

Clerk

From: Jay Jay <jss0407@hotmail.com>
Sent: Thursday, November 12, 2020 6:11 PM
To: Clerk
Subject: Justin Maurice

Follow Up Flag: Follow up
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Jul 08 2021 12:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

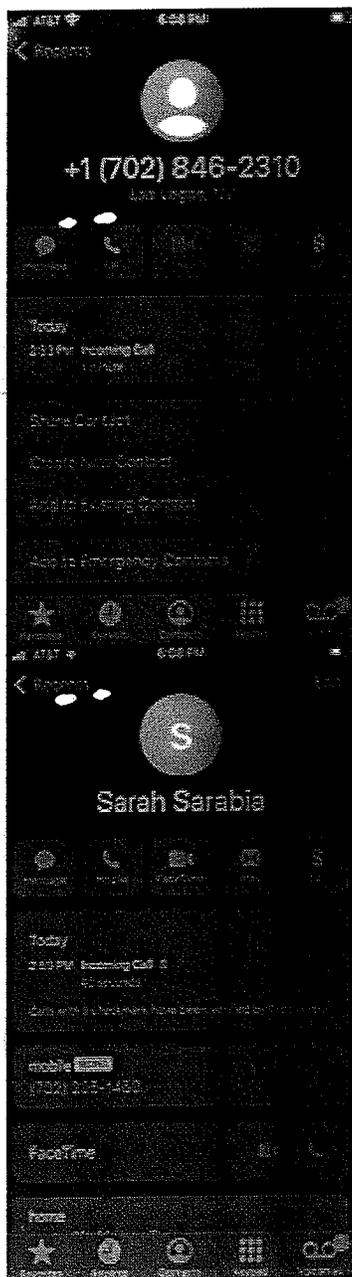


EXHIBIT "D"

AT&T LTE

10:06 AM

S

Sarah Sarabia >

Monday 10:53 AM

Can we have Emma for the next couple days this week so we can finish off swim lessons. Would be 12:30 today and after 3pm rest of the week

We can pick her up

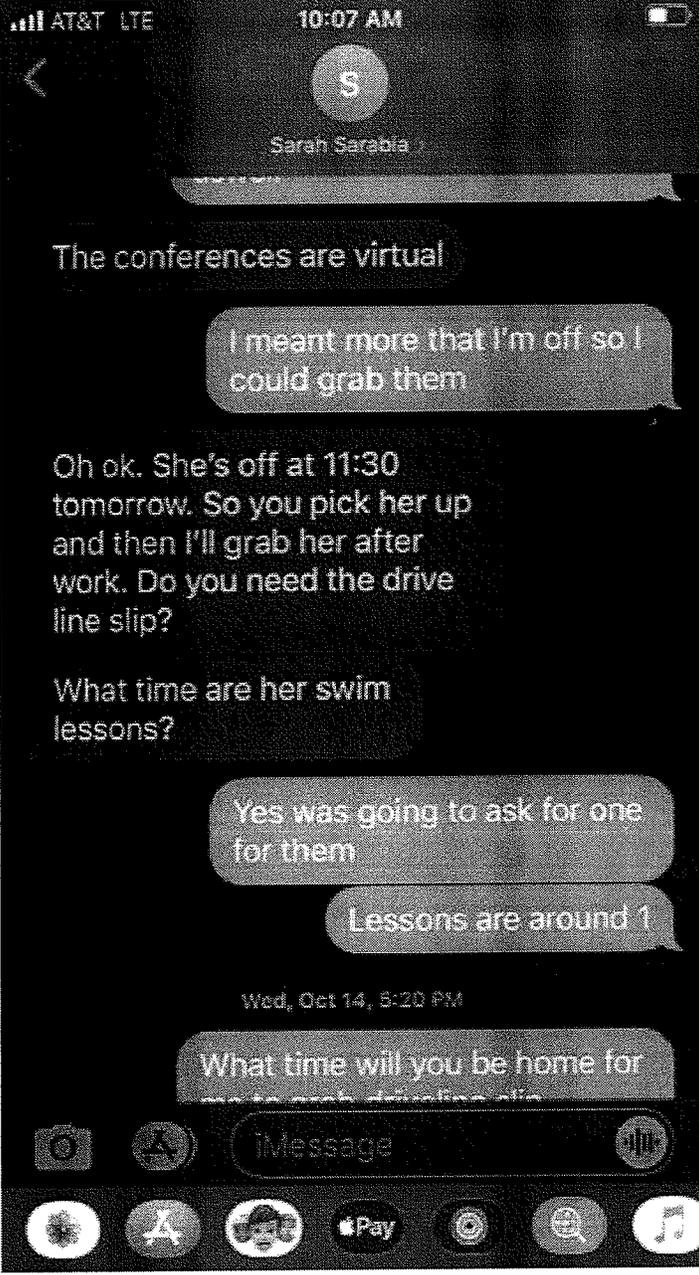
No thank you

I think it's really important for Emma to have swim lessons, I'm offering to pay for them and do all the transportation. It also doesn't interfere with when you're off work. we put Savannah in them back in the day and I want Emma to complete them too, can you please choose a couple of the days atleast?



iMessage





The conferences are virtual

I meant more that I'm off so I could grab them

Oh ok. She's off at 11:30 tomorrow. So you pick her up and then I'll grab her after work. Do you need the drive line slip?

What time are her swim lessons?

Yes was going to ask for one for them

Lessons are around 1

Wed, Oct 14, 5:20 PM

What time will you be home for me to grab driving slip

AT&T LTE

10:09 AM

S

Sarah Sarabia

Tue, Oct 6, 7:33 PM

Can I have Emma for swim lessons tomorrow !?

I'd rather not disrupt her school day. You can plan them on weekends you have them

It's after school

Plan it on your time please

This class would give her the capability to save her life or others, and you're saying no when I'm not even asking you to pay for it, the class isn't offered on the weekends Sarah

Good night Justin



iMessage



EXHIBIT "E"



Sarah Sarabia >

4:11 at 7:11

Nov 29, 2018, 5:19 PM

I'd like to see about getting more time with the girls about the first of the year. Can we talk down and try and figure something out?

We would need to go through court

Why?

Cuz Unless your schedule has somehow miraculously changed I don't need your girlfriend raising our kids

That wasn't needed?

It's true

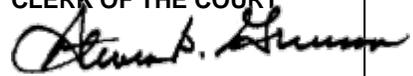


iMessage



Apple Pay





1 **OPPC**
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9
10 ***EIGHTH JUDICIAL DISTRICT COURT***
11 ***CLARK COUNTY, NEVADA***

12 **SARAH MAURICE,**

13 **Plaintiff,**

14 **vs.**

15 **JUSTIN MAURICE,**

16 **Defendant.**

Case No. **D-14-506883-D**

Dept. No. **Q**

Date of Hearing: 01/13/2021

Time of Hearing: 9:00 AM

ORAL ARGUMENT REQUESTED

17 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR**
18 **RECONSIDERATION AND COUNTERMOTION FOR AN AWARD OF**
19 **ATTORNEY'S FEES, COSTS, AND RELATED RELIEF**

20 COMES NOW Plaintiff, SARAH MAURICE ("Plaintiff" and/or "Sarah"),
21 by and through her attorney Rachel M. Jacobson, Esq., of Jacobson Law Office,
22 Ltd., and hereby submits her Opposition and Countermotion to Defendant JUSTIN
23 MAURICE's ("Defendant" and/or "Justin"), Motion filed December 7, 2020 as set
24 forth below.
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1 This Opposition and Countermotion is made and based upon the pleadings
2 on file herein, any exhibits filed herein, and the oral argument that may be adduced
3
4 at the time of hearing of this matter.

5 Sarah respectfully requests this Court enter orders granting the following
6 relief:
7

- 8 1. For an Order denying Defendant's Motion in its entirety;
- 9 2. For a behavioral order;
- 10 3. For an award of reasonable attorney's fees and costs to the Plaintiff in
11 defending this action; and
- 12 4. For such further relief as deemed appropriate in the premises.

13 DATED this 5th day of January 2021.

14 JACOBSON LAW OFFICE, LTD

15
16
17 */s/ Rachel M. Jacobson*

18
19 _____
20 Rachel M. Jacobson, Esq.
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25 *Attorney for Plaintiff*
26
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28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 As the Court will please recall, this matter came before the Court on October
5 27, 2020 which was the time set for hearing upon Defendant’s Motion to Modify
6 Custody and financial orders. Though set for 9:00 a.m., the hearing was ultimately
7 called at 10:03 a.m. as Defendant was not yet in appearance. Despite the
8 significant courtesy, Defendant still failed to appear. The Court was nevertheless
9 prepared to decide upon the matter having reviewed all the papers on file in this
10 case. VC 10:05:21 Specifically, in that regard, the Court noted and ordered as
11 follows:
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14

15 The Court does not find that a modification of a work schedule is a
16 sufficient basis, under *Ellis v. Carucci*, as a substantial change in
17 circumstances affecting the wellbeing of the children in this instance
18 that would invoke the Court pursuing a modification of custody
19 pursuant to *Ellis v. Carucci* and then proceeding to the best interest
20 factors. VC 10:05:24

21 Defendant has now filed another motion now seeking to set aside the Court’s
22 order of October 27, 2020 and/or reconsider the same. Incorporating by reference
23 the previous Opposition Plaintiff filed in this case on October 1, 2020, this
24 Opposition follows.

25 ...

26 ...

1
2 **II.**
3 **BACKGROUND AND STATEMENT OF RELEVANT FACTS**

4 The parties to this action divorced in September of 2015. Together the
5 parties have two minor children: Savannah Maurice, born April 27, 2007, and
6 Emma Maurice, born February 12, 2014. Prior to their divorce, the parties
7 separated in September of 2014. Sarah filed the underlying Complaint for Divorce
8 in December of 2014. After several filings and hearings, the parties ultimately
9 entered a stipulated Decree of Divorce on September 30, 2015. This Decree marks
10 the last custodial order in this matter.
11

12
13 As provided in the parties' Decree of Divorce, in relevant part, primary
14 physical custody was confirmed upon Sarah and Justin's visitation was set every
15 other weekend from Friday after school or 3:00 p.m. if no school to Sunday at 6:00
16 p.m. The Decree also set Justin's child support obligation at \$1,260 per month.
17
18 And Sarah shall claim the minor children on her income taxes every year.
19

20 To again reiterate what was stated in Sarah's prior opposition, *three months*
21 *after entry of the Decree*, Justin filed a motion to modify child support claiming
22 that his income had changed by more than 20% and Justin sought to lower his
23 monthly obligation to \$680.00. At the January 2016 hearing upon Justin's motion
24 and Sarah's opposition and countermotion, the parties represented to the Court
25 their agreement to lower Justin's child support obligation to \$920 per month
26
27 effective January 2016. Further, provided he began to provide health insurance for
28

1 the parties' children, Justin was to receive an offset of \$134.00 each month.¹ The
2 Court also ordered that Sarah was awarded \$5,102.24, reduced to judgment, as and
3 for Justin's child support arrears. Collection was stayed so long as Justin paid
4 \$217.00 per month toward the arrearages until paid in full. The D.A. was instructed
5 to add this amount to the child support amount to be garnished from Justin's pay
6 checks. Justin was also ordered to pay to Sarah an additional \$1,080 stemming
7 from his failure to provide health insurance for the parties' children.²

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11 On December 5, 2016, the parties filed their Stipulation and Order
12 increasing Justin's child support obligation to \$1,200 per month as his income
13 increased to \$5,252 per month. The parties further agreed that Justin shall provide
14 health insurance for the parties' children with no offset to his support obligation.
15 And, as Justin failed to pay his portion of the childcare costs, the parties agreed
16 that his arrearages of \$3,950.50 were reduced to judgment with the D.A. to add
17 \$350.50 to Justin's current monthly arrears payments. This Stipulation and Order
18 also specifically left all other previous orders intact.

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21
22 On July 26, 2017, the parties filed a document entitled Partial Payment for
23 Property Equalization stating that Justin had paid to Sarah some of the equalization
24 payment obligation Justin was to pay to Sarah pursuant to the terms of the parties'

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¹ See Order filed February 29, 2016.

28 ² *Id.* at page 3, line 3.

1 Decree of Divorce. The document further stated that Justin had a remaining
2 balance of \$10,000 toward this payment obligation.
3

4 This history is important in that it shows Justin's true intentions throughout
5 the parties' separation and divorce. Justin simply does not want to take
6 responsibility for his financial obligations. To date, Justin has not paid this
7 remaining equalization obligation, nor has he paid to Sarah the arrearages ordered
8 by this Court. And, as reflected in his current Motion, Justin again seeks to lower
9 his financial obligations. Motivated by financial ends, Justin's Motion fails to
10 present adequate cause to justify modification to joint physical custody. Justin
11 wants the Court to believe that Sarah has not cooperated with him but this could
12 not be farther from the truth.
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15

16 As noted in the October Opposition in further detail, since the entry of the
17 parties' Decree of Divorce, Sarah has demonstrated a willingness to work with
18 Justin and has agreed to lower his obligations when he so requested. Likewise,
19 Sarah has accommodated Justin's request regarding the children. During the first
20 week of school, Sarah agreed for the girls to attend school at Justin's residence.
21 This agreement was only regarding the first week of school. As Justin has
22 remarried, his wife (who has 4 other children of varying ages) was available to
23 assist the parties' children assimilate into the new on-line school arrangement
24 during the first week of school. This agreement, however, has backfired. Not only
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1 have the girls encountered chaos in Justin’s home during school hours, Justin
2 began demanding increased time on a regular basis – especially since the last
3 hearing in this matter.
4

5 In further efforts to work with Justin, as the schools closed following
6 COVID related restrictions, Sarah agreed that the girls could visit with Justin
7 during the day several days a week. This arrangement lasted only three weeks
8 given a concerning altercation between Justin and one of the parties’ daughters as
9 also explained in Sarah’s most recent opposition.
10
11

12 On April 3, 2020, Justin and Savannah had an altercation wherein Savannah
13 feared for her safety. Savannah texted Sarah explaining that her dad had been
14 drinking a lot and she heard him calling the five-year-old twins “little pussies.”³
15 Savannah stated that the boys were upset and were crying but Justin kept yelling at
16 them. When Savannah asked Justin to stop and to calm down, he directed his
17 anger at her. Shortly after her text, Savannah also called Sarah.
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19

20 Savannah told Sarah that she would be coming home. Savannah would not
21 tell Sarah why. Savannah was indeed dropped off at Sarah’s home. Justin’s wife
22

23
24 ³ Sadly, Justin also frequently disparages his wife’s children. In addition to
25 calling her 5-year-old twins “little pussies” (and in front of the parties’
26 children) he is constantly yelling at his wife’s 13 year old daughter. At
27 one point she yelled back and said “you’re not my Dad; I don’t have to listen
28 to you!” And Justin cruelly replied, “well your dead Daddy isn’t here is he?”
This was a reference to the child’s deceased father.

1 brought Savannah to Sarah. In doing so, she provided no explanation and neither
2 did Justin. Sarah learned from Savannah what had happened.

3
4 Savannah advised Sarah that Justin had followed Savannah to her room.
5 Justin then got in Savanna's face and told her she could never talk to him that way
6 and that she should be thanking him for saving her life. Justin told Savanna that,
7 when her mom was pregnant with her, she was going to be aborted and that her
8 mom did not want her. Understandably, Savannah was extremely hurt and upset.
9 Justin scared Savannah by getting in her face and being visibly intoxicated.
10 Savannah began refusing to visit with Justin in his home and the girls expressed
11 that they did not feel safe in his care. Further, Justin expressed indifference to the
12 emotional trauma he caused Savannah. When Sarah asked Justin why he would
13 tell Savannah something so hurtful, he simply stated that Savannah needed to know
14 her mom is not as perfect as she thought. After this incident, Sarah did not feel it
15 was in the girls' best interest to visit Justin on his non-visitation days. Now, in his
16 efforts to reduce his child support obligation and apparently claim the parties'
17 daughters on his returns, Justin is attempting to utilize Sarah's flexibility in
18 parenting to buttress his argument for a custodial modification. Likewise, in his
19 current Motion, Justin attempts to shift the blame to others for his nonappearance.
20 He is also again making recurrent false allegations attempting to mislead the Court
21 in his efforts to paint Sarah in a negative light. A review of Justin's own
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1 allegations shows both inconsistencies and exaggerations which help to highlight
2 that Justin's request for modification is grounded in financial interests rather than
3 the children's best interests. In response, Sarah, again, respectfully presents that
4 Justin's allegations are false.

- 5
6
7 1. Sarah has never had any control over Justin's work schedule. Moreover, at
8 the time of entry of the parties' Decree of Divorce, he was off at 1:00 p.m.
9 and thus afforded much more time to pick the girls up from school/daycare,
10 but he elected not to do so. Likewise, Sarah did not cause Justin to be laid
11 off. What possible motive would she have for doing so? And, in any event,
12 he was laid off before the parties' divorce was finalized. In any event, Justin
13 has now worked at YESCO since 2015.
- 14
15 2. If it is true that Justin is working from home,⁴ this allegedly COVID related
16 schedule does not afford him dedicated time to the girls' schooling since he
17 is also working. Justin's current wife Casey also has 4 other children in the
18 household that she must attend to during online learning. Again, the time
19 would be split between 6 children. Emma especially needs constant
20 supervision for school. And, as previously mentioned, Casey's children
21 have learning disabilities which would make giving any of the children one
22 on one attention all the more impossible. Additionally, since November, the
23 parties' children have been attending in person school on Wednesdays and
24 Thursdays and, contrary to Justin's representations, Sarah takes them to
25 school. The children are also regularly picked up but for one day where
26 there was an innocent miscommunication concerning Emma.
- 27
28 3. Following the April 2020 incident between Justin and Savannah, Sarah does
not feel it was best to expand Justin's time beyond the Court ordered
schedule. At no point, however, did Sarah ever tell Justin to file a motion.

⁴ Justin's representations regarding his current schedule are inconsistent. On page 5 he reports he works 4 days a week remotely yet on page 6 he claims to work remotely 2 days a week on Monday and Tuesday.

1 This is Justin's attempt to skirt his failure to honor the EDCR 5.501
2 obligation to attempt to confer prior to filing.

3
4 4. Emma's homework has NEVER been late, and she has never had a missing
5 assignment. The reason things are uploaded sometimes late at night is
6 because Sarah uploads all her assignments for her in the school system.
7 These times reflect when Sarah uploads the assignments not when Sarah
8 completes the assignments. Here too, Justin is grasping at straws trying to
9 make it look like Emma is up late every night doing schoolwork. That is not
10 the case. Emma does her assignments during the day and has an entire paper
11 packet that she works on all week. She completes the assignments during
12 the day on paper. Most of the time, Sarah waits until the girls are sleeping to
13 devote the time to review the assignments before loading them to the system.
14 Moreover, all weekly assignments are due by Friday at midnight⁵ and, as
15 reflected in Justin's Exhibits, nothing has ever been late or submitted past
16 that time. Likewise, Savannah's grades are rather improving, so the
17 allegations that her education is suffering is also false.

18
19 5. Ever since Justin filed his original motion back in September of 2020, he has
20 been planning activities on Sarah's custodial days. Sarah did agree to one
21 swim lesson on Thursday, October 15th because she was off school early and
22 it would, therefore, not run into her school time. The other times Justin
23 asked to take Emma to swim lessons were during school hours. (After the
24 last hearing in this case, Justin insisted upon scheduling swim lessons on
25 weekdays though classes were also available on the weekends.)

26
27 6. Contrary to Justin's current representations, the parties' daughters have not
28 asked to spend more time with Justin/custodial change.

⁵ See message from Emma's teacher verifying all assignments are due Friday by
midnight.

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- 7. Sarah’s nanny has worked with the parties’ minor children for the last two and a half years; she is not a new hire as Justin would like the Court to believe.

- 8. Historically, Justin and Sarah have always agreed to limit the girls’ use of social media. Of late, however, Justin has unilaterally allowed (and helped) Savannah to open Facebook and Snapchat accounts behind Sarah’s back. Justin also purchased an Ipad for Savannah and allowed her to use it without any parental restrictions. After discovering her inappropriate searches, Sarah added parental controls and Justin and Sarah agreed that she did not need social media and the two closed her Facebook and Snap chat account. Emma also has unrestricted use of an Ipad while at Justin’s home. She is also allowed to search social media sites and she is 6 years old! Recently Justin asked about getting Savannah a new phone for Christmas. Sarah thought it was a good idea but then Justin proceeded to reason that Savannah should be permitted to access social media sites because “these sites make her feel pretty and allow her to fit in.” Justin even suggested he should get her a whole separate phone under his account so that way he could give her free reign and usage of social media and applications that Sarah otherwise does not approve.

III.
LEGAL ARGUMENT

Justin’s request for a set aside or reconsideration should be denied as Justin fails to reasonable support either request. The request to set aside should be denied as Justin lacks a valid reason for his nonappearance at the hearing of October 27, 2020. Moreover, the finding and orders made at that time were based upon the Court’s review of the papers such that the denial of Justin’s motion was not dependent upon the failure of his appearance. In that regard, the Court reviewed the papers and arguments presented by each party and the Court’s findings and

1 order lacked error. Likewise, Justin's new Motion fails to raise new allegations
2 warranting reconsideration. He is again grasping at straws and, moreover,
3 attempting to mislead the Court with allegations that, nevertheless, do not present a
4 substantial change of circumstances affecting the welfare of the children. And, in
5 any event, Justin's Motion fails to show in any way that the children's welfare
6 would be benefitted by the custodial and financial modifications he requests.
7

8
9 As the Court is aware, the parties' minor children have remained in Sarah's
10 primary care since the parties' separation in September of 2014. As such, any
11 request to modify custody should be reviewed under *Ellis v. Carucci*, 123 Nev.
12 145, 161 P.3d 239 (2007).
13

14
15 Pursuant to *Ellis*, modification of primary physical custody is warranted only
16 when (1) the party seeking a modification proves there has been a substantial
17 change in circumstances affecting the welfare of the children and (2) the children's
18 best interests are served by the modification. Justin's current motion fails to meet
19 either prong.
20

21
22 As presented above, the minor children have remained in Sarah's primary
23 care since September of 2014. Since that time, the parties' children have visited
24 with Justin on alternating weekends. Because Sarah was flexible and attempted to
25 work with Justin (until he accosted and emotionally traumatized their children) in
26 March of 2020, Justin feels he has established grounds to bring forth a motion to
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1 modify custody. But Justin’s allegations do not meet the threshold requirement as
2 he fails to demonstrate that there has been a substantial change in circumstances
3 affecting the welfare of the parties’ minor children.
4

5 Further, pursuant to *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123,
6 124 (1993), Justin’s Motion should not result in an evidentiary hearing as it fails to
7 demonstrate adequate cause.
8

9 Pursuant to *Rooney*, the Court may deny hearing upon a motion to modify
10 unless the moving party demonstrates adequate cause for the hearing. To
11 demonstrate adequate cause, Justin must set forth a prima facie case for
12 modification which necessitates a showing that “(1) the facts alleged in the
13 affidavits are relevant to the grounds for modification; and (2) the evidence is not
14 merely cumulative or impeaching.”⁶
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18 In his Motion, Justin simply alleges that his schedule has changed such that
19 he is now able to work from home and watch the girls during home school. Just
20 omits the fact that his schedule changed back in 2016 and that, when the girls did
21 spend a few school days in his home, they reported a chaotic environment. Justin
22 wants the Court to believe that his wife (of less than one year) is able to watch the
23 children during their home school hours. Justin coast over the fact that his wife
24 has 4 other children she must attend to during those time – a few of behavioral and
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28 ⁶ *Id.*

1 learning problems requiring greater attention and rendering Justin's new wife less
2 available to provide adequate care for six children.⁷ In Sarah's care, while the
3 children are temporarily attending home school, the children get one-on-one
4 attention. Though Justin wants the Court to find that this fact satisfies the
5 substantial change prong, it is respectfully presented that Justin's Motion is devoid
6 of facts necessary to support the serious request of modification. As such, pursuant
7 to *Rooney*, Justin's Motion should be denied.

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11 Likewise, Justin's Motion fails to demonstrate the children's best interest
12 would be served by the requested modification.

13
14 As provided in NRS 125C.0035, when reviewing the children's best
15 interests, the Court is directed to consider the following factors:

16 (a) *The wishes of the child if the child is of sufficient age and capacity to*
17 *form an intelligent preference as to his or her physical custody.* The parties' oldest
18 child has requested to limit her visitation with Justin given, in part, the recent
19 incident described above.
20

21
22 _____
23 ⁷ The household environment is chaotic and not good for the girls to be
24 around. Several of the children have behavioral issues that negatively
25 impact the girls. The oldest daughter curses at her mom, has called her a
26 bitch and has even hit her own mom. She is constantly on restriction and on
27 the last occasion did not want to return from her father's house after
28 visitation. The household is chaotic, especially when all 6 of the children
are there and does not lend itself to comfortable/productive home school
conditions.

1 (b) *Any nomination of a guardian for the child by a parent.* Since 2014, the
2 parties nominated Sarah to provide the children’s primary care.
3

4 (c) *Which parent is more likely to allow the child to have frequent*
5 *associations and a continuing relationship with the noncustodial parent.* Since the
6 inception of this case, Sarah has accommodated each of Justin’s requests regarding
7 custody (as well as finances). Until now, Justin limited his time with the parties’
8 children. This fact is not a reflection of Sarah’s willingness to facilitate a
9 continuing relationship. Sarah has also agreed to a temporary school change for the
10 girls due to COVID and continually demonstrates a willingness to cooperate with
11 Justin. And, as an example of Sarah’s willingness to facilitate frequent
12 associations, though it was her 4th of July weekend with the girls this year, Sarah
13 had the girls travel with Justin to his father’s cabin in Utah. Likewise, Sarah
14 facilitates Savannah summer visitations to Maine so she may continue to build her
15 relationship with her paternal grandmother.
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20 (d) *The level of conflict between the parents.* In his Motion, Justin blames
21 Sarah for his negligible interest in the parties’ children to date. To that end, he
22 wants the Court to believe that Sarah is simply “money hungry.” This allegation is
23 false and also ironic as Justin makes this allegation while standing in an attitude of
24 contempt as he has failed to pay to Sarah \$11,000 in child support arrears as well
25 as the remaining equalization funds owed to her pursuant to the parties’ Decree of
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1 Divorce. As noted in *Lamb v. Lamb*, 83 Nev. 425, 433 P.2d 265 (1967), “[n]o
2 party to an action can with right or reason, ask the aid and assistance of a court in
3 hearing his demands while he stands in an attitude of contempt to the court’s legal
4 orders and processes.”

5
6 Moreover, as Justin well knows, it has never been about money for Sarah.
7 Since the parties’ separation (and before), Sarah’s priority has been the best
8 interests of the parties’ children. As to the conflict between the parents, it appears
9 that Justin has made the parties’ relationship adversarial as he has begun to
10 disparage Sarah to the children a lot more since getting married.

11
12 (e) *The ability of the parents to cooperate to meet the needs of the child.*

13
14 Despite the current allegations, this has never been an issue for the parents and
15 there is no indication it should be so now.

16
17 (f) *The mental and physical health of the parents.* It is ironic that Justin now

18 raises concerns regarding Sarah’s mental health. Sarah assures the Court that she
19 is of sound mental and physical health. On the other hand, as to Justin, Sarah has
20 concerns as Justin is constantly intoxicated - even when he has the girls.
21 Additionally, he is unable to control his anger and can become violent and has
22 scared Savannah several times to the point she has expressed fear for her safety.

23
24 (g) *The physical, developmental and emotional needs of the child.* As

25 mentioned above, since Justin told Savannah that her mother wanted to abort her in
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27
28

1 addition to continually disparaging Sarah before the girls, the girls have expressed
2 fear and anxiety when it is time to visit their father. In his Motion, Justin argues
3 that he is loving and exceptionally attentive. But this is also false. Even on the
4 weekends that the girls are in Justin's care, it is presented that he rarely spends
5 quality time with them. He says that he is attentive to their needs. Even their
6 material needs come into question when they are at his home. He requires that the
7 girls must go home with the same clothes Sarah sent them with and if they take
8 something home with them that he purchased he gets upset and demands they
9 make sure to bring it back the next time. Savannah still must take her basic
10 necessities with her when she goes to her Dad's (deodorant, lotion, etc.). In this
11 regard, Justin has also told Savannah on several occasions that as he pays her mom
12 so much money every month, she should be buying them two sets of everything -
13 one set for Sarah's house and one set for his. Additionally, Sarah reiterates her
14 concerns about the girls' environment and inadequate supervision while in Justin's
15 home.

21
22 (h) *The nature of the relationship of the child with each parent.* While the
23 parties' children love both of their parents, they are bonded with their mother who
24 has been their primary care provider since birth.

25
26 (i) *The ability of the child to maintain a relationship with any sibling.* The
27 girls should remain together. As such, this factor is not applicable.
28

1 (j) *Any history of parental abuse or neglect of the child or a sibling of the*
2 *child.* As mentioned above, Justin can become violent and has scared Savannah
3 several times where she has expressed fear for her safety. Further, while the
4 parties were married, Justin hit Sarah while she was holding Savannah. Justin was
5 also arrested for domestic violence against one of his girlfriends.
6
7

8 (k) *Whether either parent or any other person seeking physical custody has*
9 *engaged in an act of domestic violence against the child, a parent of the child or*
10 *any other person residing with the child.* In his Motion, Justin denies this factor
11 but this is also not true. There is a history of domestic violence between the parties
12 as Justin abused Sarah in front of their oldest daughter. Justin hit Sarah in
13 September 2014 (the act causing their separation). Justin was intoxicated at the
14 time of the incident and he hit Sarah while she was holding their daughter
15 Savannah who was 7 years old at the time. Unfortunately, Savannah was old
16 enough to understand and remember this event. After hitting Sarah, Justin went
17 outside and let the air out of all her tires so that she could not leave. As such,
18 Sarah called police for assistance and Justin (though intoxicated) fled the scene.
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23 There is also concern as Justin was arrested for perpetrating domestic
24 violence upon a former girlfriend while the two were residing together. *He called*
25 *Sarah to bail him out of jail!*
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1 (1) *Whether either parent or any other person seeking physical custody has*
2 *committed any act of abduction against the child or any other child.* Not
3 applicable.
4

5 In essence, Justin's Motion should be denied as he has fails to provide a
6 valid reason for his nonappearance and as he fails to provide new supportive
7 allegations. As previously ordered, Justin's request for modification to joint
8 physical custody (and therefore related financial requests for relief) should be
9 denied as his Motion fails under *Rooney*. Moreover, Justin's Motion does not
10 demonstrate the children's best interest would be served by a modification. Rather,
11 the children's best interests are served by allowing them permanency by
12 maintaining the status quo - which has been the case for the last 6 years.
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16 III.

17 COUNTERMOTION

18 **A. Sarah Should be Awarded Reasonable Attorney's Fees and Costs.**

19 As it is believed that Justin's Motion is not ripe before the Court and as Justin
20 comes before the Court under an attitude of contempt and in bad faith, it is
21 respectfully requested that the Court grant Sarah an award of reasonable attorney's
22 fees for the necessity of addressing this Motion.
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26 In this regard, NRS 18.010 provides as follows:
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1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to [Rule 11](#) of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Further, in the context of family law cases, guidance is provided by several cases which reviewed attorney's fees. *See Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), and *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987). And, pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the Court is also to consider the following factors:

1 1) *The Qualities of the Advocate*: his ability, his training, education,
2 experience, professional standing and skill. Regarding this initial factor, it is
3 respectfully presented that the undersigned counsel has obtained her JD in 2001;
4 she has been licensed in the State of Nevada since October of 2001 and has
5 dedicated her practice primarily to the area of family law with a focus on
6 mediation of cases to circumvent litigation for families.
7

8 2) *The Character of the Work to be Done*: its difficulty, its intricacy, its
9 importance, time and skill required, the responsibility imposed and the prominence
10 and character of the parties where they affect the importance of the litigation.
11

12 3) *The Work Actually Performed by the lawyer*: the skill, time and attention
13 given to the work. As to the character of the work, given the research into the
14 history of this case, and the enormity of correspondence to attempt settlement,
15 instead filing a motion that must be responded to, it is of high skill importance. As
16 to work actually performed, the undersigned respectfully asks this Court to find
17 that the work presented is adequate and well contemplated.
18

19 4) *The Result*: whether the attorney was successful and what benefits were
20 derived.
21

22 While each of the foregoing factors is relevant, not one should predominate or
23 be given undue weight. *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005). In
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1 the case at hand, Justin's actions have forced Sarah to incur fees in addressing his
2 Motion.

3
4 **IV.**

5 **CONCLUSION**

6 **WHEREFORE**, based upon the foregoing, Sarah respectfully request this
7 Court enter orders granting the following relief:

- 8
- 9 1. For an Order denying Defendant's Motion in its entirety;
 - 10 2. For a behavioral order;
 - 11 3. For an award of reasonable attorney's fees and costs to the Plaintiff in
12 defending this action; and
 - 13 4. For such further relief as deemed appropriate in the premises.
- 14
15

16 DATED this 5th day of January 2021.

17
18 JACOBSON LAW OFFICE, LTD

19 */s/ Rachel M. Jacobson*

20
21 _____
22 Rachel M. Jacobson, Esq.
23 Nevada Bar No. 007827
24 64 North Pecos Road, Suite 200
25 Henderson, Nevada 89074
26 (702) 601-0770
27 *Attorney for Plaintiff*
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DECLARATION OF SARAH MAURICE

I, SARAH MAURICE, being duly sworn, depose and say:

I am the Plaintiff in the above-referenced matter.

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

I have reviewed the foregoing OPPOSITION and COUNTERMOTION and know the facts therein and the same is true and correct and are incorporated herein by this reference as if fully set forth herein.

That I declare under the penalty of perjury under the laws of the State of Nevada (NRS 53.045) that the foregoing is true and correct.



SARAH MAURICE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of JACOBSON
3 LAW OFFICE, LTD., and that on this 5th day of January 2021, I caused a copy of
4 the above referenced document entitled “OPPOSITION AND
5 COUNTERMOTION” to be served as follows to the party(s) listed below at the
6 address, and/or email address indicated below:
7
8

9 BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed
10 in a sealed envelope upon which first class mail postage was prepaid in
11 Henderson, Nevada;

12 BY ELECTRONIC SERVICE: Pursuant to EDCR 8.05(a), EDCR
13 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned “In the
14 Administrative Matter of Mandatory Electronic Service in the Eighth
15 Judicial District Court,” by mandatory electronic service through the Eighth
16 Judicial District Court’s electronic filing system; and/or

17 BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy
18 of the foregoing document this date via electronic mail;

19 To the party(s) listed below at the address, email address, and/or facsimile number
20 indicated below:

21 Bradley J. Hofland, Esq.
22 Email: bradh@hoflandlaw.com
23 *Attorney for Defendant*

24 */s/ Rachel M. Jacobson*

25 _____
26 An employee of JACOBSON LAW OFFICE, LTD.
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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

SARAH MAURICE
Plaintiff/Petitioner
v.
JUSTIN MAURICE
Defendant/Respondent

Case No. D-14-506883-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.

<input type="checkbox"/>	\$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-		
<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>		The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>		The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>		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 _____.
<input type="checkbox"/>		Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

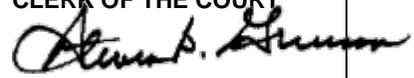
<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input type="checkbox"/>		The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>		The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-		
<input type="checkbox"/>	\$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-		
<input type="checkbox"/>	\$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:											
<input checked="" type="checkbox"/>	\$0	<input type="checkbox"/>	\$25	<input type="checkbox"/>	\$57	<input type="checkbox"/>	\$82	<input type="checkbox"/>	\$129	<input type="checkbox"/>	\$154

Party filing Motion/Opposition: Rachel M. Jacobson Date 1.5.2021

Signature of Party or Preparer /s/ Rachel M. Jacobson



1 **HOFLAND & TOMSHECK**
Bradley J. Hofland, Esq.
2 Nevada Bar Number: 6343
bradh@hoflandlaw.com
3 228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
4 Telephones: (702) 895-6760
Facsimile: (702) 731-6910
5 *Attorney for Defendant, Justin Maurice*

6
7 **DISTRICT COURT, FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 SARAH MAURICE,

10 Plaintiff,

11 vs.

12 JUSTIN MAURICE,

13 Defendant.

) CASE NO.: D-14-506883-D

) DEPT. NO.: Q

)
) **DEFENDANT’S REPLY TO**
) **PLAINTIFF’S OPPOSITION TO**
) **DEFENDANT’S MOTION FOR**
) **RECONSIDERATION OF ORDER**
) **DENYING TO MODIFY THE**
) **CURRENT CUSTODIAL**
) **ARRANGEMENT; MODIFY CHILD**
) **SUPPORT; MODIFY CHILD TAX**
) **DEDUCTION; AND FOR AN**
) **AWARD OF ATTORNEY’S FEES**
) **AND COSTS; AND RELATED**
) **RELIEF; AND RELATED RELIEF.**

) Date of Hearing: January 13, 2021

) Time of Hearing: 9:00 a.m.

) **ORAL ARGUMENT REQUESTED**

21 COMES NOW the Defendant, Justin Maurice (“Justin”), by and through his
22 attorneys, Bradley J. Hofland, Esq. and Dina DeSousa-Cabral, Esq. of HOFLAND
23 & TOMSHECK, and hereby submits this reply to Plaintiff’s opposition to
24 Defendant’s motion wherein it was respectfully requested this Court:

- 25 1. Recognize the need to reconsider this Court’s earlier Order of
26 November 21, 2020;
27 2. Set aside the November 21, 2020 Order in its entirety;
28 3. Modify child custody of Savannah Maurice and Emma Maurice to joint

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- physical custody on a 2-2-3 schedule;
- 4. Modify child support, and set support in accordance with *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), NRS 125B.070, NRS 125B.080 and NAC 425.15;
- 5. Modify the child tax deduction so each party claims a minor child as a dependent on taxes each year;
- 6. Award Justin attorney’s fees for the conduct of the Plaintiff Sarah Maurice that has caused this Motion to be filed with this Court; and
- 7. Address any further relief this court deems proper and necessary.

In support of his motion, Justin submits this reply and relies upon the following Memorandum of Points and Authorities, the attached declaration, as well as all papers and pleadings on file herein.

Dated this 8th day of January, 2021.

HOFLAND & TOMSHECK
 By: /s/ Bradley J. Hofland
 Bradley J. Hofland, Esq.
 Nevada Bar No. 6343
 228 South 4th Street, 1st Floor
 Las Vegas Nevada 89101
Attorneys for Defendant Justin Maurice

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 It is for good reasons Family Court has continuing jurisdiction of child
5 matters—a fact long recognized by our Legislature. It would be incredibly naïve,
6 in fact, neglectful, if a parent did not recognize the needs of their child(ren) never
7 changed, and adjusted their care and attention accordingly. Likewise, it would be
8 irresponsible and thoughtless if courts entrusted with the responsibility to
9 recognize and meet the needs of children chose to favor judicial economy over
10 their best interests.
11

12 The best interests of children, as a matter of law, can only be ascertained
13 with the consideration of all relevant factors. Many of these are statutorily
14 referenced, while others must be recognized and assessed by attentive and
15 concerned jurists. Courts have recognized, that among those, would necessarily
16 include changes in a/the parent’s work schedules, changes in a/the parent’s
17 residences, and even the changing ages of the child(ren), are relevant best interest
18 considerations.
19

20 Sadly, and unacceptably, this Court chose to deprive Defendant of his due
21 process rights to a fair and meaningful hearing (he was not allowed to appear given
22 the Court’s method of disposition), and more troubling, his fundamental rights as a
23 parent were not recognized and accommodated. Along with that, Defendant’s
24 counsel was not allowed (denied) the opportunity to be heard (unlike Plaintiff’s
25 counsel). Instead, this Court simply focused on one factor, denied argument and
26 an evidentiary hearing, claiming that factor alone was insufficient to modify
27 custody and child support, and promptly ruled the case would be closed as soon as
28 Plaintiff’s counsel could get an Order to the Court.

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III.
Statement of Facts

As a threshold matter, the narrative that Sarah has composed, is replete with false, misleading, inaccurate, conflicting, and inflammatory comments—all designed to deflect from the merits of the relief Justin is seeking—while unfairly and wrongfully striving to create a knee-jerk, emotional, bias against Justin. A careful, as opposed to cursory, review of Sarah’s opposition will confirm her lack of candor to this Court.

For example, Sarah self-lauds and professes to be reasonable. However, the examples she provides pertains to child support—not custody. It is telling that Sarah at least concedes child support needs to be adjusted when there are changed circumstances—but rejects the notion that child custody should be changed/modified when circumstances have changed, and of course, when such a change would be in the children’s best interests. It is also notable that in her quest to malign Justin, she falsely represents his history of payments and the actual amount of arrears².

Of course, arrears are not before this Court and any reference to them is meaningless. Sarah does so only to inflame the Court unfairly against Justin. For her to deceive this Court as to the payments he has made and the arrearages that remain, is inexcusable.

It is significant to note that in the two instances Sarah references in an feeble attempt to suggest she accommodates Justin’s request for additional time with his children, she states she allowed the girls to attend school at Justin’s, but

² See Exhibit “A” submitted herewith for the Court’s convenience and review confirming the narrative provided by Sarah is false.

1 then follows the disclosure with an untrue claim there was “chaos”³ at Justin’s.
2 The allegation is patently false. Indeed, if there was any truth to it, why would
3 she allow the children to visit Justin “several days a week” after the schools closed
4 for “three weeks”? Obviously, if there was any truth to Sarah’s defamatory
5 claims, she wouldn’t have let the girls spend the “three weeks” at Justin’s.

6 Lastly, the reason Sarah discontinued this arrangement wasn’t for the
7 reasons she fabricated⁴, but because Justin wanted to memorialize an expanded
8 custodial schedule. Given that Sarah devotes almost as much attention to child
9 support and arrears (albeit falsely and which aren’t before this Court), there was
10 no way she would allow a custodial modification to affect the amount of child
11 support she receives.
12

13 Not surprisingly, Sarah’s unwarranted and untrue *ad hominem* attacks were
14 not limited to Justin’s wife. Sarah falsely claims/suggests Justin drinks too
15 much—the fact he has no DUI’s, has never been required to attend classes or
16 counseling, and maintaining his credentials/security level, disproves her claims.
17 Sarah’s allegations that Justin disparages or speaks inappropriately to his children
18 is patently false, offensive, hurtful, and unwarranted.
19

20 ³ Sarah’s dishonesty is not confined to the false claim of “chaos”, but includes the
21 untrue claim that Justin’s wife does not provide adequate care, bribes, or
22 disparaged Sarah.

23 ⁴ Ryleigh is a typical teenager trying to figure out her world, and talks back at
24 times to both parents, and at times is not completely forthright. For example,
25 Savannah hid from Sarah her Facebook and Snapchat accounts as she tried to
26 delete them so Sarah wouldn’t see them. Savannah did, however, inform Justin
27 about these accounts because they have an open and truthful relationship which
28 allows Justin to let Savannah be monitored with trust. Also, Ryleighs dad is not
deceased he lives in Southern Highlands. Sarah is either hearing false claims from
somewhere or fabricating them. Regardless, they are not true.

1 In short, the narrative that Sarah provides this Court is false, misleading,
2 inaccurate, and incomplete. Justin vehemently disputes the truthfulness of Sarah’s
3 allegations, and as this Court knows, a court may not assume the truth of
4 allegations in a pleading that are contradicted by affidavit⁵. Sarah’s portrayal of
5 Justin’s interaction with the children is patently false, as are her other allegations
6 and representations. For example, Sarah manipulates his work schedule when she
7 claims he didn’t pick the girls up from school, but conceals the fact that at that
8 time, he didn’t get off work until after 4:00 p.m. and unable to do so. When the
9 Decree was agreed to, Justin started work at 5:00 a.m. and the children’s schools
10 did not accept children at the time Justin would need to drop them off—another
11 fact withheld from this Court. Of course, his schedule now allows him to drop off
12 and pick up—something Sarah cannot do—but would prefer a third party to
13 assume that responsibility.
14

15 Continuing, the evidence proves Sarah lacks credibility. Although Sarah
16 represents to this Court she never told Justin to file a motion, the evidence
17 confirms her dishonesty⁶. Sarah also misrepresents Savannah’s performance in
18 school—claiming her grades are “improving”—but concealing the fact Savannah
19 has always been on the honor roll. Sarah’s complaint about swim lessons is also
20 inaccurate; all times requested were after school or after virtual calls would have
21 been completed (notably, contrary to Sarah’s claim, the swim program is not on the
22 weekends). As for Sarah’s Nanny, the girls have both been in full-time school and
23 the Nanny’s role was as an occasional babysitter with no set schedule.
24

25
26
27 ⁵ See *Data Disc. Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280 (Court of
28 Appeals, 9th Circuit 1977). See also, *Taylor v. Portland Paramount Corp.*, 383
F.2d 634, 639 (9th Cir. 1967).

⁶ See Exhibit “D” submitted herewith for the Court’s convenience and review.

1 Sarah also falsely crafts a narrative about social media and in so doing,
2 conceals from this Court that what Justin actually did was to ask Sarah to allow
3 Savannah to have more apps on her phone—including a Safari browser—which
4 would enable her to research issues, topics, and school matters. Because you are
5 unable to delete the history of what was searched, Savannah would still be
6 monitored.

7 Sarah's contradictions establish that, and following an evidentiary hearing,
8 the Court would have no doubt that Sarah's narration is mean-spirited, false, and
9 intended only to malign Justin and mislead/manipulate this Court.

10 It must be remembered that when the parties divorced, Savannah was 8
11 years old and Emma was just 1. Justin's work schedule (*set by Sarah in her*
12 *position in HR*) could not (or would not) be changed, and Savannah's school and
13 Emma's preschool, did not accept students at the time he would need to drop her
14 off, so the parties agreed to the schedule that is set forth in the Decree⁷. It must be
15 noted that per the Decree, Justin gets just every other weekend to be with his
16 children—an antiquated schedule that at one time was the norm, but now, rarely
17 implemented because it is per se contrary to the intent of the legislature and this
18 State.

19 Moreover, now that the children are 13 and 6 years of age, there is no
20 question greater parental involvement—having their father as a more instrumental
21 and involved part of their lives—is a fact widely accepted by courts, as well as
22 social and mental experts.
23
24

25 _____
26 ⁷ Sarah does not dispute that because of Justin's work schedule at Yesco (where
27 Sara working in the HR and set Justin's schedule—the very schedule that
28 prevented a joint custodial schedule) at the time of the Decree and initial custodial
determination, the Parties agreed that Sarah would be awarded primary custody of
their two children

1 On that note, there is no dispute Sarah cannot take the girls to school or pick
2 them up—something that she relegates to a third party instead of the children’s
3 father⁸. Sarah cannot, or will not, help with the children’s schoolwork⁹, and far
4 too often, the schoolwork that is done, is turned in exceedingly late¹⁰. Such
5 inattention has caused Emma to need tutoring.

6 Justin is no longer employed by Yesco and his work schedule has
7 significantly changed¹¹; the children are older and their needs have changed; and
8 the additional factors and considerations that must be considered merit a change of
9 custody, or at the very least, the setting of an evidentiary hearing. Indeed, both
10 Justin and his wife are able to pick up, drop off, and supervise the children, as
11 well as assist and monitor the children’s schoolwork.
12

13 The children’s emotional needs, along with their educational needs, not to
14 mention the unquestionable benefit of having a more involved and present father
15 in their lives, the outdated and inadequate custodial schedule merits modification.
16

17 **IV.**
18 **Legal Analysis**

19 ***A. Legal Standard***

20 Sarah does not challenge this Court’s authority to reconsider its decision and
21 prior ruling.
22

23 ⁸ A third party who Sarah does not dispute has overslept and failed to pick Emma
24 up from school.

25 ⁹ See Exhibit “B”.

26 ¹⁰ See Exhibit “C”.

27 ¹¹ Justin continues to work remotely two days a week on Monday and Tuesday. He
28 does not work on Friday. Emma now goes to school in person on Wednesday and
Thursday and attends virtual school on Monday, Tuesday and Friday, which are
the days Justin is either working remotely or off work. Such that he is available to
supervise and assist Emma with virtual schooling.

1 ***B. The Order from the October 27, 2020 hearing was clearly***
2 ***erroneous, manifestly unjust, and merits reconsideration.***

3 Sarah's selfishness and unreasonableness are further confirmed with her
4 argument that Justin's motion should be denied, claiming Justin lacks a valid
5 reason for his nonappearance at the October 27, 2020 hearing. Justin's counsel has
6 disclosed the conflict and Justin was waiting for his attorney. Sarah's position is
7 simply ridiculous.

8
9 Contrary to Sarah's myopic evaluation of the instant action, Justin has
10 identified and addressed considerable factors and reasons that confirm the Ellis
11 standard has been met...and at the very least, established the adequate cause that
12 mandates the setting of an evidentiary hearing to ensure the best interests of the
13 children are met. For Sarah to opine the needs of the children and the time they
14 spend with their father should remain unchanged during their entire minority is
15 absurd.

16 As previously noted, a court may exercise its discretion to revisit and reverse
17 a prior ruling if just one of five circumstances are present. Those circumstances
18 are: "(1) a clearly erroneous prior ruling, (2) an intervening change in controlling
19 law, (3) substantially different evidence, (4) other changed circumstances,' and (5)
20 that 'manifest injustice' would result were the prior ruling permitted to stand."¹²
21

22 1. **Abuse of Discretion**

23 This Court did not make any factual findings. Our Supreme Court has stated
24 that "[s]pecific factual findings are crucial to enforce or modify a custody order
25 and for appellate review." *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009).
26 Continuing, *Rivero* stated that "[t]he district court shall then apply the appropriate
27

28 ¹²See *U.S. v. Real Prop. Located at Incline Vill.*, 976 P. Supp. 1327, 1353 (D. Nev. 1997).

1 test for determining whether to modify the custody arrangement and make express
2 findings supporting its determination.” *Ibid.*

3 In the case at bar the district court failed to comply with applicable law and
4 make the requisite findings as mandated by law. *Lewis v. Lewis*, 132 Nev. 453,
5 459, 373 P.3d 878, 882 (2016) (a custodial determination without entering
6 “specific factual findings as to each of the statutory best-interest-of-the-child
7 factors” was an abuse of discretion). In *Davis v. Ewalefo*, 131 Nev. 445, 451, 352
8 P.3d 1139, 1143 (2015) the Nevada Supreme Court ruled that “[s]pecific findings
9 and an adequate explanation of the reasons for the custody determination ‘are
10 crucial to enforce or modify a custody order and for appellate review’” (internal
11 quotation marks omitted). The *Davis* Court also declared that “deference [to the
12 district court] is not owed to ...findings so conclusory they may mask legal error”
13 (citations omitted)¹³.

14 It is clear from this Court’s ruling that this Court did *not* consider the
15 relevant factors in support of Justin’s motion, including the statutorily mandated
16 factors—and certainly did not take testimony or receive evidence related thereto.
17 The limited factual references made by this Court were unquestionably incomplete
18 and inaccurate. This abuse of discretion mandates reconsideration.

19 2. **Error of Law**

20 While considering the merits of the underlying Motion to Modify this Court
21 erroneously ruled that a change in work schedules is **not** a factor the Court could
22
23

24
25 ¹³ See also *Bird v. Bird*, 313 Wis. 2d 832, 756 N.W.2d 810 (2008) (holding that in
26 setting a modified schedule the court shall consider the same factors that apply in
27 initial placement decisions.); and *Timmerman v. Timmerman*, 139 S.W.3d 230
28 (2004) (the court must consider the statutory custodial factors in deciding whether
modification of custody would serve the best interests of the child).

1 consider or that could satisfy the changed circumstances requirement.¹⁴ Of course
2 the statement is untrue and the corresponding reliance thereon constitutes judicial
3 error.

4 Consideration of the multiple factors and reasons that were identified by
5 Justin clearly established adequate cause for an evidentiary hearing by presenting a
6 prima facie case for modification¹⁵. *See Rooney v. Rooney*, 109 Nev. 540, 853 P.2d
7 123 (1993). As a matter of law, once adequate cause has been shown “*the district*
8 *court does not have the discretion to deny the modification motion without*
9 *holding a hearing.*” *Id* at 542, 853 at 124 (emphasis added). A moving party
10 demonstrates adequate cause once a prima facie case has been set forth. *Thompson*
11 *v. Thompson*, (Nev. Sup. Ct 59785 (2013)).

13 This Standard has consistently been applied and incorporated in the Orders
14 of the Nevada Supreme Court and Court of Appeals. One such Order is the recent
15 decision of *Singh v. Singh*, (Nev. Sup. Ct. 63530 (2015)). In *Singh* the decision to
16 not conduct an evidentiary hearing was reversed by because the appellant
17 established a prima facie case—and notably, *the allegations were contested*. That
18 was sufficient to require a hearing in *Singh*. In this case Justin alleged other
19 additional factors establishing the requisite changed circumstances under the most
20 stringent of standards. This Court’s determination that a change to a party’s work
21 schedule, alone, is immaterial and insufficient is contrary to law.

23 Indeed, in *Silva v. Silva*, 136 P.3d 371 (2006), the Idaho Supreme Court
24 affirmed the determination expressed by their appellate court in *Silva* that work
25

26 ¹⁴ Order of October 27, 2020, page 2 of 3, lines 18-23.

27 ¹⁵ Indeed, per *Rooney*, to constitute a prima facie case, all that must be shown is
28 that (1) the facts alleged are relevant to the grounds for modification; and (2) the
evidence is not merely cumulative or impeaching.

1 schedules of the parties *is* a relevant factor in modification of custodial orders.
2 *Markwood v. Markwood*, 152 Idaho 756, 274 P.3d 1271 (2012). In *Grange v.*
3 *Grange*, 15 Neb. App. 297, 725 N.W.2d. 853 (2006), the court held “[w]here the
4 issue concerns visitation, a significant change in a party’s *work schedule* may well
5 constitute a material change in circumstances sufficient to reopen the extent of
6 visitation.” In *Bird v. Bird*, 313 Wis. 2d 832, 756 N.W.2d 810 (2008), the court
7 ruled that “increased availability constituted a substantial change in
8 circumstances...” Moreover, the court in *Timmerman v. Timmerman*, 139 S.W.3d
9 230 (2004) stated “the substantial change in one of the parties’ [work] schedule
10 constituted a change in circumstances.”¹⁶

12 Clearly a change in the work schedules of the parties *is* a factor this Court
13 *must* consider—along with all other relevant factors; something this Court did *not*
14 do. To rule and do otherwise is an abuse of discretion. The creation and utilization
15 of the erroneous standard used by this Court constitutes judicial error and warrants
16 reconsideration and the setting of an evidentiary hearing.

17 ***The Best Interests of Savannah and Emma Mandates Modification of***
18 ***the Current Schedule.***

19 Continuing, when determining the best interest of the child NRS
20 §125C.0035 directs the court to consider a number of factors with any custodial
21 determination. Justin has accurately addressed those factors in his underlying
22 motion and incorporates such facts/discussion by reference. Justin disputes the
23
24
25

26 ¹⁶ See also *Ritter v. Ritter*, 873 N.W.2d 899 (2016) (holding “*a significant change*
27 *in the father’s work schedule was an appropriate consideration in determining*
28 *whether a prima facie case for modification had been established.*”); *Housley v.*
Holmlund, 836 N.W.2d 152 (2013); *J.T.H. v. H.H.*, 135 A.3d 651 (2015); and
Rebecca L. v. Martin, (Alas. Sup. Ct No. S-14509) (2013).

1 truthfulness, accuracy, and completeness with her reference to the statutory factors
2 that must be considered.

3 a. *The wishes of the child if the child is of sufficient age and*
4 *capacity to form an intelligent preference as to his or her*
5 *custody. NRS §125C.0035(4)(a).*

6 In short, the girls are five years older, now both in school, and Savannah is
7 now a teenager. Contrary to what Sarah says, both children want to spend more
8 time with their father. No week days and every other weekend is woefully
9 inadequate. This factor favors Justin and the modification of the current custodial
10 timeshare.

11 b. *Any nomination of a guardian for the child by a parent. NRS*
12 *§125C.0035(4)(b).*

13 In 2015 the parties agreed, for the reasons stated herein, for Sarah to be the
14 children’s primary physical custodian—*notably, those reasons no longer exist.*
15 Accordingly, Justin’s nomination would be for joint physical custody of the
16 children and this factor favors Justin.

17 c. *Which parent is more likely to allow the child to have frequent*
18 *associations and a continuing relationship with the noncustodial*
19 *parent. NRS §125C.0035(4)(c).*

20 Sarah falsely claims she has accommodated each of Justin’s requests. If
21 that were the case, this motion would not be before the Court. Justin’s time with
22 the children is limited solely because of Sarah’s refusal to afford him more time.
23 Indeed, Sarah references only two times she allowed the children to spend
24 additional time with Justin during the school year—only to mischaracterize and
25 malign Justin when describing such periods. The minimal time she has allowed
26 Justin to see the children confirms this factor favors Justin.

27 d. *Level of conflict between the parties. NRS §125C.0035(4)(d).*

28 For Sarah, it has always been about the money, so much so, that she
needlessly includes “arrears” in opposition to Justin’s request for more time with

1 his children, and more disturbing, misrepresents the amount of arrears and
2 withholds his compliance. Sarah’s focus on finances, rather than the best interests
3 of the children, coupled with her dishonesty, creates conflict. Justin, remains
4 focused on the girls and has weathered Sarah’s storm of unreasonableness for the
5 children. This factor also favors Justin and the modification of the current
6 custodial timeshare.

7 e. **Ability of the parents to cooperate to meet the needs of the child.**
8 **NRS §125C.0035(4)(e).**

9 To her credit, Sarah claims this has never been an issue. However, given
10 her current opposition to Justin’s requests, Sarah’s unwillingness to cooperate is
11 undeniable. This factor favors Justin.

12 f. **Mental and physical health of the parties. NRS §125C.0035(4)(f).**

13 Both Parties are health and have the ability to properly car for Savannah
14 and Emma. Sarah’s refusal to recognize Savannah’s and Emma’s need to spend
15 more time with Justin, as well as his (and the children’s) unequivocal preference
16 for the same, raises concern to the mental state of Sarah¹⁷. As long as she remains
17 under the belief that she alone is able to determine the custodial arrangement that
18 will be followed by the Parties, her unreasonableness, and brazen dishonesty, will
19 continue to impact the minor children’s well-being. This factor clearly favors
20 Justin and the modification of the current custodial arrangement.

21 g. **The physical, developmental and emotional needs of the child.**
22 **NRS §125C.0035(4)(g).**

23 Savannah’s and Emma’s physical, development and emotional needs are
24 typical of children their age. Justin has proven himself capable of recognizing
25

26
27 ¹⁷ This concern is validated with Sarah fabricating allegations that Justin “is
28 constantly intoxicated” (which is untrue and never been an issue or used as a basis
for Sarah to remove the children from such an environment), and Justin could not
retain his credentials if Sarah’s claims were true).

1 and satisfying those needs; Sarah's claims Justin disparages her is not true¹⁸ as is
2 her ridiculous claim they are fearful. Justin is an extremely attentive, loving,
3 caring, and devoted father and spends as much time as he can with his girls.
4 Having the ability to avail themselves to the love, care and guidance of both
5 parents on a regular and frequent bases is in Savannah's and Emma's best
6 interests and preventing them from doing so is certainly not in their best interest.
7 This factor certainly favors Justin.

8 **h. The nature of the relationship of the child with each parent. NRS**
9 **§125C.0035(4)(h).**

10 Savannah and Emma have a relationship with both parents and they love
11 both of them dearly. Justin wants the relationship Savannah and Emma have with
12 both parents to continue to grow and strengthen; to be a reliable and constant
13 source of strength and support as they continue through challenges, joys and
14 experiences life has for them. With the increasing presence of peer pressure,
15 especially for Savannah in her teenage years, parental involvement is critical.

16 **i. The ability of the child to maintain a relationship with any**
17 **sibling. NRS §125C.0035(4)(i).**

18 Parties agree the girls are to remain together. Additionally, the girls have
19 developed close relationships with their step-siblings and the requested
20 modification enables all children to derive the support and benefit of the sibling
21 relationships. This factor favors Justin.

22 **j. Any history of parental abuse or neglect of the child or a sibling**
23 **of the child. NRS §125C.0035(4)(j).**

24 Sarah's commentary is deliberately misleading. Justin is *not* violent and
25 certainly has not scared Savannah several times as claimed by Sarah. The

26 ¹⁸ Savannah is a teenager and has routines she follows and favorite products she
27 uses. Justin buys what she needs and does not monitor or restrict what she takes or
28 brings from/to her mothers. Moreover, the children are always properly cared
for—despite Sarah's claims otherwise.

1 allegation is ludicrous, offensive, and designed solely to obtain an unwarranted
2 “knee-jerk” reaction from this Court. Fortunately, this Court has seen such a
3 tactic on countless occasions and won’t succumb to such deception.

4 **k. Whether either parent has engaged in an act of domestic violence**
5 **against the parent of the child. NRS §125C.0035(4)(k).**

6 Sarah falsely makes the claim, believing embellished fiction substitutes as
7 truth, but there is no evidence to support her allegation because it is fabricated and
8 false. The children, Justin’s wife, and the multitude of witnesses that have
9 submitted statements to this Court—and who are more than willing to testify to
10 the Court, attest her claims are not true. Justin has never been convicted of
11 domestic violence—another claim seeking that unwarranted “knee-jerk” reaction
12 and corresponding prejudice against Justin. This factor is not applicable, but
13 Sarah’s dishonesty must be considered.

14
15 **l. Whether either parent or any other person seeking physical**
16 **custody has committed any act of abduction against the child or**
17 **any other child. NRS §125C.0035(4)(l).**

18 Not applicable.

19 **Conclusion.**

20 Based upon the substantial change of circumstances, that clearly affect the
21 well-being of the children, coupled with consideration to the best interest factors
22 enumerated in NRS 125C.0035, Justin has set forth a prima facia case to modify
23 the current custodial order under *Rooney*¹⁹ designating him and Sarah as joint
24 physical custodians of Savannah and Emma. The statutory factors, and those
25 others identified by Justin, favor Justin.

26 Accordingly, for the best interest of Savannah and Emma, Justin reasonably
27 requests modification of the current custodial timeshare.

28 _____
¹⁹ *Rooney v. Rooney*, 109 Nev. 540 (Nev. 1993).

1 ***The modification of the current custodial schedule warrants a***
2 ***modification of child support.***

3 With the modification of the current custodial schedule, as joint custodians,
4 child support must necessarily be modified and should be set in accordance with
5 *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), NRS 125B.070, NRS
6 125B.080 and NAC 425.15. Justin has always been willing to support his children
7 and remains intent on providing for the children's needs. Sarah has shown she is
8 willing to sacrifice the best interests of the children if that means Justin's child
9 support will not be reduced.

10 ***Modification of the child tax deduction is warranted.***

11 With the modification of the current custodial schedule, as joint custodians,
12 the child tax deduction must necessarily be modified so the Parties share the tax
13 deduction each year.

14 **3. Other changed circumstances**

15 As noted above, Emma has been turning her homework late and many times
16 not until nearly 11:00 p.m. at night when she should be in bed. Additionally, due
17 to the difficulties Emma is having in school it was necessary for her to undergo
18 tutoring every Wednesday. The instant case is analogous *Ellis v. Carucci*, 123
19 Nev. 145 (2007), in which the court determined that a child's academic
20 performance slipping was sufficient change of circumstances affecting the welfare
21 of the child to warrant a modification of custody.

22 The additional events that have occurred since the October 27, 2020,
23 warrant reconsideration of the Court's ruling as a substantial change in
24 circumstances affecting the welfare of the children, namely Emma's school
25 performance has declined and education being negatively affected and, that
26 warranting a modification of the custody schedule.

27 **4. Manifestly unjust**

28 It is *manifestly unjust* for the children to be prohibited from having their

1 father in their life on a more frequent basis when he is available. Justin wants to
2 spend additional time with his children, and even when Sarah is unavailable, the
3 children are in the care of others, and the children's supervisor is not helping them
4 with their school and has left them unattended.

5 Too often children lack self-esteem, confidence and learn aggressive traits
6 where a parent restricts a child(ren) from another [qualified] parent. Such
7 comments precipitated from Sarah's control over Justin's work schedule in the
8 beginning of this action, must not be allowed to duplicate and be used as a sword
9 to interfere and prohibit the children from having a meaningful relationship with
10 the children. The children deserve better.

11 Without consideration to the best interest of the children, Sarah shamelessly
12 seeks to capitalize on the "limited" contact initially awarded to Justin just because
13 of his prior work schedule that Sarah controlled, to unjustly deprive the children
14 from having a meaningful relationship with their father and treat Justin as if he has
15 no role in raising their children. This conduct needs to be stopped.

16
17 **5. Sarah is not entitled to, nor deserving of, an award of**
18 **attorney's fees.**

19 Sarah has violated the duty of candor that is owed this Court, has is
20 unreasonably refusing to allow the children to spend more time with their father.
21 Sarah has misrepresented and fabricated facts, and lodged defamatory ad hominem
22 attacks towards Justin and his wife, simply to unfairly inflame the Court. Sarah's
23 opposition and countermotion was not well grounded. There is no factual or legal
24 basis that would warrant an award of attorney's fees.

25
26 **V.**
27 **Conclusion**

28 Without question, the Court should implement an arrangement that permits
both parents to enjoy the maximum participation possible in the lives of

1 their children. Based upon the above, the safety and best interests of the children
2 call for the immediate modification of the custodial arrangement. Justin
3 respectfully requests that this Court enter an Order:

- 4 1. Recognizing the need to reconsider this Court's earlier Order of
5 November 21, 2020;
- 6 2. Setting aside the November 21, 2020 Order in its entirety;
- 7 3. Modifying child custody of Savanah Maurice and Emma Maurice to
8 joint physical custody on a 2-2-3 schedule;
- 9 4. Modifying child support, and set support in accordance with *Wright v.*
10 *Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), NRS 125B.070, NRS
11 125B.080 and NAC 425.15;
- 12 5. Modifying the child tax deduction so each party claims a minor child as
13 a dependent on taxes each year;
- 14 6. Awarding Justin attorney's fees for the conduct of the Plaintiff Sarah
15 Maurice that has caused this Motion to be filed with this Court; and
- 16 7. Addressing any further relief this court deems proper and necessary.

17
18 Dated this 8th day of January, 2021.

19
20 **HOFLAND & TOMSHECK**

21 By: /s/ Bradley J. Hofland
22 Bradley J. Hofland, Esq.
23 Nevada Bar No. 6343
24 228 South 4th Street, 1st Floor
25 Las Vegas Nevada 89101
26 *Attorneys for Defendant Justin Maurice*
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DECLARATION OF JUSTIN MAURICE

I, Justin Maurice, hereby state and declare as follows:

1. That I am the Defendant in this action and I am competent to testify as to the matters stated herein.

2. I have read the foregoing reply and opposition and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

DATED this 8th day of January, 2021.

/s/ Justin Maurice
Justin Maurice

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hofland & Tomscheck, that Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 8th day of January, 2021, I served the **DEFENDANT’S REPLY TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR RECONSIDERATION OF ORDER DENYING TO MODIFY THE CURRENT CUSTODIAL ARRANGEMENT; MODIFY CHILD SUPPORT; MODIFY CHILD TAX DEDUCTION; AND FOR AN AWARD OF ATTORNEY’S FEES AND COSTS; AND RELATED RELIEF; AND RELATED RELIEF** on the following parties by E-Service through Odyssey and/or U.S. mail addressed as follows:

Jacobson Law Office, Ltd.
64 North Pecos Road, Suite 200
Henderson, NV 89074
Attorney for Plaintiff

By: /s/ Nikki Woulfe
Employee of Hofland & Tomscheck

EXHIBIT "A"