons I and Ed Kainen articulated during the hearing that we opposed the request.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27th day of September, 2016.

THOMAS J. STANDISH, ESQ.

State of Nevada
County of Clark

Subscribed and sworn before me
this 27th day of September, 2016.

Notary Public

ALEX MATTER
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-3990-1
My Appt. Expires Dec. 10, 2018

EXHIBIT "2"

AFFIDAVIT OF EDWARD KAINEN, ESQ.
filed in Support of Plaintiff's Motion for an Order to Nullify and Void Expert Report

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

3. We prepared and were ready to provide to Dr. Paglini a 25 page single spaced memorandum detailing a number of issues which we believed were relevant to Dr. Paglini's analysis. Pursuant to the Court's order, if we provided this memorandum to Dr. Paglini, we needed to provide a copy to the other side. As settlement negotiations were underway, we made the determination to withhold the memorandum pending the settlement negotiations, as we felt the submission of the memorandum to the other side would undermine settlement efforts. Kirk advised Dr. Paglini that we had prepared this memorandum and that we had decided to not provide it to him unless the settlement negotiations failed.

4. All counsel and the parties were present at Radford J. Smith's office for the scheduled second day of Kirk Harrison's deposition on July 10, 2012. However, the day was spent negotiating and settling custody. I participated in the settlement negotiations with Tom Standish, Radford Smith, Gary Silverman and Vivian Harrison.

5. At no time during the negotiation of custody did anyone advise me that Dr. Paglini had already discussed his findings and report with anyone. At no time did Radford Smith, Gary Silverman, or Vivian Harrison indicate in any way that Dr. Paglini had already communicated to them what his recommendations would likely be to the Court.

6. The Stipulation and Order Resolving Parent/Child Issues was entered July 11, 2012. Despite this fact, during the hearing on July 18, 2012, Radford Smith requested the Court to have Dr. Paglini finish his report. My immediate reaction was that Mr. Smith must know something that I did not know. Tom Standish and Kirk Harrison had a similar reaction. We opposed this request as custody had been settled, we felt that Mr. Smith knew something we did not know regarding what Dr. Paglini might do, and we knew that Dr. Paglini had not had an opportunity to review the memorandum, which we had withheld because of the settlement negotiations.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 28TH day of September, 2016.

EDWARD KAINEN, ESQ.

State of Nevada
County of Clark

Subscribed and sworn before me
this 28TH day of September, 2016.

Notary Public

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

EXHIBIT “3”

AFFIDAVIT OF KIRK HARRISON
filed in Support of Plaintiff's Motion for an Order to Nullify and Void Expert Report

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Kirk Harrison, 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. On Tuesday, July 3, 2012, at 3:59 p.m., I received the following text from Vivian: "I need to take girls to see Paglini at 2 on Fri. If ur going out of town we need to reschedule. Dr P needs to see girls once with me and once with u sometime before the 18th court date."

3. On Thursday, July 5, 2012, at 1:04 p.m., I received another text from Vivian, "Dr. Pagliani has appt scheduled to meet with girls & I 2morrow. R u planning 2be in town? Can I pick them up at one?" I sent the following text in response, ""I have a mediation tomorrow. I was assuming you would get them at 10:00 a.m. If you prefer, they can stay with Joseph until 1 p.m." I then received a final text that day from Vivian, "I will pick them up at 1 and return to ur house after appt."

4. I had a mediation on Friday, July 6, 2012 and prepared for that mediation reviewing the parties *in camera* briefs and exhibits on July 4 & 5, 2012.

5. On Saturday, July 7, 2012, I rented a U-Haul trailer and, together with Tahnee, Joseph, Brooke and Rylee, loaded Tahnee's furniture and boxes into the U-Haul. Tahnee, Brooke, Rylee and I then drove to North Hollywood, California and

moved Tahnee into her apartment there on Saturday and Sunday, July 8, 2012.

6. On Monday, July 9, 2012, I took Tahnee, Brooke, and Rylee to Universal Studios. I drove home with Brooke and Rylee later that day. Therefore, between the time I got Vivian's first text on Tuesday, July 3, 2012, there was no time for me to take Brooke and Rylee to meet with Dr. Paglini before the resumption of my deposition.

7. Although my deposition was scheduled to resume on Tuesday, July 10, 2012, the day was spent by the attorneys and the parties negotiating and settling the custody portion of the case.

8. It is my recollection that it had been quite some time, perhaps several weeks prior to July 10, 2012 when I had last met with Dr. Paglini. We had a 24 page single space memorandum prepared to give to Dr. Paglini. This memorandum was withheld pending the custody negotiations.

9. At no time, including through the present, has Dr. Paglini ever told me what he was likely going to recommend to the Court. At no time, has Dr. Paglini discussed with me "his findings and report." At no time during the custody settlement negotiations on July 10, 2012, was I ever informed that Dr. Paglini had met with anyone and discussed his findings and report. My understanding was there was no report. Since Dr. Paglini had just met with Brooke and Rylee the previous Friday and wanted to meet with Brooke and Rylee again with me, it was my understanding Dr. Paglini was not ready to finalize his report. I also felt it was important that Dr. Paglini have an opportunity to review the memorandum we had prepared before he finalized any report. As a consequence of the settlement that was reached on July 10, 2012, at no time after receiving Vivian's text on July 3, 2012, did I ever take Brooke and Rylee to meet with Dr.

Paglini as he requested.

10. At no time during the settlement discussions on July 10, 2012, was I ever told that Dr. Paglini had discussed his findings and report with Vivian. Such a statement would have been totally inconsistent with everything else I had been told and understood.

11. During the hearing on July 18, 2012, Radford Smith requested the Court to have Dr. Paglini finish his report stating that he wanted the report completed to assist the Parenting Coordinator and therapist. My immediate reaction was that Mr. Smith knew something which my attorneys and I did not know. The request also did not make sense as custody was already resolved. I immediately concluded that Mr. Smith would not have made such a request unless he was confident of what the report would recommend. Both Tom Standish and Ed Kainen had the same reaction. As it appeared that Dr. Paglini had communicated his intentions to the other side and not to us, I naturally concluded that Dr. Paglini was biased and had compromised his role as a Court appointed independent expert. At that point, Dr. Paglini was independent in name only.

12. To this day, Dr. Paglini has never told me what is assessment or recommendations might have been had he completed his report.

13. My conclusion that there had been an ex parte communication between Dr. Paglini and the other side on July 18, 2012 was confirmed when I read Defendant's Motion for Attorney's Fees and Sanctions, filed April 3, 2013, wherein Vivian made the following affirmative representation to the Court on page 14, "Just a few days before the parties settled the case (on the second day of Kirk's deposition), Dr. Paglini met with each party to discuss his findings and report." Although Dr. Paglini never met with me

during that time period and certainly has never, at any time, discussed "his findings and report" with me, and I do not believe he discussed "his findings and report" with Vivian during that time period as well, it did confirm that an inappropriate ex parte communication was made between Dr. Paglini and someone on the other side sometime prior to the hearing on July 18, 2012.

14. When it was suggested during the hearing on September 22, 2015, that Dr. Paglini be retained again as a Court appointed independent expert, I immediately expressed my opposition as I believe Dr. Paglini's role as an independent expert for the Court had been compromised and is ex parte communication with the other side is a clear indication of bias.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27th day of September, 2016.

KIRK HARRISON

State of Nevada
County of Clark

Subscribed and sworn before me
this 27th day of September, 2016.

Notary Public

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

EXHIBIT “4”

A.App.2249

JOLLEY URGA WIRTH WOODBURY & STANDISH

Kirk Ross Harrison PERSONAL AND CONFIDENTIAL
I.D. 11271-24000 - TJS
Re: Harrison, Vivian Marie Lee

August 10, 2012
Invoice 217592
Page 2

Fees

Date	Description	Atty	Hours	Amount
07/02/12	Read e-mail from opposing counsel Smith with proposed summer schedule to be executed as a separate stipulation; Draft e-mail to opposing counsel Smith regarding revisions to stipulation regarding entire custody settlement, and when to expect preparation of revised full stipulation; Review e-mails and texts from client regarding [redacted]	TJS	0.9	$450.00
07/04/12	Read e-mails from client regarding [redacted]	TJS	0.2	$100.00
07/05/12	Read e-mail from opposing counsel Smith regarding allocating two Fridays to client; Draft responsive e-mail to opposing counsel; Send lengthy text to co-counsel; Telephone call to co-counsel; Read e-mail from client regarding [redacted]	TJS	1.5	$750.00
07/06/12	Read e-mail from opposing counsel Silverman regarding his conversations with opposing party, his opinion that settlement can still be pursued	TJS	0.2	$100.00
07/08/12	Draft response of e-mail to opposing counsel Silverman regarding settlement negotiations	TJS	0.3	$150.00
07/09/12	Several telephone calls to opposing counsel's office to move/vacate depositions set for tomorrow on client and Wednesday on Tahnee; Telephone call to co-counsel, Mr. Kainen regarding same	JPW	0.7	$210.00
07/09/12	Receive message from Mr. Standish regarding moving depositions based upon agreement and his unavailability; Telephone call to Mr. Smith's office to confirm same; Telephone call to co-counsel, Mr. Kainen's office to inquire about [redacted] Return call to Mr. Smith's office	JPW	0.5	$150.00
07/09/12	Several telephone conferences with Mr. Smith's office and Mr. Silverman's office regarding moving depositions; Several emails with Mr. Standish regarding same; Conference call with Garema and Mr. Gary Silverman to discuss possibly moving depositions and whether the matter has been settled; Discuss Mr. Standish's unavailability; Additional conference with Mr. Standish; Review Clark County School District on "in-service" days off and email Mr. Standish	JPW	2.1	$630.00
07/09/12	Numerous text messages, e-mails and telephone calls with Ms. Poynter-Willis, opposing counsel's office, and opposing counsel Silverman regarding our request continue deposition of client and deposition of Tahnee; Conference call with client and co-counsel regarding [redacted] Draft e-mail to opposing counsel Silverman regarding whether settlement negotiations possible at client's deposition	TJS	1.3	$650.00

A.App.2249

A.App. 2237

A.App.2250

JOLLEY URGA WIRTH WOODBURY & STANDISH

Kirk Ross Harrison PERSONAL AND CONFIDENTIAL
I.D. 11271-24000 - TJS
Re: Harrison, Vivian Marie Lee

August 10, 2012
Invoice 217592
Page 3

Date	Description	Atty	Hours	Amount
07/09/12	Read e-mail from Carol at co-counsel's office regarding opposing counsel will not take off depositions; Read e-mail to Ms. Poynter-Willis regarding CCSD school schedule, opposing counsel's reasons for attending deposition	TJS	0.4	$200.00
07/10/12	Travel to opposing counsel's office; Participate in settlement discussions with client, co-counsel, and opposing attorneys Smith and Silverman; Stipulation on custody issues executed by parties	TJS	6.8	$3,400.00
07/11/12	No Charge: Conference with Mr. Standish regarding [redacted]; Attempt to call Department Q to obtain signature on agreement; Confer with Mr. Matter regarding his attempts to also call the Court	JPW	0.2	$0.00
07/11/12	Telephone call from Dr. Paglini confirming he will stop preparation of his evaluation report; Telephone call from opposing counsel Smith regarding his client's insistence that Dr. Paglini finish his evaluation report for advisory purposes	TJS	0.4	$200.00
07/12/12	No Charge: Review Notice of Entry and direct Ms. Galvan to serve Mr. Smith and Mr. Silverman	JPW	0.2	$0.00
07/12/12	Confer with Mr. Standish following his call with Dr. Paglini [redacted]	JPW	0.3	$90.00
07/12/12	Telephone call to client regarding [redacted] Second telephone call from client [redacted] Conference call with opposing counsel Smith and Dr. Paglini to discuss situation; telephone call to judge's chambers regarding possibility of court setting telephone call to resolve issue	TJS	1.2	$600.00
07/13/12	Telephone call with Ms. Danielle Taylor regarding Objection to Discovery Commissioner's Report and Recommendations; Discuss time for filing her opposition and discuss whether the matter should go forward if Vivian no longer wants to view client's computer files/records; Confer with Mr. Standish regarding [redacted] Confer with Mr. Matter and Ms. Galvan regarding file stamped copy of Objection and dates of hearing; Return call to Danielle Taylor regarding our suggestion to Stipulate to Continue the Objection hearing date	JPW	0.6	$180.00
07/13/12	Review voice mail from judge's secretary regarding need to file ex parte request for telephone conference or hearing issue at upcoming status check appearance; Conference with Ms. Poynter-Willis regarding [redacted]	TJS	0.4	$200.00

PLTF10959

A.App.2250

A.App. 2238

EXHIBIT “5”

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON, Plaintiff, vs. VIVIAN MARIE LEE HARRISON, Defendant.	CASE NO. D-11-443611-D DEPT. Q **(SEALED)**

BEFORE THE HONORABLE BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, JULY 18, 2012

APPEARANCES:

The Plaintiff: KIRK HARRISON
For the Plaintiff: THOMAS STANDISH, ESQ.
EDWARD KAINEN, ESQ.
1635 Village Center Cir.
Suite 180
Las Vegas, Nevada 89134
(702) 998-9344

The Defendant: VIVIAN HARRISON
For the Defendant: RADFORD SMITH, ESQ.
GARY SILVERMAN, ESQ.
2470 St. Rose Pkwy.,
Suite 206
Henderson, Nevada 89074
(702) 990-6448

LAS VEGAS, NEVADA WEDNESDAY, JULY 18, 2012

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:21:05)

THE COURT: We are on the record in the Harrison matter, Case D-11-443611-D. Please confirm your appearances.

MR. STANDISH: Good morning, Your Honor. Thomas Standish and Edward Kainen for the Plaintiff Kirk Harrison who is present.

MR. KAINEN: Only my mother calls me Edward. I get nervous.

THE COURT: Good morning.

MR. STANDISH: Sorry, my bar number is 1424 and Mr. Kainen is 50 --

MR. KAINEN: 50 --

MR. STANDISH: -- 29.

MR. KAINEN: Yeah, 5029.

THE COURT: Okay.

MR. SMITH: Radford Smith, 2791, on behalf of Mrs. Harrison with Gary Silverman, bar number 409.

THE COURT: Good morning. This is the time set for the case management conference. It's also a return hearing from the FMC outsource evaluation by Dr. Paglini. It's also set for the objection on Plaintiff's objection to discovery

commissioner's report and recommendation. However, it's my understanding there was a stipulation to continue --

MR. SMITH: Yeah, we're going to --

THE COURT: -- but that was going to be submitted today to avoid having the whole hearing continued --

MR. SMITH: Yeah, except that --

THE COURT: -- inadvertently.

MR. SMITH: -- I forgot it in my office. Ms. --

THE COURT: Okay.

MR. SMITH: -- Taylor created it. But Your Honor, I -- we can put it on the record that we are going to continue that matter --

THE COURT: That's fine.

MR. SMITH: -- if that's okay.

THE COURT: And I can give you -- we can --

MR. SMITH: Yeah.

THE COURT: -- talk about dates, what -- what's convenient.

MR. STANDISH: In the ordinary course, we thought we're going to try to workout between counsel what it is --

THE COURT: Okay.

MR. STANDISH: -- that we still need to get --

MR. SMITH: That's right.

MR. STANDISH: -- in the way of documents. And then

if we still had a problem, I guess we would then utilize that date.

THE COURT: Okay.

MR. SMITH: as the Court may know, a lot of the issues now are -- are different.

THE COURT: Right. I -- I do note a parenting agreement was received and signed by the Court. It is showing in Odyssey, so it has been filed. It's a stipulation and order resolving parent-child issues. I -- I do note also appearing on Odyssey is an ex -- ex parte request for a telephone conference. And I don't know if that's been served. It relates to the completion of --

MR. SMITH: Yeah.

THE COURT: -- Dr. Paglini's report.

MR. SMITH: Yeah, we got that. I don't know if you want to talk about that first. That was the one thing we can agree on. I think we have agreed essentially on a procedure for everything else or -- or what the other issues. But there was a -- a disagreement as to whether or not Dr. Paglini should complete his report under the circumstances. So we could address that now or -- or however you want to address it.

THE COURT: If you want to address that now, I don't have a problem taking care of that right now.

MR. SMITH: Our view is this is that we've put a lot of time, effort and money into this sort of jump ball that was requested by Mr. Harrison. We think the process particularly the way you described it was we didn't want recommendations. We wanted to see what was in the psychological best interest of these children and then determine whether or not there were any issues of the parties that need to be addressed from a psychological standpoint, vis-a-vis the -- the care of the children.

It's true that we have agreed on -- on equal joint custody. I got that. And I understand that the utility of the Court -- for purposes of the Court -- for purposes of the Judge are -- are really -- you know, it's really not existent at this point. That's not our point.

Our point is that this is information that a lot of effort has been put on. For example, we hired two experts, one on the issue of amphetamine, one on the issue of co-sleeping, spent a pretty good amount of money presenting that information to Dr. Paglini. We obviously have participated in the process and -- and spent money doing that, includes gathering all the information and so forth.

The idea is that we think there's a benefit, because the way that we structure the agreement as you saw I think when you -- when you probably reviewed it and signed it is

that we have a -- a parenting coordinator in place. Well, one will be in place once we actually exchange an -- an order for the parenting coordinator and choose one. And then we have a therapist that's in place for the children if necessary, if either party thinks that there's an issue that needs the -- the children.

We think it would be helpful to have the report in order to provide information to them. We would be willing to make the report confidential to the Court. In other words, this isn't a matter of litigation where we want to present it to the Court. And we -- we would be willing to stipulate that they -- it could never see the light of day in a courtroom. That would be perfectly okay with us.

But we think the information that's contained in that report once he completes it and again, he's a -- he was -- when this thing was halted, it was a couple days before he was scheduled to -- to provide the report. So we assumed that that's about the amount of time that he would have to complete it.

We think that information would be helpful to the parenting coordinator, to a therapist, et cetera, because Dr. Paglini as the Court -- I think the reason the Court had appointed him, he was the guy that the Court appointed to kind of give an overview of the substantial amount of information

that had been provided and give some perspective on it from a neutral standpoint. In other words, the Court's words.

So from our -- our point of view -- oh, it -- and Gary reminds that in a conversation I guess I wasn't involved with but he -- they had with Dr. Paglini, Dr. Paglini indicated he was about 85 percent done, so a substantial --

THE COURT: With drafting the report.

MR. SMITH: Correct.

THE COURT: Okay.

MR. SMITH: so from our perspective, we think that it's a report that --

MR. SILVERMAN: No.

MR. SMITH: -- can be valued --

MR. SILVERMAN: With all -- he didn't say -- with all his efforts. He's 85 -- he is 15 percent away from completion.

THE COURT: Okay.

MR. SMITH: Okay. So we think that that 15 percent should be completed. The report -- again, we don't have a problem if it's confidential to the Court, remains with other parties. Only given to the PC and the therapist. But we believe that the report should complete it because it has value and substantial value has gone into it.

THE COURT: Okay.

MR. STANDISH: Your Honor, we settled the -- the case with a detailed stipulation that the Court had mentioned earlier. It's signed and it's now the order of the Court. And when I say detailed, I mean it was difficult as many settlements are to resolve each and every one of those details in various areas. And we went back and forth. I think the last day when I got to Mr. Smith's office back at 12:45 and we signed the stipulation just on that day after six or seven hours of going back and forth in negotiating. And finally it was done.

MR. KAINEN: Some of us were there three or four hours before that.

MR. STANDISH: Yes, but nothing really happened until I got there. So the -- the point being that the subject matter and the -- and the issues of that stipulation as the Court is well aware are very, very serious between the parties. This was a highly contentious case. There were -- there were substantial allegations made and pled and argued and substantial work put into those pleadings. This settlement that is on the record now is an order of Your Honor was the outcome of all of that.

I understand what Mr. Smith just said about having the usefulness of the report, but here is where it is not useful and it's -- it's very disruptive. And that is first of

all, we bargained for the settlement that we got. There was absolutely nothing in the stipulation suggesting that Dr. Paglini would go forward. We did settle. All of the issues that the Court was addressing were contained in that settlement. We were finished, wound up, completed, including any reason to go forward with Dr. Paglini's report.

But the wounds that this family has that are still open are only going to be made worse if Dr. Paglini's report is issued. That's what I would suggest to the Court. My client has -- has different ideas about why he thinks that it wouldn't be a good idea, but the basic concept being this family needs to go through a healing process now that we have settled this and it's no longer a contentious litigation that's going to go forward to trial with many experts and potentially more hundreds of thousands of dollars in attorney's fees. That's all done now. We would like to have it done and have it in and not have those issues go forward.

I -- Dr. Paglini's report deals with the issues that I'm talking about. A parenting coordinator is not going to deal with those issues. A parenting coordinator if necessary is only going to deal with issues that are prospective. So allegations made in those pleadings as to past behavior, what is best for these girls in terms of a timeshare was best for them in terms of holiday sharing and summertime and everything

else. And all the other myriad of details that we worked out, that's all done now.

Dr. Paglini's report is going to rehash all of those details. It can't possibly help the parties' relationship to have the report issued. And frankly, it just wasn't a part of what we agreed on. And that's where we were -- obviously both sides had a different idea, but we were relying on the written document that we signed to end this. And we would like to have it ended.

And I would suggest and would argue to the Court that there is no reason to have the report issued as far as being useful to the parties or the case. In fact, I am arguing as you can tell that it would be very destructive to have these things aired out again through Dr. Paglini so the parties can then have all the second guessing of whether they made the right decision and they can criticize each other for whatever Dr. Paglini finds is wrong with them in the report or right with what they did.

So in that respect, we would ask to please if we can just move forward from this point in time and if there's a parenting coordinator needed or the therapist is -- is needed for the girls, then we have those people in place.

MR. KAINEN: I have just one thing to add and I apologize. The negotiations have ultimately culminated a

couple days ago had been going on for the better part of six or eight weeks. And they were very, very fragile. As a result and the -- dealing with Dr. Paglini was sort of something that was in my -- you know, in terms of the -- the evaluation was in my area.

And one of the things we've done, we prepared was a 20 page single -- probably a little better than 20 page, probably 20 to 25 page single spaced detail analysis of all sorts of things. Now based on your order, if we provided it to Dr. Paglini, it had to be copied to the other side. Okay. We held back on that report because we knew if we provided that to the other side, all the settlement negotiations that we were dealing with would have been out the window. So the bottom line -- and Dr. Paglini knew about it. He knew about the existence of this memo and knew that it wasn't going to be provided to him unless the settlement negotiations failed.

So the fact is Dr. Paglini doesn't have all the information that he would have ultimately been provided. Now if he's going to go forward, then we've got to provide this memo to him which I will tell you is extremely inflammatory and will light up this case and the parties again. But he doesn't have all the information that he would have been provided, because we -- we meaning my client specifically discussed with him that he was not going to provide this

information because he didn't want to send the settlement negotiations going entirely sideways which is what would have happened.

So the bottom line is that I don't know how far he is along in what he's doing or what he hasn't been. But he didn't have all the information from our side because of your order regarding copying it and the impact that would have had. So he -- so it can't be complete. And if he's going to go forward, then we have to then provide that memo to him which would be copied to the opposition and will have the -- the effect that I'm indicating it will have.

THE COURT: Has anyone spoken with Dr. Paglini about the value of at this point understanding an agreement has been reached about whether there's value to --

MR. STANDISH: Mr. Silverman and I had a conversation with Dr. Paglini on Friday or Thursday, I forget which. He didn't really take a position on anything. He simply needed to have instruction from us was his point as to whether he needed to complete the report. And he said he would await the -- whatever the instructions were from us or the Court. And we were going to try to get a telephone call. Your chambers indicated you were not normally, you know, enthusiastic --

THE COURT: Inclined?

MR. STANDISH: -- about doing telephone calls. I should have had the ex parte request done on Friday and I was not in my office to get it done. I apologize. So I did file it on Monday. And -- but we did have this court appearance which we thought would also would be --

THE COURT: Right.

MR. STANDISH: -- good to use to really --

THE COURT: Well, and I don't have a problem with the timing of it. I -- I just -- I'm just curious if there was any communication with Dr. Paglini about val -- the value to having him complete his services, because it is -- it's accurate to say it's of no value to me at this point and Mr. Smith mentioned that in his argument. I don't need a report, I don't want a report because a stipulation is satisfactory. I -- my -- my concern is I -- I'd like to know what -- if -- if you had that conversation with Dr. Paglini what the value is. I would like to know what -- is there additional cost involved.

And my concern is if a report is completed and we're going to reopen old wounds, what I don't want to do is invite a motion to set aside because all of a sudden a report comes out. And one side believes oh, I don't like that agreement anymore, we're going to swoop in and -- on either side, so --

MR. SILVERMAN: We -- we don't believe that's a

realistic alternative in either case on either side of the aisle that either party would move to set it aside based on the report or what might be learned in the report.

MR. KAINEN: Well, I -- I don't know that's entirely --

MR. SILVERMAN: Or may.

MR. KAINEN: Sorry, I -- I'm sorry. Well, you're making your representation regarding our position and I can tell you --

MR. SILVERMAN: And we did talk to Dr. Paglini last week about the benefit to the parties of the parenting coordinator and the therapist for the children having access to the body of information which he's gathered and analyzed. And he said well, I would be glad to talk to either one of those people. He said in so many words, and I'm not far off here, I would be glad to orally transfer this information to whoever needed -- to whomever needed to hear it. That's not a good idea.

The information should be transferred to the parenting coordinator in this high conflict case, but it should be done in writing so that both sides know exactly what the parenting coordinator and the therapist is dealing with, not some conversation on the phone.

So the answer to your question is, Your Honor, yes,

Dr. Paglini said I would communicate this to the two people that -- to the two people who need -- need this information. And he seemed like he thought it was a good idea.

MR. KAINEN: And I will tell you that --

MR. STANDISH: Hold on. Hold on. Hold on.

MR. KAINEN: I'm sorry.

MR. STANDISH: That wasn't my impression at all --

MR. KAINEN: Yeah.

MR. STANDISH: -- of what Dr. Paglini said. What he said was he made an offer that I guess he saw as being some sort of middle ground. He -- he didn't in my view offer an opinion as to whether it would be terrificaily useful or not to a parenting coordinator or a therapist. What he said was that he could speak to those -- one or both of those people to relate what he saw were the issues and family dynamics going forward is how I interpret it so that they would have some idea of what issues were going on between the parties. That is very, very different.

And you can ask Dr. Paglini directly or however you wish, Your Honor, to clarify this. But what I heard him say if I am correct is very different than a report which has to by necessity rehash all of the ugly allegations back and forth in this case that have been made by the parties. That I hope he would never relate to a parenting coordinator, because why

would we want to make that part of the mix?

If the parties can move on from this and if they're going to be given a chance to move on, then that -- that information wouldn't go. But I thought what Dr. Paglini was saying was he would give them some idea, these other professionals, of what he saw as the family dynamics and the issues that they had. It would not -- in other words, I don't think he would go over the MMPIs and what he found from that. I don't know that he would go over whether or not he had a specific diagnosis on X number of the points of narcissistic personality disorder or whatever other DSM-IV, you know, neurological or psychological difficulties they alleged against Kirk and so forth and so on.

I wouldn't expect that at all. He would be more or less a resource for what might be some of the dynamics. I -- again, I mean, this is supposed to be a confidential process. His evaluation if you call it that was not a full evaluation. It was narrowed by Your Honor to talk about the relationship between the -- the children and their parents and so forth. There was not going to be a recommendation. So Dr. Paglini's not geared to doing any of that.

I mean, again, I see the purpose as being entirely negative, not being helpful because of the nature of the -- the battle that's been going on here.

MR. SILVERMAN: And --

MR. KAINEN: The -- the other thing I would add to this --

MR. SILVERMAN: -- but the question would be Your Honor when did a parenting coordinator or a therapist do a better job knowing less? This is information that's been if you will strained through a mental health professional.

THE COURT: Well, but do they -- the question arises do they need a full-blown evaluation as opposed to what has been described to me as input from Dr. Paglini -- Paglini in writing stating this is the information that I believe the children's counselor and perhaps the parenting coordinator should have as they move forward doing their coordination and -- and counseling. My -- you know, typically as we're going through this evaluation process, one of the issues that arises when parties resolve the issue and -- and call off the evaluation before it's actually completed often times is cost.

Now I know cost is not necessarily the issue here and I -- I ask the question is everything paid for, is -- but I imagine if -- if there's still time to be devoted by Dr. Paglini, there's still some additional cost going on. But the utility of a report at this point for me is -- is gone. And my concern is I -- I don't want to put the parties in a position on either side to -- to second guess the agreement

that they reached after careful consideration what sounds like very long negotiations that have spanned quite some time. And -- and I don't want to put that at risk.

Yet, at the same time I see there may be some value in having Dr. Paglini provide at least some information in -- in the process and perhaps limit the cost to providing that type of a report to whoever is selected as the counselor and the parent coordinator.

MR. SMITH: If -- if the sole consideration is cost, my client is willing to bear whatever cost Dr. Paglini would have to complete the evaluation. It's not a matter of cost. It's a matter of -- of -- here's what -- let me address the arguments that were actually made by counsel. And that was that the -- the idea that this report would result in findings or reviews that somehow would cause the parties to be more against each other or be angry at each other and so forth.

I don't believe one could read this record and find that there is any greater allegation. I mean, this idea that there's a 25 page memo. We don't really -- are concerned about that, because the allegations in this matter were so severe from the very beginning that our client was, you know, had narcissistic personality disorder, should be limited to supervised visitation. These are things that were there in the record in very significant ways from the very beginning.

And I think what would harm the parties is to have that cloud still over them. It's been argued vehemently by the other side throughout this process and -- and ultimately were told to your decision to appoint Dr. Paglini that we didn't have a determination even though my client had gone to three of the top doctors in the world, their position was that that wasn't sufficient, that we still needed this overall review of the situation.

I think keeping that in a black box so that it can always be there is more damaging to the parties than getting some finding particularly of the issues regarding the psychological conflict of the parties. I think if one party is able to say to the children and others particularly the adult children that, you know, we never did resolve that. So that still may be true. Those things are what's damaging. That's why my client desires to have those matters put to bed. We think that it will be more likely to lead to a better relationship between the parties.

We also think that this information -- the only thing that's -- that's -- and it's -- it's not that unusual. The only thing that's unusual about this parenting plan, the -- the meat of the parenting plan I kind of disagree as to how these negotiations went. The meat of the parenting plan was very simple to -- to me to the major issues in the parenting

plan. It was all kind of little details over visit -- over holiday visitation, over certain language in the decree. That was really the bulk of the negotiations. The overall picture of joint custody and so forth was -- I mean, that was easy to get to.

So for example, if we have a therapist in place and that therapist wants the information from someone about this allegation, if this allegation was made in the future that we believe this is an ongoing continuation of Mrs. Harrison's narcissistic personality disorder, well, the only way that -- the only piece of information that person can go to is the very information that they argued previously was not conclusive of that issue. So -- and again, that's why the Court appointed Dr. Paglini.

So again, my argument would be that it would be much more damaging to the parties to leave those issues out there instead of being addressed. Another thing that's true is my client does not have any intent. She would be willing to stipulate that she hasn't any intent to change this plan. She agreed to it. It's what the parties compromised on. She's willing to accept that plan.

But what would be true, let's say for example in the plan it said in Dr. Paglini's findings that maybe they should do this a little bit differently or maybe this might not be

good or bad for the girls. That would have immense value to the parties, an immense value to the ultimate thing that we are trying to do here and that is look after the best interest of these children.

So again, our plan is not that this is a matter of litigation. We would agree that it cannot be used for any purpose associated with litigation. It's solely for the purpose of providing it to the parenting coordinator, the parties and the therapist even most importantly.

So again, cost is not the issue. We think the black box is worse than actually resolving these issues for the parties and getting sort of therapeutic ideas as to how to help these issues. We think that's really the value of someone who's going to be in that position. And no one else is going to be in that unique position anymore

We're never going to have somebody else that's going to do the kind of comprehensive analysis of all the various allegations, hundreds as you recall pages of allegations, numerous witnesses. I think he -- he talked to 20 something witnesses. So we're never going to have that opportunity again and -- and we think it should be done.

MR. KAINEN: I -- I'm sorry, go ahead.

MR. STANDISH: Your Honor, I've tried to be diplomatic in this argument, but here is where we stand. We

refused to have Dr. Paglini finish his report. And we have the right to do that. The only thing in this case which exists which would justify that report being promulgated is your order. Your order is no longer an issue in this case. The issues of child custody that were being addressed by Dr. Paglini, every single one of them have been resolved in the child custody stipulation. There is absolutely no grounds for him to complete the report.

I would submit that it is not in the best interest of Vivian that we are here today or Kirk. And that is what I am hearing especially from the other side that Vivian wants this report. Well, it's not Vivian's choice. It is your choice ultimately. But I believe the parties have already made their choice and that was to end this dispute. There are also the adult children, the oldest two girls who are involved in this.

My client has been roundly condemned for getting their affidavits which support his motion. And that's a huge issue in the family dynamics of this group. That is all going to come out again all over again with all of the pain and all of the hassles and all of the resentment that go with it.

It is absolutely not in the best interest of these two minor children to have the report completed. We bargained for that. We bargained for a specific stipulation. There's

nothing in there that suggests this report would go forward. And now they are trying to come along behind it and -- and bootstrap this request onto it. And I'm sorry, Your Honor, but that is not fair. It's not what we bargained for. And there's no grounds for them to receive that order.

So we submit that the Court should enforce what has happened which is a custody stipulation, no hearing going forward and no need for that report. And I -- I can't state -- state it any more clearly than that.

MR. KAINEN: So what --

MR. SMITH: Real quick, let me --

MR. KAINEN: I've been standing here.

MR. SMITH: -- let me just state the -- oh, I'm sorry.

THE COURT: Hang on. Mr. Kainen's been standing --

MR. SMITH: Yes.

MR. KAINEN: Okay.

THE COURT: -- patiently --

MR. KAINEN: And --

THE COURT: -- to address the Court.

MR. KAINEN: The dynamic here seems to be that like well, they want it because they will like the outcome and we're afraid of the outcome. What -- the dynamic that the -- the Court may be misreading is what was going on was the

attempt to keep the adult children out of the mix because of what was going on. They were interviewed. They gave statements and all of that.

The problem was and the reason my client accepted a settlement with a lot of terms that he didn't like or didn't agree to -- didn't -- he agreed to them ultimately, that didn't like and wouldn't have been his method of settlement was because the deposition of Tawny, the -- one of their adult daughters was scheduled for the next day.

And so what was going on this deposition was continued to be held out there as sort of like okay, we're taking the depositions, we're taking the depositions. And the idea was to keep this -- keep the adult children out, to keep their statements and the things they made otherwise from continuing to fester and wound.

Meanwhile, we separately held back on some of the other information. So this idea that after the fact when custody was fully resolved for them to then raise this idea is not -- honestly, it's not legitimate. It's -- Tom says it wasn't something that was ever discussed before and that oh, by the way, we're going to do this but we're going to do this other thing.

The idea is to keep the children -- to keep the children's statements from ever going any further. And what

happens now is that if we go further, the children's statements get released. The children -- the adult children then get -- they gave apparently very honest interviews or whatever it is.

The other part is that we've held back on -- and I -- I've indicated to the Court if Dr. Paglini is -- is charged with finishing it, I've got to give him this memo that I've been holding on the heels of this negotiation that will be offensive and will be inflammatory and will not move them towards any kind of healing but will actually tear open most of the progress they have made in going forward.

And the last thing was just that the discussion that at least my client had with Dr. Paglini is that he didn't want or intend to complete the report unless he was ordered to do so by the Court. That's where it was left. Our understanding was this matter was closed and done and the adult children had moved on, okay, were protected from being further involved, that we had reached a settlement and we're going forward with therapists and parenting coordinators and everybody else in place and all sorts of terms on their use.

And now what we're talking about is going forward on this which requires us to do all sorts of things that are going to -- in other words, this isn't just like okay, let him write up a report. First of all, you've seen Dr. Paglini's

reports. He has not -- he has not done his report yet. I can't imagine in a case like this he wouldn't be dealing with a 60, 80, hundred page report or something like that.

My understanding from the discussions I've had is that he has not begun that report that. The second thing is is that he doesn't have the information from our side that we've been holding back on that we provided to him -- that we would provide to him to be able to do it. So this idea that it's just well, we'll have it tomorrow, just give him the go ahead so he can just release it is simply not the case.

MR. SMITH: Well, let me -- let me just -- Mr. -- I think it's interesting that Mr. Kainen characterized the negotiations since he wasn't involved in them until the last few hours and the last day. The negotiations --

MR. KAINEN: Well, that's -- that's not the case.

MR. SMITH: That is the case.

MR. KAINEN: The fact is I wasn't --

THE COURT: Okay.

MR. KAINEN: -- dealing with --

THE COURT: Hang on. No.

MR. KAINEN: -- you directly --

THE COURT: One --

MR. KAINEN: -- but I was --

THE COURT: Listen.

MR. KAINEN: -- I was intimately involved with them.
MR. SMITH: I understand --
THE COURT: One at a time.
MR. SMITH: -- you're angry, but it's my time. In regard to this notion that we had somehow threatened the deposition of Ms. Harrison and that led to the settlement, let me note that the final two things that were left on the plate on the date of settlement were issues over Monday holidays. This had nothing to do with the taking of the deposition of Ms. Harrison who had already given a statement to Dr. Paglini. That's just a way for them to say this is justification for a settlement we really didn't want to enter.

I -- I think that's -- that's really bogus, because the discussion of the settlement had been the same for a very long time. And those discussions were had between Mr. Standish and I. I disagree with Mr. Standish. We did specifically discuss the idea of Dr. Paglini completing his report for therapeutic purposes. That was a discussion that was had. So this --

MR. KAINEN: That day?
MR. SMITH: No, not that day.
MR. SILVERMAN: How long ago --
MR. SMITH: Because again --
MR. KAINEN: Months ago we talked about that. That

wasn't --

THE COURT: Okay.

MR. SMITH: I know you're --

THE COURT: One -- one at a time.

MR. SMITH: -- angry guys, but this is the way it works is I get a chance and you get a chance. In terms of the -- the order itself, the order itself, what it doesn't say is that your order directing Dr. Paglini to prepare a report is vacated in any way. In fact, it doesn't even say that this hearing is vacated in regard to the review of that report, because it was never our intent. We understood that the report was going to be prepared. And we understand there may be a difference in the opinion as to the effect of that agreement.

But what we know it doesn't say is that it either will or will not be prepared. There's nothing in that order that affects the previous order. This idea that the order automatically goes away because there was a resolution of custody issues is nowhere to be found in the record of this case.

But let me say th -- again, we're not asking this to be distributed to the children. We're not asking this to be distributed. We would even agree that it could be confidential. It's not our purpose to have this to resolve

the family issues. We think it's valuable to the therapist and parenting coordinator and to the parties who will be dealing with these young children for a significant period of time. And it's that report that would give them some insight into their own behavior, the allegations that were made and the effect of those on the children.

This isn't about anybody vindicating. I don't know why they fear the report coming in, but I get it. I don't think that this is a matter of something that they should fear, because it won't go beyond that. It will just go to the parties, the therapist and the parenting coordinator for their value.

And again, Your Honor, we paid an enormous amount of money to get where we were because of Kirk's insistence that this is the -- the procedure you follow. You remember, our position was we don't need a report. This is a normal case like any other that should result in joint custody. That was our position.

Their position was demanding the report that we're discussing today. I just don't understand why they would -- after demanding that for so many, you know, months giving you this amount of documents suggesting that our position was inappropriate, they would now argue that they don't want the report to ever see the light of day.

MR. STANDISH: Your Honor --

THE COURT: I -- I don't need any --

MR. STANDISH: -- just so you know, I would like to make an oral motion. We would like to have cameras installed in both of the parties' houses in the hallways around the girls' bedrooms. Now this is something that we discussed in the past, but we didn't actually agree to it. It was never actually reduced to writing.

But there's nothing in the stipulation that you have that you made an order that says we can't have cameras. So we would like to open up the cameras. And let's see. What else did we discuss during settlement? We discussed many other things.

MR. KAINEN: The first refusal.

MR. STANDISH: All of which I'm going to now raise and ask for after we settled the custody thing. I -- let me make up the list Your Honor and I'll -- I'll bring a motion so you can consider all of these things that weren't in the custody stipulation but are now something that one side or the other thinks that maybe they're a good idea anyway.

I understand I'm being facetious, but you get my point. There are many things that were discussed in settlement that did not get into this stipulation. Dr. Paglini completing his report just because it was one of them.

And so are cameras and a myriad of other things. So my point is Your Honor it's outside the settlement. It's not something we agree to. I would be -- I think the rug is pulled out from under us when if the Court were to allow this type of extra beyond the agreement type of request, it opens up -- I mean, there's no sanctity to the agreement at all.

THE COURT: Well, here -- here's where I'm at as -- as it relates to this issue. We've spent quite a bit of time just on -- on this issue which technically wasn't part of the case management process. Dr. Paglini was -- was designated basically at our prior hearing to provide service to the Court because of the fact that there had been a variety of reports that I had the opportunity to review that had been extensively briefed on both parties. And I ultimately found that there would be value over Defendant's objection to having Dr. Paglini appointed for the purpose of providing assistance to the Court in making a determination regarding the care and well-being of the parties' minor children.

So I -- I view it from a standpoint of what assistance will this provide to the Court in adjudicating the issues relating to -- to custody. As I've said throughout the hearing this morning, given the fact that a stipulation and order was negotiated and signed by parties and counsel and ultimately signed by me reflecting their agreement.

Dr. Paglini's utility to me is -- is no longer present. It's not there. I -- I don't find the value. And the concern is without a stipulation from both sides effectively stating that notwithstanding whatever conclusions he reaches in preparing his report it would not be a basis to have the matter reheard, set aside. And -- and I understand the Defendant has offered --

MR. SMITH: Yeah, we're pre --

THE COURT: -- that she would not use it for that basis, but --

MR. SMITH: We're prepared to make that stipulation, Your Honor.

THE COURT: -- I -- I don't sense that from the Plaintiff's side because we're not in agreement. Otherwise, we would be going down that path. I'm not inclined to open that box and -- and create more of a firestorm that can occur after the parties entered into a stipulation agreement.

Had there been value to that stipulated -- the -- the stipulation and order that was entered was detailed. It -- it covered areas including the identification of the need for a parent coordinator. And -- and so it was very thorough in that regard. To the extent the report was needed for purposes of facilitating future services, that's something that should have been included as part of the stipulation and

order that was entered.

Although I acknowledge that Dr. Paglini could have some value to whoever is involved in the future, some input, I don't find that it would be necessarily by way of -- of a full blown custody evaluation that at this point is of no value to me. And as I view Dr. Paglini's role in this case was to provide me with assistance. That role has been fulfilled and satisfied by virtue of the stipulation agreement that's already been entered into by the parties. And I'm not inclined to upset that agreement with -- with further -- further proceedings over -- over this issue.

So that's my position. I do not need any additional --

MR. KAINEN: We have some other resolutions.

THE COURT: -- report from Dr. Paglini.

MR. SMITH: Yeah, we actually have a bunch of issues we have resolved. So this part will be --

THE COURT: Okay.

MR. SMITH: -- easier, we hope.

MR. KAINEN: Do you want me to take a shot at it or do you want --

MR. SMITH: Yeah, no, you got --

MR. KAINEN: Okay.

MR. SMITH: -- the list.

MR. KAINEN: The -- save and except certain property that I'm going to talk about, all the community property of the parties will be equally divided and distributed to them. And it's primarily cash and retirement accounts.

But the save and except would be really in two components. One is there is some separate property accounts that the -- my client has designated -- I don't think Vivian has designated, but -- but -- and those are not -- that -- I don't mean we're adjudicating those to be awarded to him but we're not distributing those, we're reserving those. Because he --

THE COURT: Okay.

MR. KAINEN: -- something like counsel from his father died that had never been commingled and had been separate and things like that. So we're not going to distribute those. And we are not going to obviously agree to distribute any personalties that the two of them have that would be their separate property.

And then in the other category there -- we are going to put four items which would not be distributed. The sum of $1,000,000, the community property interest in the Harrison family ranch, the marital residence, I guess the lot.

MR. SILVERMAN: The lot.

MR. KAINEN: The lot. That would be five items.

And --

MR. SMITH: I guess we're okay to put it for the market for sale if you wanted to do that.

MR. KAINEN: And I guess we'll probably do that which is fine. Okay, then the lot we'll sell. Okay. Then the fourth item would be the community property furnishing and furni -- furniture and furnishings. Those four items, the million dollars, the community property and the ranch, the house and the furniture and furnishings will be equally divided. And we've kept the million dollars there to cover the equal reward so that everybody can be fully compensated. But the idea is that of those four items everyone will receive an equal value.

Everything else will be distributed equally. The -- the -- as a result of the distribution which will be substantial to both parties, community -- temporary attorney's fees will not be an issue. As we've told you before, the discovery, we have agreed at least in principle to limit some of the discovery going forward without specifics. We're going to continue to work on that and continue the hearing on the discovery hearing. And we're going to work on trying to resolve the community property interest in the Harrison family ranch. And there's going to be a meeting I think probably by the end of this week or at least a phone call between Mr.

Beadle and Mr. Boone to do that.

MR. SMITH: Right.

MR. KAINEN: I think that covers -- I --

MR. SMITH: Right. And I just want to make clear that the issue of attorney's fees is not resolved globally. It's just resolved for the -- on a temporary basis --

THE COURT: On a temporary basis.

MR. SMITH: -- as a result of the --

MR. KAINEN: Right.

MR. SMITH: -- certain issues.

THE COURT: Understood. All right. From a --

MR. SMITH: Is there anything else that we need to do on your side? I think that's it.

THE COURT: From a scheduling standpoint, you want a hearing date then for the objection?

MR. KAINEN: Oh. Oh, and I guess we probably -- well, we need a date for the -- for the hearing on the objection if we cannot be able to resolve it and we probably need a trial date. We might as well get in line at this point for a trial date. I think we're a one day trial really on what's left.

MR. SMITH: Yeah, it sounds right.

MR. KAINEN: so if we can just take --

THE COURT: Looking at a full day trial.

MR. KAINEN: Yeah, I think a full day.

MR. SMITH: Probably will be one expert in the morning, one expert in the evening. That's probably about how --

THE COURT: Okay. How much time for discovery do you need? Or are you pretty much wrapped up? You've -- we've got --

MR. KAINEN: We're -- we're --

THE COURT: -- we'll have --

MR. KAINEN: -- still -- we're still working, but I don't think we're talking about -- I mean, two months out, three months at the outside -- and we have -- the -- the issues are down --

MR. SMITH: Let's --

MR. KAINEN: We got a house -- by the way, do you have the -- do you have the appraisal on the house?

THE COURT: Wow.

MR. SMITH: Not with me.

MR. KAINEN: Okay. But can you get that to us?

MR. SMITH: I can. I'm not sure that it -- it's been -- has the date been six months?

MS. HARRISON: I don't think I have it.

MR. SMITH: Did -- did he ever distribute? Did he ever prepare it?

MS. HARRISON: I think I gave it to somebody else.

MR. SMITH: But anyway, we'll find it.

MR. KAINEN: We -- we just need to do an appraisal, because we're -- the reason we're dealing with -- I mean, we have to make a choice.

MS. HARRISON: I'll get a new appraisal. I'll get a new appraisal.

THE COURT: I can give you a full day trial on October 12th which is a Friday.

MR. KAINEN: I'm actually out of the country on October 12th. Do you have something maybe the week before so that way I can actually not have this thing prepared before I leave?

THE COURT: I don't. I -- I can give you half days back to back.

MR. KAINEN: Okay.

THE COURT: If -- if that's -- if there's a preference. Otherwise, I'm looking at a full day in December.

MR. KAINEN: Oh, no, no.

THE COURT: A -- a Friday in December. Otherwise, I can give you pretty much -- October is wide open in terms of back to back days, a Monday and Tuesday or a Tuesday and Wednesday.

MR. KAINEN: Do you have something then like during

MR. KAINEN: Perfect. I actually have a trial that day, but I'm -- I can probably move that if necessary.

THE COURT: Right now it's -- it's taken by another case, but I'm anticipating and I'll know this next week that that may clear up.

MR. KAINEN: So can we take that date then and then --

THE COURT: Yeah, if --

MR. KAINEN: -- you'll let us know?

THE COURT: -- if counsel want to check their calendars --

MR. KAINEN: And I have a trial that day, but I can move the trial, I think.

(Counsel confer briefly)

THE COURT: It's essentially 60 days out, so --

(Pause)

MR. SMITH: I have an evidentiary hearing that day.

THE COURT: Oh, do you? Okay.

MR. KAINEN: Me too, but I'm moving mine. Do you have a couple half days in that week or something like that that might work or --

THE COURT: Well, it -- it's -- actually, the -- the trial is scheduled to go that entire week. The problem is I -- and that's why I'm taking Friday off because I -- I believe

that -- but I -- there may be portions of it that still proceed Monday -- Monday, Tuesday or Wednesday. That's my only concern.

MR. SMITH: Stay there. We're getting new dates.

THE COURT: And it's my understanding from Mr. Silverman October is not a great month.

MR. SILVERMAN: The -- the --

THE COURT: How -- what about November 5th and 6th?

MR. SMITH: November 5th and 6th?

MR. KAINEN: Judge -- Judge, all we got is --

MR. STANDISH: Well, what does that mean? October is not a great month.

THE COURT: Well, I --

MR. KAINEN: You can just like lock the whole month. I mean --

MS. HARRISON: Well, that's our anniversary, so it's perfect.

MR. SILVERMAN: I -- I have a couple of days in October. I just don't know when. Let's see what the Court has in October and I'll deal with it --

THE COURT: Well, October, the only -- the only -- and my -- my trial settings are afternoon settings on Mondays, Tuesdays and Wednesdays. And then I have the one Friday open on the 12th, but Mr. Kainen's going to be gone, correct?

MR. KAINEN: Correct. I'm out of the country the --

THE COURT: Now how long are you --

MR. KAINEN: -- the week of the --

THE COURT: How long are you gone?

MR. KAINEN: Just the week of the 8th. Well, actually, I leave the 6th, but I'm -- I'm gone the -- the business week of the 8th.

THE COURT: Okay. I -- I have the 15th and 16th available, the 22nd, 23rd, 24th and the 30th and 31st which is a Tuesday, Wednesday. So pretty much any of those weeks I can give you back to back days.

MR. SMITH: The 15th and 16th would work for us.

MR. KAINEN: And -- and candidly, it would -- I'm back in the country. It's my first day back. My preference would be 22nd and 23rd if you have it.

MR. SMITH: 22nd and 23rd of October?

MR. SILVERMAN: Okay the 15th and 16th.

THE COURT: No, 22nd and --

MR. SMITH: 22nd and 23rd, Gary.

MR. SILVERMAN: How does the 22nd and 23rd look?

MR. SMITH: Okay. That's been -- we've settled that. So that's okay. Okay. We're okay on the --

THE COURT: That's good?

MR. SMITH: The 22nd and 23rd we do have open.

MR. SILVERMAN: The 22nd and 23rd for --

THE COURT: October 22nd and 23rd?

MR. SMITH: Is the Harrison file beginning at 1:30 each day in the afternoon.

MR. SILVERMAN: A trial?

MR. SMITH: Is that correct?

MR. SILVERMAN: It ends at 1:30 each day.

MR. SMITH: 1:30?

THE COURT: 1:30 each day.

MR. SMITH: All right. Very good. Just block those afternoons out.

MR. SILVERMAN: Thank you.

MR. SMITH: The 22nd and 23rd of October.

THE COURT: I -- I will prepare a case management order.

MR. KAINEN: And then we probably need a date let's say a month out on discovery, just a regular hearing.

MR. SMITH: A month out for the hearing on the discovery objection?

MR. KAINEN: Yeah.

MR. STANDISH: Well, I -- I was -- oh, well, I --

MR. SMITH: I -- I --

MR. STANDISH: I just was going to ask for another case management date and how long we're at.

MR. KAINEN: We can do it the same day.

MR. STANDISH: About some of the things we talked about, briefing, that sort of thing.

MR. SMITH: And we talked about the settlement -- no, I'm just kidding. When -- when was briefing? I'm sorry.

MR. STANDISH: Well, on some of -- like the attorney's fees issue for example.

MR. SMITH: Oh, okay.

MR. STANDISH: We could use some input from the Court as --

THE COURT: Well, and I --

MR. STANDISH: -- on that.

THE COURT: -- and I typically also set -- I'll -- I'll set a calendar call as well, but that's going to be a week or two prior to trial.

MR. KAINEN: So why don't we take --

THE COURT: I don't know if we need that. If we do, if we set an -- I -- I can give you a -- a one hour setting pretty much on any Wednesday in August. If you're looking for the objection hearing in --

MR. SMITH: I think we can put it on a regular motion calendar. I just don't think it's going to be that involved. A lot of the discovery was associated with the -- the child custody issues.

THE COURT: Okay.

MR. SMITH: So I just don't -- I think we're going to be able to come to a resolution and -- and I don't for -- foresee the argument being that long. If -- if -- out of an abundance of caution because Mr. Kainen and I are in the room, if we need an hour --

THE COURT: And -- and I'm not inviting an hour, but I'm just -- historically, these --

MR. KAINEN: Looking at the Wednesdays, can we just take 8/22, August 22nd in the event that we need it?

MR. SMITH: Yeah.

MR. KAINEN: And that way it'll be there. If we don't -- if we settle it -- if we resolve it, then we'll certainly let the Court know without --

MR. SMITH: August 22nd is fine.

THE COURT: And do you want to view that as -- as an extension of the case management conference?

MR. KAINEN: It'll be the discovery hearing and the case management conference -- or continued case management conference.

MR. SMITH: Well, okay. Why do we need a continued case management conference?

MR. KAINEN: I don't know. Just so we can talk about whatever we need to talk about. That was --

THE COURT: Well, it sounded like --

MR. KAINEN: That was my --

THE COURT: -- you were --

MR. KAINEN: That was -- I was just trying to differentiate --

THE COURT: Are there any additional issues you're going to need me to address from a -- I don't need another case management conference unless there are issues you believe --

MR. SMITH: We got our dates, right?

THE COURT: -- I need to address.

MR. STANDISH: Well, I think that if not anything else, then the attorney's fee issue and briefing for that rather than -- and the scope of it. We -- we definitely are going to need input from the Court so that --

MR. SMITH: Okay.

MR. STANDISH: -- we can try to --

THE COURT: Well, then --

MR. STANDISH: -- frame the issues.

THE COURT: -- then it -- it won't necessarily be a case management conference. The extent you want to provide some briefing as it relates to attorney's fees, I -- I believe in preparation for today's hearing I had -- I had indicated getting some form of litigation budget. That's something I

think we discussed at the last hearing. But if you want to --

MR. SMITH: We -- we did, Your Honor. We just kind of figured that was moot as a result of the division of --

THE COURT: Right.

MR. SMITH: -- all the property --

THE COURT: Right.

MR. SMITH: -- and reserving the issue, because one of the things you told us at the last time is look, I'm not going to make any judgments about off the cuff as who's going to pay which fees, who's going to pay more. That's something I'll reserve to the time of trial.

I mean, to the extent that -- that we want to brief it to you prior to the trial, I -- I get that. But I mean, the trial is where the evidence is going to be taken and you're going to make a decision one way or another and that's the end of it.

THE COURT: Okay. Well, let's -- let's set a -- the objection hearing for -- for August 22nd. And it won't be a case management conference, just on the objection.

MR. SILVERMAN: What time is this?

THE COURT: At 11:00. Discovery will remain open until October 2nd. As far as witnesses are concerned, I've heard some -- some names of -- of potential experts.

MR. SMITH: There are experts, Your Honor. There is

Brian Boone on behalf of the -- Mrs. Harrison. And Mr. Harrison has Cliff Beadle.

THE COURT: Cliff Beadle.

MR. SMITH: And at least those are the -- the experts that are designated now. I would assume at some point in time there may also be appraisers involved since this is real property.

MR. KAINEN: They were already -- you already had Dugan involved.

MR. SMITH: Oh, in -- not in the ranch. I mean, with -- we're not talking --

MR. KAINEN: No. No. No.

MR. SMITH: -- about the ranch. Yeah, so the --

THE COURT: So Scott Dugan is -- is a potential witness?

MR. SMITH: Scott Dugan is a potential witness. And there are -- again, there is -- there may be additional experts associated with the value of the real property in Utah.

THE COURT: Okay. The -- the deadline for disclosing witnesses -- bless you, will be -- is August 27th sufficient time? That -- that way there's enough time to take a deposition in advance of the close of discovery. I can -- I can tighten it up if you would like. It's up to you. I -- I

generally like to keep a window of about 40 days so that you can notice a deposition between the -- the deadline and close of discovery.

MR. SMITH: Got it. That's plenty of time.

THE COURT: So August -- witnesses designated by August 27th.

MR. KAINEN: The witness or expert?

THE COURT: Both, percipient witnesses, expert witnesses. And then pretrial memos will be due on October 12th.

MR. KAINEN: I'm out of the country. You're going to have to handle that.

THE COURT: And I'll set a calendar call for -- I'm looking at -- at October 16th at 11:00. Okay.

MR. SMITH: Okay.

MR. KAINEN: Thank you, Your Honor.

THE COURT: Do we -- yeah, that's fine. That's fine. And again, you'll receive a case management order that sets forth all of these deadlines.

MR. SMITH: Very good.

MR. KAINEN: Thank you.

MR. STANDISH: Thank you, Your Honor.

MR. SMITH: All right. Thanks, Judge.

THE COURT: All right. Thank you for your

appearances. Do we need an order prepared from today or will the minutes suffice?

MR. SMITH: We -- I think the minutes will suffice and we're going to get an -- an order in regard to the -- the dates and so forth that you'll --

THE COURT: Yes.

MR. SMITH: -- prepare, so --

THE COURT: That will be prepared separately.

MR. STANDISH: Good. Thank you, Your Honor.

THE COURT: Okay. The Court will issue an order based on the minutes.

(PROCEEDINGS CONCLUDED AT 11:11:12)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

EXHIBIT “6”

Jul-08-12	GRS	Telephone Conference with Viv; forward email after draft by V.	0.40	150.00
Jul-09-12	GRS	Telephone Conference with Viv and G and Tom's associate re: scheduling depo. Prep for depo of Kirk ı	4.70	1,762.50
Jul-10-12	GRS	Settlement.	14.00	5,250.00
Jul-11-12	GRS	Letter to Kainen re: ranch call.	0.25	93.75
Jul-12-12	GRS	Telephone Conference with Viv and Tom and morning conversation; final letter to	2.70	1,012.50
Jul-13-12	GRS	Telephone Conference with Vivian and Radford.	0.40	150.00
Jul-17-12	GRS	Telephone Conference with Rad and Viv. Final letter to	1.80	675.00
	JD	Conference with Ms. Matts, Conference with Mr. Silverman. Email to appraiser.	0.50	75.00
Jul-18-12	GRS	Hearing in LV.	8.00	3,000.00
Jul-20-12	JD	Ltr to appraiser, conf with Mr. Silverman, email to client and co counsel	0.40	60.00
Jul-27-12	ACM	Brief call from . .~ regarding contact information for accountant. No charge.	0.25	0.00
	Totals		41.95	$14,307.50

DISBURSEMENTS		Disbursements	Receipts
Jul-31-12	Copy Costs	11.00	
Aug-03-12	Southwest Air - GRS - Harrison	401.60	
	Green Valley Ranch Hotel - Harrison	28.24	
	Green Valley Ranch Hotel - Harrison	169.50	
	Totals	$610.34	$0.00

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KIRK ROBB HARRISON
Plaintiff/Petitioner

v.

VIVIAN 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-

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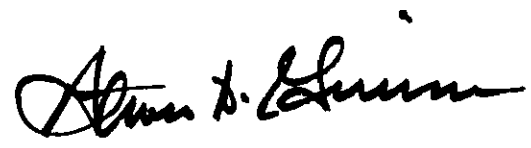

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DISTRICT COURT
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

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

Date of Hearing: 10/5/2016
Time of Hearing: 11:00 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 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 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 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 Reply is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, the affidavit of Kirk Harrison, and oral argument of counsel at the time of hearing.

DATED this 30th day of September, 2016.

KAINEN LAW GROUP, PLC

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Despite Unequivocal Rulings from This Court and the Nevada Supreme Court to the Contrary, Vivian Continues Her Unlawful Attempt to Utilize the Teenage Discretion Provision to Wrongfully Empower Brooke to Obtain *De Facto* Primary Custody

Brooke refuses to comply with the Custody Oder and the Reunification Order. Despite this, Vivian, incredulously, asserts that Brooke has "no behavioral problems whatsoever." Opp., 9.23.16, p. 6, l. 27. Respectfully, knowingly and intentionally violating this Court's Orders is a behavioral problem – a very serious behavioral problem.

Vivian wants this Court to ignore the fact that both Dr. Ali and Dr. Paglini are currently very concerned with the extent to which Vivian has wrongfully empowered Brooke. Upon reading Dr. Paglini's report, dated January 25, 2016, this Court stated it was "**alarmed**" by the fact that Brooke has been so wrongfully empowered by the teenage discretion provision that the provision has been eviscerated. Hearing Transcript, 1.26.16, p. 8, l. 17-24. Dr. Ali, in his letter submitted to the Court on July 5, 2016, expressed serious and significant concern about the extent to which Brooke has been wrongfully empowered.

In his letter to the Court, dated May 31, 2016, Dr. Paglini expressed his dismay with the lack of reunification sessions and reiterated his opinion that Brooke cannot dictate the pace of

the reunification therapy. Dr. Paglini quoted from his report, "Brooke cannot dictate the pace in this case." Dr. Paglini, obviously feels very strongly about this point as he reiterated this point again in his letter, "As stressed in my report, Brooke should not be in charge of the pace of reunification therapy." Dr. Paglini was unequivocal in his letter regarding the urgent need for Brooke and Kirk to be involved continuous and frequent reunification therapy, "Brooke and her father need to be involved in continuous/frequent treatment and address their issues." Exh. 2 to Motion.

The source of this wrongful empowerment is well known. Vivian's counsel, Mr. Silverman, opined, "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." Aff. of Gary R. Silverman, dated September 9, 2013, Exh. S to Vivian's Exhibits, filed September 11, 2013, at 9. Apparently, consistent with his opinion, Mr. Silverman advised Vivian that the teenage discretion provision could be utilized to obtain *defacto* primary custody.

As the Court is well aware, Vivian had been on a campaign to alienate Brooke and Rylee from Kirk since the filing of the Motion for Temporary Custody on September 14, 2011. At the first opportunity after Brooke's 14th birthday, Vivian convinced Brooke that upon her 14th birthday, Brooke would be empowered to determine her own custody and could decide to live with Vivian full-time.

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 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

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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." Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, filed 10.1.13, p. 4, l. 27-28; p. 5, l. 1-14.

During the hearing on October 30, 2013, this Court made it very clear to Vivian that the teenage discretion provision was not an instrument whereby the joint physical custody arrangement could be altered:[1]

> 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.

Hearing Transcript, 10.30.13, p. 32, l. 24, p. 33, l. 1-8.

This Court reiterated its position in its Findings and Orders Re: May 21, 2014 Hearing, finding and ordering:[2]

> The exercise of "teenage discretion" should not be used as a tool to remove blocks of time from either part 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.

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[1] The Nevada Supreme Court noted this fact in its opinion, stating, "At a subsequent hearing, the district court explained . . . the provision was not an instrument whereby the joint custody arrangement could be altered." *Harrison v. Harrison*, 132 Nev. Advance Opinion 56 (2016) at 4.

[2] The Court made it clear elsewhere in its order that what was contemplated by the provision was if the child wished "to make a modification of a few hours" there should be no issues when such a wish was expressed. Findings and Orders, filed 9.29.14, p. 35, l. 15-16.

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Findings and Orders Re: May 21, 2014 Hearing, filed 9.29.14, p. 3, l. 7-12.[3]

In addition, Subsection 6.2 of the provision provides, "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."

Despite these clear rulings from the Court and the language of Subsection 6.2,Vivian continued her wrongful empowerment of Brooke under the "teenage discretion" provision and continued to alienate Kirk from Brooke. As noted in the motion, pursuant to this Court's Custody Order, between August 12, 2015 and August 26, 2016, Brooke was supposed to be with Kirk a total of **192 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 **38 days** during that time period. Therefore, between August 12, 2015 and August 26, 2016, Kirk has lost a total of **154 days** of custodial time with Brooke. Between April 8, 2016 and June 16, 2016 – **over a two month period**, Brooke spent **less than one day** in Kirk's physical custody.[4]

Vivian has turned a deaf ear to the Court's repeated admonitions to her that it is her responsibility to insure that Brooke complies with the Custody Order. During the hearing on

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[3] This Court's finding and order in this regard has been specifically affirmed by the Nevada Supreme Court, stating, "The teenage discretion provision does not violate the joint physical custody arrangement. The agreement permits the children to adjust 'their weekly schedule, from time to time.' But that flexibility is necessarily limited. Section 6.1 provides: 'The parties do not intend . . . to give the children the absolute ability to determine their custodial schedule with the other parent.' Thus, section 6.1 reinforces that child-initiated schedule changes may not take so much liberty that they violate the joint custody arrangement set forth by the district court." *Harrison v. Harrison*, 132 Nev. Advance Opinion 56 (2016) at 6.

[4] Vivian's scheme to separate Brooke from Rylee for one-half the time was apparent soon after Brooke's 14th birthday. In Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief, filed 10.1.13, we cautioned, "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**." Plaintiff's Motion, filed 10.1.13, p. 10, l. 22-23 (emphasis added).

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September 22, 2015, the Court was unequivocal in its position, "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. Further, "So that's the issue of contempt that I have before me that there's been essentially a complete upheaval of the custody arrangement." *Id* at p. 14, l.2-4. And later, ". . . there's no question that that time has been missed, and ultimately that's on Mom's shoulders." *Id* at p. 49, l. 14-15. And later, ". . . it's Mom's responsibility to make sure that Brooke is with Dad." *Id* at 56, l. 21-22. And later, "Whatever Mom needs to do to make sure that Brooke sees her father." *Id* at 62, l. 7-8. And later, "I do believe it's in Brooke's best interest to have a relationship with her father." *Id* at 62, l. 15-16. In the Minute Order for the September 22, 2015 hearing, the Court ordered, "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."

As noted earlier herein, during the hearing on January 26, 2016, the Court stated that it was alarmed, that through the "teenage discretion" provision, Vivian has empowered Brooke to such an extent that the "teenage discretion" provision has been eviscerated. And further, that by doing so, the Court expressed its concern that Vivian has planted the same seeds of empowerment regarding the "teenage discretion" provision with Rylee. More specifically, the Court stated:

> But one thing that **alarmed me** was **the empowerment that Brooke was given through the teenage dis – [discretion]** and it – and – and the way I interpret Dr. Paglini's report is **the intent of that provision was eviscerated** with what happened in terms of empowering Brooke.[5]
> And I can't – I'm not here to change that. **It concerns me in terms of if the same seeds have been planted with Rylee**.

Hearing Transcript, 1.26.16, p. 8, l. 17-24 (emphasis added).

. . .

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[5] It should be noted this was Dr. Paglini's opinion before Brooke knowingly and intentionally violated this Court's Order regarding reunification therapy. And, as noted in the motion, Dr. Paglini was also unaware of the extent that he had been misled by Vivian and Brooke.

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We are also alarmed and gravely concerned about Rylee during the next almost four and one-half years.

Vivian has, indisputably, eviscerated the "teenage discretion" provision and will continue to do so irrespective of the rulings and orders of this Court and the affirmance of those rulings and orders by the Nevada Supreme Court. Vivian simply has no respect for the rulings and orders of this Court or for the affirmance of those rulings and orders by the Nevada Supreme Court. What Vivian is doing is in knowing violation of the joint physical custody provision, the "teenage discretion" provision, the rulings and orders of this Court, and the opinion of the Nevada Supreme Court.

The continued existence of the "teenage discretion" provision, continues to provide the justification to Vivian to continue to callously manipulate Brooke and Rylee, to continue to wrongfully empower Brooke and Rylee in their relationship with their father, and to continue to provide motivation to Vivian to alienate Kirk from Brooke and Rylee. The "teenage discretion" provision is being used by Vivian to emotionally manipulate and harm Brooke and Rylee. The unwillingness of Vivian to abide by the terms, and the relative inability to enforce material terms, encourages the abuse. It is clearly in the best interest of Brooke and Rylee for the Court to nullify and void this provision to stop Vivian's emotional carnage of these children. This perceived incentive must be nullified. The "teenage discretion" provision and the protections contained in that provision have been so violated and disregarded that the provision has been eviscerated. We ought to care enough about Rylee to avoid a scenario in two and one-half years where Rylee has been wrongfully empowered to willfully violate this Court's orders.

Although it is respectfully submitted this Court has such power, without such a provision, the "teenage discretion" provision (Section 6 of the Stipulation and Order Resolving Parent/Child Issues) contains a provision, which provides, "Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations." 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

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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).

It is in Rylee's best interest to not spend the next four and one-half years being callously manipulated by Vivian by being wrongfully and unlawfully empowered in her relationship with her father, by Vivian severely alienating Kirk from Rylee based upon such fictitious issues as falsely asserting that Kirk does not care enough about his own children to pay their medical bills, and by Vivian convincing Rylee that if she does anything with Kirk she is somehow betraying Vivian or somehow choosing Kirk over Vivian.

Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the "teenage discretion" provision, which has been eviscerated by Vivian's contemptuous actions.

B. The Facts Set Forth in the Motion are Sworn to in Kirk's Affidavit

In support of motion, Kirk submitted his sworn affidavit which provides:

> 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.

Motion, p. 30.

The affidavit was duly subscribed and sworn before a notary public. The **sworn facts** set forth in the Motion are very detailed including, but not limited to: the lost custodial time; the efforts by Dr. Paglini, Dr. Ali, and Kirk to have weekly double reunification sessions with Brooke; Brooke's resistance and ultimate refusal to participate in the Court ordered reunification sessions; the manner in which Vivian and Brooke intentionally attempted to mislead Dr. Paglini and Dr. Ali regarding Brooke's claimed unavailability; Brooke's conduct and statements during the second (and last) reunification session with Dr. Ali; Kirk's efforts to obtain Brooke's high school class schedule from Vivian, Brooke, Vivian's attorneys, and Nevada State High School; the high school's refusal to provide Kirk with Brooke's class schedule because there were no records identifying Kirk as Brooke's parent; Vivian's

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enrollment form where Vivian made the decision to not list Kirk as Brooke's father or a person to contact in case of an emergency; Brooke's class schedule and dance schedule which readily revealed ample time each week for double sessions recommended by Dr. Paglini, sought by Dr. Ali, and ordered by this Court; Brooke's class schedule and dance schedule also readily revealed that Vivian and Brooke had misled Dr. Paglini and Dr. Ali concerning her availability; how Brooke attempted to create a schedule conflict that did not exist to cancel scheduled reunification sessions; how Brooke chose to miss two dance classes for a tutoring session, after she represented she could not miss a dance class for a reunification session; how Vivian and Brooke have substantially reduced the time Brooke spends with not only Rylee, but with Tahnee and Whitney as well; how Vivian has developed a scheme each summer to prevent Brooke from having vacation time with Tahnee and Whitney; how Vivian is attempting to minimize the time that Rylee spends with Tahnee and Whitney; how Vivian is now taking the position with Rylee, as she has done with Brooke, that custody transfers are just too much trouble; etc.

The sworn facts by affidavit are clearly in compliance with NRS 22.030(2). Vivian's patently false assertion that Kirk's affidavit "does not state or incorporate facts at all" is nonsensical and contrary to the explicit language in the affidavit – "the facts set forth in the foregoing Motion for an Order to Show Cause are true of my own knowledge. . ."

C. Dr. Paglini Saw the Need for Reunification Therapy, Strongly Recommended Reunification Therapy to the Court, and is "Dismayed" it has Not Taken Place

Vivian cannot overcome the fact that Dr. Paglini saw the need for reunification therapy for Brooke and Kirk, strongly recommended reunification therapy to the Court, and is "dismayed" the Court ordered reunification sessions have not taken place.

As addressed in the motion, Brooke told Dr. Paglini that she did not hate Kirk and wanted a relationship with her father. It was upon this basis that Dr. Paglini erroneously concluded the parental alienation by Vivian was not severe.[6] However, that representation was

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[6] *See* Motion, p. 7-9.

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A.App. 2301

later shown to be absolutely false during the last session with Brooke, Dr. Ali and Kirk, wherein Brooke made it very clear she "hated" Kirk and believes he is a mean and bad person directly contrary to what she told Dr. Paglini.

We believe that if Dr. Paglini was apprised of the true facts, and in light of what has occurred since the date of his report, including the fact it has been established that Vivian and Brooke made a number of additional false statements to him, Vivian's enrollment form (which is undeniable evidence of an intent to exclude and alienate Kirk from Brooke's life), and Brooke's refusal to comply with the Court's Order for the reunification sessions, Dr. Paglini would now conclude there has, in fact, been severe alienation by Vivian of Kirk from Brooke.

Vivian asserts that, "Dr. Paglini disputed Kirk's contention that Vivian had involved Brooke in the [insurance] issue." Opposition, filed 9.23.16, p. 4, l. 1. This issue was squarely before the Court. This Court knows very well what happened and Vivian's inexcusable embroilment of Brooke with that issue and Vivian's use of that issue to inflame Brooke's hatred of Kirk – Brooke removed all of her clothes from Kirk's home shortly thereafter and sent Kirk a text that she was no longer going to live with him.

Contrary to Vivian's allegation, Kirk has never told Brooke that "Vivian filed the divorce action." Opp., 9.23.16, p. 4, l. 22. The treatises on parental alienation strongly advise that the alienated parent must attempt to defend himself or herself. Vivian has been alienating Kirk from Brooke and Rylee since the filing of the Motion for Temporary Custody in September of 2011, including telling Brooke and Rylee that the divorce was all Kirk's fault.[7] After Brooke stopped complying with the Custody Order, Kirk finally tried to defend himself by simply telling Brooke that the divorce was not his fault. That is all he said.

Contrary to Vivian's "fair reading of Dr. Paglini's report," Kirk has consistently advised Brooke and Rylee to love and be respectful of Vivian. When Vivian would bring Brooke and

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[7] A partial list of Vivian's overt acts of alienation are set forth in 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, which are incorporated herein by this reference.

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Rylee to pick up their stuff from Kirk's house to get their things when custody was transferred, he has consistently told them to have their stuff ready so Vivian did not have to wait in the car. As a consequence, the vast majority of time, Vivian waits less than 5 minutes and most times, waits less than 2 or 3 minutes. The only time that Kirk has been critical of Vivian to Brooke and Rylee is when custody is being transferred to Kirk, and Vivian keeps Kirk waiting in the car for 20 to 45 minutes, while Vivian visits with Brooke and Rylee, despite the fact they have been in Vivian's custody until that time and they are picking up the identical items.

Finally, as set forth in detail in Plaintiff's Motion for an Order to Nullify and Void Expert Report, filed September 28, 2016, Vivian's counsel, through his inappropriate actions, has so tainted the expert process regarding this issue, that Dr. Paglini's role as an independent expert in this matter was compromised and the report should be declared null and void, *ab initio*.

D. Contrary to Vivian's False Assertion, Kirk is Not Seeking to "Substantially Modify the Custody Schedule," But Rather Kirk is Seeking Compensatory Time in the form of Temporary Reunification Therapy or the Make-up of Lost Custodial Days

Vivian falsely asserts, "Kirk has not demonstrated adequate cause for hearing to substantially modify the custodial schedule." Opp., 9.23.16, p. 5, l. 2-3. Kirk is not attempting to modify the custodial schedule. Kirk is seeking temporary reunification therapy in lieu of making up the lost custodial days.

1. Kirk is Entitled to Compensatory Time for the Lost 167 Days of Custodial Time Between August 12, 2015 and September 23, 2016

Between August 12, 2015 and August 26, 2016, Kirk lost a total of 154 days of custodial time with Brooke. Between August 27, 2016 and September 23, 2016, Kirk lost an additional 13 days of custodial time with Brooke. Therefore, between August 12, 2015 and September 23, 2016, Kirk has lost a total of **167 lost custodial days**. This Court has found that Vivian is responsible for the loss of those 167 custodial days with Brooke.

. . .

Those were 167 days when Brooke should have been with Rylee as well, but was not. If Kirk were to request those 167 days be made up, and this Court granted the request, it would

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result in Rylee being separated from Brooke for another 167 days. The make up of those days also would most likely not emotionally reunify Brooke with Kirk.

Therefore, in lieu of or as part of making up the 167 days, Kirk has requested that he is given compensatory time in the form of temporary exclusive physical custody of Brooke and Rylee for a period of 90 days. Under this request, Kirk will be recouping only 45 days of the 167 days of lost custodial time with Brooke. Kirk will be obtaining an additional 45 days of custodial time with Rylee.[8]

2. Vivian's Baseless Allegations of Brooke's Time with Kirk are False

Vivian's allegations of Brooke's time with Kirk is absolutely false. Vivian represents to the Court as follows:

> To Vivian's knowledge, Brooke spends alternating weekends and one night per week at Kirk's home. She recently spent three weeks at his home.

Opp.,9.23.16, p. 5, l. 10-13.[9]

There is such a disparity between the truth and this allegation that the sheer audacity of making such false representations is highlighted. Brooke **does not** spend alternating weekends and one night per week at Kirk's home. Similarly, Brooke **did not** recently spend three weeks at Kirk's home.

a. Brooke Does Not Spend Alternating Weekends and One Night Per Week at Kirk's Home

Brooke does not spend alternating weekends at Kirk's home. Brooke does not spend one night per week at Kirk's home. Vivian's allegations to the contrary are absolutely absurd. Between June 17, 2016 and September 14, 2016 – about two months -- Brooke spent no time whatsoever at Kirk's home.

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[8] A proposed Order for Reunification Therapy is attached hereto as Exhibit "7" and by this reference incorporated herein.

[9] Ironically, but, at this point, predictably, Vivian makes these false allegations without a supporting declaration or affidavit.

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Without any prior notification, Brooke showed up at 10:12 p.m. the night of September 14, 2016 and said she was staying that Wednesday and Thursday. However, Brooke has no dance classes on Wednesdays, but chose not to show up until after 10:00 p.m. The next morning, September 15, 2016, Brooke got up, had a bowl of cereal and left around 9:10 a.m. Brooke did not return home until sometime after 9:40 p.m. The next morning, September 16, 2016, at 7:07 a.m., Kirk heard the front door open and Brooke say goodbye. She has not been back since. Therefore, between June 17, 2016 and September 28, 2016, Brooke came to Kirk's home late one night, stayed away the entire next day and evening, slept there a second night, and then left shortly after 7:00 a.m. the next morning and has not been seen since.

Despite the foregoing, Vivian affirmatively represented to this Court, as fact, that, "Brooke spends alternating weekends and one night per week at Kirk's home." There is simply no correlation whatsoever between the truth and what Vivian will represent to this Court.

b. Brooke Did Not Recently Spend Three Weeks at Kirk's Home

Kirk's three week vacation schedule with Brooke and Rylee this summer was supposed to be Monday, June 13 through Sunday, June 19; Monday, June 27 through Tuesday, July3, and; Thursday, July 14 through Wednesday, July 20.

Except for the part of the day Brooke came to see Tahnee on May 1, 2016 beginning at around 2:25 p.m. and leaving the next morning at 9:00 a.m., Brooke had not been to their home since April 8, 2016 – about nine weeks. Without any prior notice whatsoever, Brooke showed up at about 9:45 p.m. the evening of June 16, 2016, stating she was there for the vacation period. The vacation period began on June 13, 2016 – not June 16, 2016. Brooke left at 9:00 a.m. on June 20, 2016. Therefore, Brooke was there only three of the seven vacation days.

The next vacation period was June 27, 2016 through July 3, 2016. This year was also Kirk's turn to have Brooke for the 4th of July. However, of the total of eight days, Brooke only spent five days with Kirk or Tahnee. For the three days she was home, Brooke would leave around 9:00 a.m. and not return until around 9:00 p.m. or later. Brooke spent from June 30,

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2016 until July 3, 2016 visiting Tahnee in California. Kirk dropped Brooke off at Vivian's house on July 3, 2016 to pick up her car. However, Brooke did not pick up her car and return to Kirk's home. Brooke never returned to Kirk's house during this custody period, including the 4th of July.

The last vacation period was from July 14, 2016 to July 20, 2016. Kirk was to have custody of Brooke for nine days from 9:00 a.m. on July 13, 2016 until 9:00 a.m. on July 22, 2016 (seven days of vacation time and two days of regularly scheduled custody time). However, Brooke did not show up until 10:30 p.m. the night of July 14, 2016 with no explanation as to why she didn't come the morning of the day before. On July 15, 2016, Brooke left shortly after 10:00 a.m. to spend the day with a friend and did not return until about 11:30 p.m. that night. On June 16, 2016, Brooke slept in until around noon, left at 2:45 p.m. and did not return until after 9:30 p.m. On June 17, 2016, although Brooke spent most of the day at home, it was in her bedroom with the door shut. She left for Vivian's that night and did not return. Therefore, Brooke only spent about two days of the nine days she was supposed to spend with Kirk.

In summary, although this was the most time Brooke has spent with Kirk in over a year, Brooke only spent a small fraction of the three weeks of vacation time she was supposed to spend with Kirk.

3. Vivian's Claims of Lack of Involvement In Brooke's Violation of the Custody Order Ring Hollow

Vivian has wrongfully empowered Brooke to determine her own custody schedule in clear violation of this Court's Custody Order, this Court's rulings, and this Court's subsequent orders. Vivian has been wrongfully empowering Brooke since before Brooke's fourteenth birthday. The Court, Dr. Ali, and Dr. Paglini are all aware of this wrongful empowerment and are very concerned. Vivian is responsible for Brooke's non-compliance because Vivian has wrongfully empowered Brooke. It is not necessary to have a video of Vivian telling Brooke to violate the Custody Order.

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However, in the Motion, Kirk set forth in detail Vivian's involvement in Brooke's non-compliance by Vivian's confirmed overt attempts to exclude Kirk from Brooke's life. Vivian refused to provide Kirk with Brooke's class schedule month after month after month. Kirk still does not have Brooke's class schedule for the current term. Vivian, not Brooke, completed Brooke's high school enrollment form and Vivian chose to omit Kirk as Brooke's father and to omit Kirk as someone to contact in case of an emergency. Vivian falsely told Brooke that Kirk refused to pay for her dance classes for an entire year. The Court is well aware of Vivian's alienation of Kirk regarding the medical insurance claim issue. Vivian's overt conduct in separating Brooke from not only Kirk, but Tahnee and Whitney as well, has been set forth in detail. Glaringly absent from Vivian's Opposition is any response whatsoever to any of these uncontroverted facts.

Vivian has no response to the fact that Vivian 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.

Vivian has no response as to why she and Brooke both intentionally misled Dr. Paglini and Dr. Ali regarding Brooke's class schedule.

Vivian has no explanation as to why she didn't take the car keys and the cell phone until Brooke was in full compliance with the Custody Order. Vivian also has no explanation as to why, if Vivian truly believed Brooke was misbehaving in not complying with the Custody Order, Vivian bought Brooke a new 2015 Toyota Avalon for her 17th birthday.

Vivian's assertion of "Kirk's continual disparagement of Vivian to Brooke" is absolutely unfounded. The record in this case is replete with Vivian's alienation of Kirk from Brooke since the filing of the motion for temporary custody. In stark contrast, is the absence of any record during the same period of time of Kirk alienating Vivian from Brooke.

Vivian has spent the last four years wrongfully empowering Brooke in her relationship with Kirk. After doing so, Vivian now makes the specious argument of questioning why Kirk does not simply compel Brooke to comply with the Custody Order.

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Vivian makes assertions that plainly reveal her wrongful empowerment of Brooke and her own disrespect of and disdain for authority. Vivian, incredulously, asserts, "Contrary to Kirk's statement, to Vivian's knowledge Brooke suggested that she and Kirk meet with Dr. Ali on alternate Thursdays, but it was Dr. Ali's schedule that prevented that." Dr. Paglini emphatically recommended double sessions each week, that is what Dr. Ali attempted to schedule, and that is what this Court ordered. Yet, Vivian and Brooke don't understand why they can't simply override Dr. Paglini, Dr. Ali and this Court.

Vivian's wrongful empowerment of Brooke cannot be denied. The Court, Dr. Paglini, and Dr. Ali have all expressed alarm, dismay and serious concern about the extent of this wrongful empowerment. Vivian's future wrongful empowerment of Rylee as soon as Rylee turns 14 years old is inevitable unless something is done. Kirk respectfully urges the Court to stop this undeniable damage to Brooke and Rylee by granting the relief sought in the Motion and declaring the eviscerated teenage discretion provision null and void.

DATED this 30th day of September, 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 Reply in Support of 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 29th day of September, 2016, by Kirk Harrison.

K. L. NIDAY
Notary Public State of Nevada
No. 12-7715-1
My Appt. Exp. June 17, 2020

NOTARY PUBLIC in and for said
County and State

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30TH day of September, 2016, I caused to be served the ***Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Knowlingly and Intentionally Violating 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):

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Gvarshney@radfordsmith.com
Jhoeft@radfordsmith.com

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EXHIBIT “7”

ORDER

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Co-counsel for Plaintiff

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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:
Time of Hearing:

PROPOSED ORDER FOR REUNIFICATION THERAPY

THIS MATTER having come on for hearing this 5th day of October, 2016, on *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, and Motion for Reconsideration, or, in the Alternative, Motion for Hunneycut Certification, Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order*, as well as the Oppositions thereto, KIRK HARRISON being represented by EDWARD L. KAINEN, ESQ. of the KAINEN LAW GROUP, PLLC, and VIVIAN HARRISON being represented by RADFORD J. SMITH, ESQ. of RADFORD J. SMITH, CHARTERED.

The Court having reviewed the pleadings and papers on file herein, having heard the arguments of counsel, and good cause appearing therefore, the Court finds and orders as follows:

THE COURT FINDS that between August 12, 2015 and August 26, 2016, Kirk lost a total of 154 days of custodial time with Brooke, and that between August 27, 2016 and September 23, 2016, Kirk lost an additional 13 days of custodial time with Brooke, for a total of 167 lost custodial days, and Vivian is responsible for the loss of those 167 custodial days with Brooke.

Those were 167 days when Brooke should have been with Rylee as well, but was not. If Kirk were to request those 167 days be made up, this Court would grant such request. However, that would result in Rylee being separated from Brooke for another 167 days. In lieu of making up the 167 days, Kirk has requested that he is given compensatory time in the form of temporary exclusive physical custody of Brooke and Rylee for a period of 90 days. Under this request, Kirk will be recouping only 45 days of the 167 days of lost custodial time with Brooke. Kirk will be obtaining an additional 45 days of custodial time with Rylee.

IT IS HEREBY ORDERED that Kirk is granted temporary exclusive physical custody of Brooke and Rylee for a period of 90 days.

IT IS HEREBY ORDERED that during this 90 day compensatory time in the form of temporary exclusive physical custody period, Kirk shall enroll Brooke, Rylee and Kirk in the four day reunification program, Turning Points 4 Families, Linda J. Gottlieb, LMFT, LCSW-R, 35 Slocum Road, Beacon, New York 12508 (631) 707-0174 or, in the event this program does not have time available during said 90 day period, then with another, similar, four day family reunification program.

IT IS HEREBY ORDERED that before and after this 90 day period and any extensions thereof, Vivian shall ensure Brooke's and Rylee's full compliance and strict adherence to the custody schedule set forth in Paragraph 5 of the Custody Order, filed July 11, 2012. In the event Vivian fails to ensure said full compliance and strict adherence, then this Court shall strongly consider and will likely grant primary custody of both Brooke and Rylee

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to Kirk. This is not the outcome this Court wants and Kirk has made clear it is not the outcome he wants, but this Court's orders shall be honored and obeyed.

THE COURT FINDS Vivian is responsible for fostering the relationship between Kirk and the minor children – Brooke and Rylee.

IT IS HEREBY ORDERED that Vivian shall 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. Vivian shall work with the family reunification program in drafting this letter.

IT IS HEREBY ORDERED that Kirk will schedule the four day program with Turning Points 4 Families as soon as reasonably possible with the goal of minimizing the loss of school time for Brooke and Rylee as much as reasonably possible, and that once it is scheduled, Vivian shall be responsible for promptly paying for the cost of this program, which is estimated to be approximately $12,000.00.

IT IS HEREBY ORDERED that Vivian shall be responsible for transporting Brooke and Rylee to the location of the reunification program, Vivian shall initially meet with the person at the reunification program in charge of the reunification effort and shall cooperate fully with that person, and that Kirk shall be responsible for transporting Brooke and Rylee from the location of the reunification program to Kirk's home.

IT IS HEREBY ORDERED that the 90 day compensatory time in the form of temporary exclusive custody period shall begin the day after Vivian takes Brooke and Rylee to the reunification program.

IT IS HEREBY ORDERED that during the 90 day temporary exclusive physical custody period, Vivian shall have no contact whatsoever with Brooke and Rylee. This includes all telephone and electronic communications, in person contact, and communications through third parties. This is a necessary protective provision to prevent the children's relapse and regression.

IT IS HEREBY ORDERED that in the event Vivian violates the foregoing no contact provision or fails to support Kirk's relationship with Brooke and Rylee, the Court will extend

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A.App. 2314

the 90 day temporary exclusive custody period and the 90 day period of no-contact. Either the family reunification program or Dr. Ali will make a recommendation to the Court regarding making such extension and the duration of such extension.

IT IS HEREBY ORDERED that Vivian shall have parent education services with the family reunification firm.

IT IS HEREBY ORDERED that Vivian shall counsel with Dr. Ali to address any behaviors that have been unsupportive of the relationship between the children and Kirk, and to recognize that it is in Brooke's and Rylee's best interests for both parents to be in their lives, and Vivian shall be solely responsible for the payment of these services.

THE COURT FINDS that Turning Points 4 Families policy, which is also the policy of other family reunification programs, is that the entire cost of the program is non-refundable in the event the minor children are not transported to the program at the time the four day family reunification program is to begin.

IT IS HEREBY ORDERED that after Vivian has successfully transported Brooke and Rylee to the family reunification program, Brooke and Rylee have completed the four day program, and Vivian has fully complied with the 90 days of no contact, as ordered herein, then Kirk shall reimburse Vivian for one half of the cost of the family reunification program, which if Turning Points 4 Families is the program utilized, will be the sum of $6,000.00.

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IT IS HEREBY ORDERED that after the conclusion of the 90 day no contact period, and any extension thereof, Vivian and Kirk shall meet with Dr. Ali on a periodic basis in an effort to avoid any relapse or regression on the part of Brooke and Rylee. These meetings with Dr. Ali can be separate meetings or joint meetings, depending upon Dr. Ali's determination as to what will be best for Brooke and Rylee. Vivian and Kirk shall each be responsible for bearing the cost of each meeting she or he has with Dr. Ali.

DATED this —— day of September, 2016.

_____
DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By: _____
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Las Vegas, Nevada 89129
Attorneys for Plaintiff

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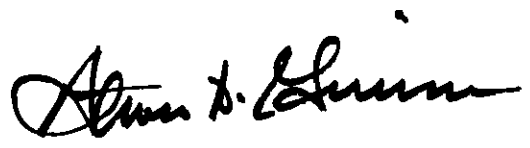

CLERK OF THE COURT

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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: 10/5/2016
Time of Hearing: 10:00 a.m.

ORAL ARGUMENT REQUESTED:

YES XX NO ___

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, MOTION FOR HUNNEYCUT 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

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 Reconsideration, or, in the alternative, Motion for Huneycutt Certification; Motion to Amend Findings or Make Additional Findings, and ; Motion

to Alter, Amend, and Clarify Order.

This Reply 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 30th day of September, 2016.

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By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Vivian only appealed this Court's denial of her countermotion to modify primary custody, wherein Vivian sought primary physical custody of Brooke, and this Court's denial of Vivian's motion for attorney's fees. This Court only lost jurisdiction as to these two narrow and discreet issues.

Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006) is directly on point. 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 for Reunification Therapy and Plaintiff's Motion for an Order to Show Cause 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.

In *Mack-Manley v. Manley*, the Nevada Supreme Court ruled on the very issue before this Court, namely whether this Court has the power to enforce custody provisions pending appeal. The Nevada Supreme Court ruled the district court does have such jurisdiction:

> 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. The pending Motion for an Order to Show Cause is a motion to enforce custody. The gravamen of both of these motions is to cause Vivian and Brooke to willingly comply with the existing Custody Order.

In *Mack-Manley v. Manley,* the Nevada Supreme Court also 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:

> 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.

Vivian cannot expand the scope of the limited lost jurisdiction by claiming to make this argument or that argument. An argument does not expand the scope of the jurisdiction lost on appeal. It is just argument. If that were the law, an appellant could theoretically deprive a trial court of all jurisdiction pending appeal by making unlimited tenuous and specious arguments designed only to deprive the trial court of all jurisdiction pending appeal. That is not how it works.

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Vivian's entire opposition is premised upon the erroneous assumption that Kirk is seeking to modify custody. Kirk is not seeking to modify custody. If Kirk simply requested the Court to order compensatory time for his 167 days of lost custodial time, which is not a modification of custody, but merely the enforcement of the existing Custody Order. In lieu of that relief, Kirk is requesting far less. Kirk is only requesting 45 days of compensatory time for the lost 167 days for Brooke and an additional 45 days for Rylee. The 90 day period of compensatory time is not a modification at all, but at best is a temporary modification only.

Kirk's motion is clearly in the best interest of Brooke and Rylee. The Court, Dr. Paglini, and Dr. Ali have all noted their alarm, dismay, and significant concern about Vivian's wrongful empowerment of Brooke and Brooke's defiance of the Custody Order and the Court's Order regarding reunification. Vivian's assertion that the motion is frivolous and sanctionable under EDCR 7.60 is an insult to everyone involved in this case.

DATED this 30th day of September, 2016.

KAINEN LAW GROUP, PLLC

By: _____

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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2016, I caused to be served the ***Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for Hunneycut 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 EDRC 5.13*** 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):

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CLERK OF THE COURT

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Attorney for Defendant

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 DIVISION

DEFENDANT'S OPPOSITION TO MOTION FOR AN ORDER TO NULLIFY AND VOID EXPERT REPORT

DATE OF HEARING: ~~September~~ 10/24/16, 2016
TIME OF HEARING: 10:00 a.m.

COMES NOW Defendant, VIVIAN MARIE LEE HARRISON ("Vivian"), by and through her attorney Radford J. Smith, Esq. and Garima Varshney, Esq. of the firm of Radford J. Smith, Chartered, and submits the following points and authorities in Opposition to Plaintiff, KIRK ROSS HARRISON's ("Kirk") Motion for an Order to Nulllify and Void Expert Report, and requests that the Court deny Kirk's Motion in its entirety. Vivian countermoves for sanctions.

This Opposition and Countermotion is based upon the points and authorities attached hereto, the evidence provided in the form of Exhibits to the Opposition, all pleadings and papers on file in this matter, and any oral argument adduced at the time of the hearing of this matter.

DATED this 17 day of October, 2016.

RADFORD J. SMITH, CHARTERED

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GARIMA VARSHNEY, ESQ.
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Henderson, Nevada 89074
Attorney for Defendant

I.

STATEMENT OF FACTS

Commencing in August 2015, Kirk filed a series of motions seeking to hold Vivian in contempt for alienating Brooke from Kirk, and causing Brooke to not comply with the visitation provisions of the parties' stipulated parenting plan. At the first hearing on those Motions, the Court suggested to Kirk that a hearing on an order to show cause may not be the best method to get to the root of the problem, and instead suggested an interview of Brooke to determine the basis of her desire to spend less time with Kirk. The Court appointed Dr. John Paglini to interview Brooke and the parties. Dr. Paglini did so, and also conducted a joint session with Kirk and Brooke.

Kirk never moved this Court to disqualify Dr. Paglini as an independent expert between the time the Court appointed him, until the time of the completion of his report. Dr. Paglini completed his report on January 25, 2016. His findings were inconsistent with Kirk's theory that Brooke's behavior was caused by Vivian's alienation.

1. Dr. Paglini's Findings

When Kirk met with Dr. Paglini as part of Dr. Paglini's analysis set forth in his Child Interview report dated January 25, 2016, he provided books, copies of pleadings, and other documents to convince Dr. Paglini that Vivian had alienated Brooke, and that was the reason Brooke desired a more limited schedule with Kirk. Dr. Paglini specifically found, with emphasis, that Kirk's allegations that Vivian had alienated Brooke was not supported by the interviews of the parties and Brooke, the joint sessions of the parents and Brooke together, or the extensive documentation he reviewed as part of the interview / analysis.

Dr. Paglini addressed and dismissed Kirk's general claim that Vivian had alienated Brooke, and also Kirk's specific claim that was contained in his then pending motion to hold Vivian in contempt, the insurance issue. Dr. Paglini disputed Kirk's contention that Vivian had involved Brooke in the issue, and found that it was not the basis for Brooke's desire to spend more time at one home, rather than equal time at two homes.

In his report, Dr. Paglini recounted his interview with Brooke in 2012 in which even at that time Brooke has expressed a desire to spend more time with Vivian. Dr. Paglini perceived Brooke's present desires to be consistent with her wishes in 2012, and Dr. Paglini found that she had not now expressed her desires more forcefully without prompting by Vivian.

After his interviews of the parties and Brooke in late 2105 and early 2016, Dr. Paglini, in sum, recognized Brooke's close relationship with Vivian arises from numerous emotional connection points. Also, her recognized Brooke's comfort in residing in her childhood residence in which Vivian still resides. He described Brooke's relationship with Kirk as different. He identified that Brooke and Kirk do not have many emotional connecting points, and that she is disengaged from him by his thinly veiled

attempts to convince her that Vivian was putting thoughts in her head (essentially the claim underlying all of his recent motions).

Further, Dr. Paglini describes a joint session between Kirk and Brooke in which Kirk inappropriately (and in violation of EDCR 5.03) confronted Brooke with issues from the divorce action, and then apologized for doing so. He falsely asserted to Brooke that Vivian had filed for the divorce. Kirk suggests in his pleading filed with this Court on October 3, 2016 that he did so to combat allegations by Vivian that Kirk caused the divorce. That allegation makes it worse – he consciously fed false information about the divorce to his daughter in order to cause her to think less of Vivian.

Dr. Paglini's observations are supported by years of Kirk's attacks and insults he has heaped upon Vivian. The following is just a small sample of descriptions or statements about Vivian that have appeared in his filings in this case:

> "Bizarre", "incredibly insecure", "in competition" with him and children, "threatened" by children, "resentful" of children and Kirk, "delusional", "need for attention is frightening", "lonely", "distanced herself from family", "not all there", "incredibly totally self absorbed", jealous of Kirk, "never has had any sense of propriety", lacks a moral compass", "narcissist", "personality disorder", "feeds on the negative emotions of her own children", "inflicts emotional abuse upon every member of the family", "callous", "manipulative horrible human being", "absent and uncaring". "out of control", " obviously deceitful", "checked out", "lowest form of human existence", "no ability to love or care for someone else", "pathological narcissist", "vicious", "abusive", no "empathy", "looked like a crazy person","don't want to bond" with Brooke and Rylee, wants Brooke and Rylee to have "insecurities and fears", "cares nothing about Brooke and Rylee", "lack of emotional attachment to Brooke and Rylee", "doesn't care what is best for Brooke and Rylee", Vivian "interests take precedence over Rylee's interests", "wants them to be dependent upon (me) even though it costs them emotionally", "wants them needy, fearful and insecure", "rarely spends time with Brooke and Rylee", "will say anything to give Brooke and Rylee the false impression that she cares form them", "consistently gives no consideration whatsoever for Brooke and Rylee", "Brooke and Rylee's needs are not on Vivian's radar", "emotionally feeds on Brooke and Rylee at her convenience.", "doesn't care about them", "no regard for Brooke and Rylee whatsoever", "working them big time", "no regard for Rylees emotional and physical well being whatsoever", wants children to be "emotionally distraught", "callous and wanton disregard of Brooke and Rylee", doesn't have "the ability to care one iota about Rylee", "intentionally emotionally torture their won eight year old daughter each night", exposes

> Rylee to "serious physical harm each night", "Rylee is victimized again", "tries to get rid of Brooke and Rylee", "drug addict"

Dr. Paglini warned that if Kirk persisted in his line of thinking that Brooke's desire grew out of severe parental alienation, he would likely damage her relationship with her. A fair reading of Dr. Paglini's report is that Kirk's hatred of Vivian, and his disparagement of her, is a significant part of Brooke's choice to spend less time with him.

2. Kirk's Reaction to Dr. Paglini's Report:

After Kirk reviewed Dr. Paglini's report, he withdrew his motions to hold Vivian in contempt, and asked the Court to follow the recommendations of Dr. Paglini regarding therapy with Dr. Jamal Ali (who had previously been providing therapy to Brooke under the terms of the parties stipulated parenting plan):

> THE COURT: Does – does the Plaintiff accept the recommendations of Dr. Paglini?
>
> MR. KAINEN: We think it's a good first step, yes.

See, Transcript of the hearing of January 26, 2016 filed February 10, 2016. Based upon Kirk's request, the Court ordered that therapy take place.

> 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, Ph.D.

See, Order filed May 25, 2016, page 3, lines 8-15. Kirk did not file a motion to disqualify Dr. Paglini, or seek to have his report vacated before the issuance of the Court's May 25, 2016 Order, nor did he appeal that order.

. . .

3. Kirk's Attempt to Cause the Court to "Nullify and Void" the Report whose Recommendations He Accepted, and Upon Which He Currently Seeks to Hold Vivian in Contempt.

Kirk now moves the Court "nullify and void" Dr. Paglini's January 26, 2016 report. His claim is based upon a single line contained in a motion for attorney's fees Vivian filed on April 3, ***2013*** approximately 3 and a half ***years*** before his current motion, and almost nine months after he agreed to the recommendations contained in the report. The fundamental premise of his claim is that ***four years*** ago, undersigned counsel had an ex-parte conversation with Dr. Paglini regarding the results of the report he was then preparing in January, 2012. That fundamental premise is completely and utterly false. Notably absent from Kirk's presentation is any statement from Dr. Paglini, or evidence of an attempt to even inquire of Dr. Paglini, whether Kirk's false claims have any basis in fact. Undersigned counsel requests that this Court direct Dr. Paglini to advise the Court whether he has ever had any substantive discussions of his report, findings, or any aspect of the preparation of his report with Mr. Smith. The answer will be a resounding "no."

In order to support his false proposition, Kirk quotes the April 3, 2012 motion, but fails to quote the entire pertinent paragraph. The April 3, 2012 Motion for Attorney's fees was largely based upon the notion that Kirk had greatly exacerbated the costs of the child custody litigation by manufacturing through Dr. Norman Roitman a "diagnosis" of Vivian as suffering from Narcissistic Personality Disorder "to a reasonable degree of medical certainty" without Dr. Roitman ever meeting her or reviewing any of her medical or psychological records. The discussion quoted by Kirk in his present motion was written by Vivian's counsel in the context of explaining that none of the psychologists who had examined Vivian, had reviewed her medical records, and had reviewed all of Kirk's pleadings, ever found that she suffered from any psychological disorder. The full paragraph reads:

> Just a few days before the parties settled the case (on the second day of Kirk's deposition), Dr. Paglini met with each party to discuss his findings and report. Dr. Paglini reported to the parties' counsel that he was nearly done with the preparation of his

> report, and he was scheduled to provide the report to the Court only days after the parties reached a settlement. As stated, Vivian wanted (and still wants) the report to be published to settle the issues Kirk raised in his pleadings. Kirk adamantly refused, yet to this day continues to allege that Vivian suffers from a personality disorder, and that the multiple psychiatrists and psychologists, including Dr. Paglini, who found that Vivian was not suffering from any psychological disorder, were all duped by her.

See, Motion for Attorney's Fees and Sanctions, filed April 3, 2013, page 14. The reference by undersigned counsel was to a meeting that Vivian had with Dr. Paglini after both Vivian and Kirk underwent extensive psychological testing. Vivian advised undersigned counsel that Dr. Paglini met with Vivian to discuss the results of her testing, and advised Vivian that the results were all "within normal limits." He found no psychological disorder from the test results. He advised her that he would be having, or had already had, the same type of meeting with Kirk. That is the basis for the reference within that motion, and that was the import of the reference – that Dr. Paglini found that "she was not suffering from any psychological disorder." Vivian welcomes the Court's inquiry into that fact from Dr. Paglini, who she believes will verify the meetings that Dr. Paglini conducted with both Vivian and Kirk regarding their individual psychological testing.

Kirk submits with his Motion the Affidavits of his counsel (Mr. Kainen and Mr. Standish) to suggest that Vivian's counsel improperly withheld the information regarding knowledge of Dr. Paglini intended report. That claim is a true head-scratcher; why would Vivian want to withhold information that favored her position? One could understand Kirk's argument if Vivian, by withholding information about a weakness in her case she learned through Dr. Paglini, had sought a negotiated result that was better than she could expect if the information was published by Dr. Paglini. It makes no sense, however, that she would withhold confirmation of the position that she, and every doctor who ever examined her, had taken, that she did not suffer from any psychological disorder. That position was stated by undersigned counsel during negotiations, during hearings, in letters, and in just about every pleading ever filed in this matter.

Kirk's motion tries to reinvent history by claiming that it was undersigned counsel's idea to bring the matter of the preparation of Dr. Paglini's report, even after settlement, to the Court in July of 2012. In reality, it was Kirk, through Mr. Standish, that asked the Court to weigh in on the issue. *See,* Ex-Parte Request for Telephone Conference, filed by Mr. Standish July 16, 2012. In that Ex-Parte Request, Mr. Standish stated:

> As this Honorable Court is aware, a return hearing has been set for Wednesday, July 18, 2012, at which time [the] expert report of Dr. Paglini was to be completed. However, following the execution of the parties' Stipulation, [Kirk] informed Dr. Paglini that completion of the report was no longer necessary. [Vivian] and Defendant's counsel, Radford Smith, Esq., disagreed with Kirk's directive and insisted that Dr. Paglini complete his Report. As a result, the parties have reached an impasse on whether the report should be completed.

The facts leading to Mr. Standish's filing were as follows: undersigned counsel and Mr. Standish had frequently discussed the merits of having Dr. Paglini complete his report even after settlement, but only for the benefit of the parties, and without any ability for either party to present the report to the Court. Undersigned counsel first learned this would not occur when advised by Vivian that Kirk almost immediately upon settlement told Dr. Paglini to stop working on his report. Nothing in the parties' stipulated plan vacated either the hearing of July 18, 2012, or the Order of the Court directing Dr. Paglini to prepare a report.

Undersigned counsel then contacted Dr. Paglini to confirm the case was settled, and to inquire whether he would be completing his report. When he advised undersigned counsel of the call from Kirk, undersigned counsel advised him that he would contact Kirk's counsel. Undersigned counsel contacted Mr. Standish, and agreed to set a conference call with Dr. Paglini. Mr. Standish then participated in a conference call with Mr. Silverman and Dr. Paglni shortly before the July 18, 2012 hearing, as confirmed by Mr. Standish and Mr. Silverman at the hearing. *See,* Transcript of the hearing

of January 18, 2012, filed February 24, 2016 (and appended to Kirk's present Motion as Exhibit "5") at pages 13-17.

That was the extent of all of the conversation by Vivian's counsel with Dr. Paglini. These facts were known to the parties and counsel at the time of the July 18, 2012 hearing, years before the Court appointed Dr. Paglini to conduct the current interview of Brooke.

4. Kirk's Goali for Refusing to Allow Dr. Paglini to Finish His Report and His Motion to Vacate and Nullify Dr. Paglini's Present Report, is to Avoid the Truth

Kirk's stated reason for settlement, his stated reason for refusing to allow the preparation of Dr. Paglini's report, and his stated reason for seeking to vacate Dr. Paglini's present report are not credible. Kirk's position that Vivian suffered from an incurable personality disorder only softened as his case weakened. He had no credible expert to support his manufactured theory of NPD, and was facing world class experts that would debunk the unethical "diagnosis" of Dr. Roitman, Vivian has supplied reports on the issues of harm to Rylee, phentermine, and co-sleeping from nationally known experts to Dr. Paglini. She had scores of witnesses lined up to testify about her care and involvement with Brooke and Rylee. During that process Kirk had been directed by the discovery commissioner to turn over his texts and emails with the parties' adult daughters (which Vivian submits would have shown an mountain of improper manipulation of them, and disparagement of Vivian) and sanctioned $5000 for his discovery failures, and one of his only two potential witnesses (Tahnee) was scheduled for deposition. After causing the parties to spend hundreds of thousands of dollars on litigation, he saw he had no hope of winning his goal of primary custody, and folded.

His stated reason for not wanting to have Dr. Paglini's report completed in 2012 in his current motion all addresses his fears of the effect on his family of more discovery and trial. That notion has nothing to do with the reason Vivian asked for Dr. Paglini's report to be completed at that time. She made that request to avoid the very thing that has occurred: Kirk still claiming that Vivian suffers from

a personality disorder. Kirk suggests that the Court's denial of Vivian's request to have the report completed is inconsistent with the Court's findings in its order of February 10, 2014. The two contexts, however, are completely different. One context was the Court addressing the arguments regarding the relative merits of having the report prepared, the other was addressing the obvious inconsistency in Kirk's position that he wanted to shield the children from harm caused by Vivian's condition, yet refused to have a report completed that could have addressed his concerns, and offered solutions. *See,* Findings, Conclusions and Orders filed February 10, 2016, page 18, fn. 19.

His current motion is designed to avoid Dr. Paglini's findings. He does not want to accept or the findings that hold him responsible for his relationship with Brooke because that would preclude him from blaming Vivian for any and every problem in his relationship with Brooke.

II.

KIRK HAS WAIVED HIS OBJECTION TO DR. PAGLINI'S REPORT

Kirk caused Vivian to incur thousands of dollars of fees defending against motions claiming that she was the cause of Brooke's behavior in refusing to abide by the timeshare contained in the parenting plan. He then caused her to incur thousands of dollars of cost to go through Dr. Paglini's interview process only to learn that Kirk's theories regarding the motivation for Brooke's behaviors were wrong. Kirk did not present any cogent evidence of any act or omission by Vivian that was the basis for Brooke's behavior. He voluntarily vacated his motions, and specifically approved, and asked that the Court memorialize in an order, the findings of Dr. Paglini.

All of the facts Kirk now alleges were known to Kirk at the time of the Court's appointment of Dr. Paglini. He did not move to disqualify Dr. Paglini, and he did not inquire of Dr. Paglini either inside or outside of the interview process if the allegations had merit (which they do not). Kirk could have

filed this motion, and if it had merit it would have saved the parties and the Court time, judicial resources and thousands of dollars of fees.

By his failure to timely act, Kirk waived any right to challenge Dr. Paglini's participation in this case, or his report. Waiver requires the intentional relinquishment of a known right. *Mahban v. MGM Grand Hotels,* 100 Nev. 593, 596, 691 P.2d 421, 423 (1984). The waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished. *Hudson v. Horseshoe Club Operating Company*, 112 Nev. 446, 457, 916 P.2d 786, 792-93 (1996). Here, Kirk's failure to file any motion to disqualify Dr. Paglini until months after he issued his report, and his acceptance of the findings in the form of an order (entered May 25, 2016) that he did not appeal, is conduct so inconsistent with an intent to enforce his right to challenge Dr. Paglini's report that Vivian, and the Court, had the right to reasonably believe that the had waived that right.

II.

THERE IS NO FACTUAL BASIS TO JUSTIFY VACATING DR. PAGLINI'S REPORT.

Kirk's only citation in support of his motion seeking to vacate Dr. Paglini's report is *G.K. Las Vegas Limited Partnership v. Simon Property Group, Inc.* 671 F. Supp.2d 1203 (D. Nev. 2009). In that case, a Defendant's counsel had a phone conversation with an independent expert appointed by the Court pursuant to Rule 706 of the Federal Rules of Evidence[1], and provided the expert only copies of his client's pleadings without advising opposing counsel that he had done so. *Id.,* 671 F.Supp at 1227-1228.

[1] FRE 706 reads in relevant part:

The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses upon its own selection. An expert witness shall not be appointed by the court unless the witness agrees to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have the opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

Defendant's counsel then invited the expert's personnel to attend a meeting in the Defendant's offices again without advising opposing counsel. 671 F.Supp 1228. Consequently, the court vacated the order authorizing the expert report.

Here, Vivian's counsel never had any ex parte contact with Dr. Paglini. All pleadings and documents provided to Dr. Paglini were copied to Kirk's counsel, and none of Vivian's counsel had a conversation with Dr. Paglini regarding the substance of his proposed report in 2012 or his report in 2016 at any time. Undersigned counsel never disclosed any ex parte contact with Dr. Paglini because none existed. Kirk's motion is baseless, and the Court should deny it in its entirety.

III.

COUNTERMOTIONS FOR SANCTIONS

Once again Kirk has filed a long and contrived motion with no basis in fact. He could have easily investigated the issue by discussing the issue with Dr. Paglini, because he is the only attorney in this litigation who believes that he can have *ex parte* contact with the experts in the case. Though he has acted as his own counsel in appeals, and his current counsel have admitted that Kirk provides the initial draft of every pleading (something that is apparent from the same expressions and insults being leveled time and time again), he feels comfortable talking to them without ever informing opposing counsel of the substance of the conversation. Even so, in this particular instance he wants the Court to believe that he could not ask Dr. Paglini if he ever had a conversation about the substance of any report either drafted or prepared in this case.

Vivian submits that Kirk did not contact Dr. Paglini regarding this issue because he knows that Dr. Paglini will verify that there has never been any improper conduct. Kirk's motion is tactical, and designed to bolster his now pending motion to hold Vivian in contempt. He wants to create an image to

the Court that Dr. Paglini was biased, and therefore the Court should dismiss his findings without any specific challenge to any of his findings.

Kirk's motion, based upon his failure to properly investigate his claim, is frivolous, and it has unnecessarily multiplied the proceedings in this case. EDCR 7.60 permits this Court to award sanctions where a party has filed a frivolous motion, or has unnecessarily multiplied the proceedings in a case. The Court should sanction Kirk in a sum equal to all of the attorney's fees and costs that Vivian has incurred to reply to his meritless motion.

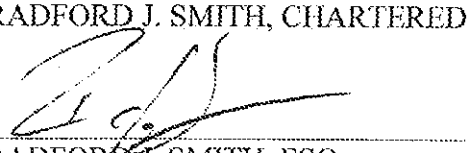
VII.

CONCLUSION

Based on the foregoing, the Court should deny Kirk's Motion in its entirety and sanction him pursuant to EDCR 7.60.

Dated this 17 day of ~~September,~~ October, 2016.

RADFORD J. SMITH, CHARTERED



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UNSWORN DECLARATION OF RADFORD SMITH, ESQ.

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

I, RADFORD J. SMITH, ESQ., declares and says as follows:

1. I am an attorney licensed to practice law in all courts of the State of Nevada. My firm, Radford J. Smith, Chartered represents the Defendant, Vivian Harrison, in the above-entitled matter.

2. 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.

3. I. I have reviewed the foregoing Plaintiff's 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.

RADFORD J. SMITH, ESQ.

DATE: 10/17/2016

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 OPPOSITION TO MOTION TO NULLIFY AND VOID EXPERT REPORT on this 18 day of October, 2016, to all interested parties by way of the Eighth Judicial District Court's electronic filing system.

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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: Defendant Date 10/18/16

Signature of Party or Preparer Helen Harrison