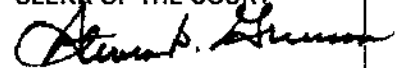


	of the Children, for Dissolution of the TPO and for Related Relief		AA000125
8.	Defendant's Motion to Extend the Temporary Protective Order, to Change Custody, for an Interview of the Minor Children, and for Related Relief	3/27/20	AA000126-AA000152
9.	Plaintiff's Opposition to Defendant's Motion to Extend the Temporary Protective Order, to Change Custody, for an Interview of the Minor Children, and for Related Relief	4/10/20	AA000153-AA000182
10.	Plaintiff's Reply to Defendant's Opposition Motion for Immediate Return of the Children, for Dissolution of the TPO and for Related Relief	4/15/20	AA000183-AA000206

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1



1 COMD
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
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7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@TheDKlawgroup.com

12 Attorneys for Plaintiff

13 DISTRICT COURT
14 FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 JAMES W. VAHEY,

17 Plaintiff,

18 v.

19 MINH NGUYET LUONG,

20 Defendant.

21 CASE NO. D-18-581444-D
22 DEPT NO.

23 Department H

24 COMPLAINT FOR DIVORCE

25 COMES NOW Plaintiff, JAMES W. VAHEY ("JIM" or "Plaintiff"),
26 and as and for his Complaint for Divorce against the Defendant, MINH
27 NGUYET LUONG ("MINH" or "Defendant"), alleges as follows:

28 I.

JIM is, and for more than six weeks immediately preceding the
commencement of this action and the verification and filing of this
Complaint has been, an actual bona fide resident and domiciliary of the
County of Clark, State of Nevada, and during all of said period of time
JIM had and still has the intent to make the State of Nevada his home,
residence and domicile for an indefinite period of time.

1 II.

2 JIM and MINH were duly and legally married in Henderson, Clark
3 County, Nevada, on June 6, 2006, and ever since said date have been and
4 are now husband and wife.

5 III.

6 The parties have three (3) minor children the issue of their marriage,
7 namely, Hannah Vahey, born March 19, 2009, Matthew Vahey, born
8 June 26, 2010, and Selena Vahey, born April 4, 2014 (sometimes
9 collectively referred to in this Agreement as the "children" and individually
10 referred to as a "child"); the parties have no other minor children, no
11 adopted minor children, and MINH is not pregnant.

12 IV.

13 The parties are fit and proper persons to have joint legal and physical
14 custody of their minor children.

15 V.

16 The Court should order each party to contribute to the support of
17 their minor children in accordance with Nevada law. The Court also
18 should order each party to pay one-half (½) of at least the following
19 expenses relating to their minor children: medical insurance for the
20 children, any medical expenses not covered by such medical insurance, all
21 costs and expenses relating to the children's elementary and secondary
22 education, and the children's extra-curricular activities.

23 VI.

24 On or about June 14, 2006, approximately three (3) weeks prior to
25 the parties' marriage, the parties entered into a Prenuptial Agreement (the
26 "Premarital Agreement").

27 ...

28 ...

VII.

The parties' Premarital Agreement is a valid and binding agreement between the parties.

VIII.

The parties' Premarital Agreement addresses, controls, and resolves all marital issues that exist between the parties which are incident to the parties' divorce, with the sole exception of the issues of child custody and child support.

IX.

By way of their Premarital Agreement, the parties have set forth their mutual desire and intent to establish, determine, and settle between themselves all of their relative property rights, interests, and obligations with respect to each other, including, without limitation, each party's respective property rights, the rights of either party to be supported by the other party, and all financial obligations each party has relative to the other party.

X.

By way of their Premarital Agreement, the parties have set forth their mutual desire and intent to define all of their respective rights in any property that each owned at the time of their marriage to each other, as well as any property either party has acquired during their marriage.

XI.

All questions relating to the division of the parties' property, the assumption of their debts, each party's waiver of alimony, and all other issues and claims, marital and otherwise, that exist between the parties have been and are resolved by the parties' Premarital Agreement. The parties' Premarital Agreement should be ratified, confirmed, approved, and enforced by the Court.

1 XII.

2 By way of their Premarital Agreement, the parties have agreed they
3 would not acquire any community property during their marriage.

4 XIII.

5 Pursuant to their Premarital Agreement, all property owned by JIM
6 is his sole and separate property and all property owned by MINH is her
7 sole and separate property.

8 XIV.

9 The parties have no community or jointly owned property to be
10 adjudicated by the Court.

11 XV.

12 The parties have no community or joint debts to be adjudicated by
13 the Court.

14 XVI.

15 Each party's separate property should be confirmed to him or her as
16 his or her sole and separate property, and each party's separate debt
17 should be confirmed to be such party's sole and separate debt.

18 XVII.

19 By way of their Premarital Agreement, each party has waived and
20 relinquished the right to receive spousal support or alimony or other such
21 maintenance (collectively, "alimony") from the other party.

22 XVIII.

23 All the property and assets owned by JIM are his sole and separate
24 property, and the same should be confirmed to JIM as his sole and
25 separate property.

26 XIX.

27 Any debt or obligation that has been incurred by JIM before or
28 during the parties' marriage, and any debt held in JIM's name, is JIM's

1 sole and separate debt and obligation, and the same should be confirmed
2 to JIM as his sole and separate debt and obligation.

3 XX.

4 Any debt or obligation that has been incurred by MINH before or
5 during the parties' marriage, and any debt held in MINH's name, is
6 MINH's sole and separate debt and obligation, and the same should be
7 confirmed to MINH as her sole and separate debt and obligation.

8 XXI.

9 It has been necessary for JIM to retain the services of attorneys to
10 represent him in this divorce action. Pursuant to the parties' Premarital
11 Agreement, if MINH contests the validity of the Premarital Agreement,
12 JIM should be awarded all the attorneys' fees and litigation costs incurred
13 in this action.

14 XXII.

15 JIM and MINH are incompatible in their tastes, natures, views, likes
16 and dislikes, which have become so widely separate and divergent that the
17 parties have been and currently are incompatible to such an extent that it
18 now appears that there is no possibility of reconciliation between JIM and
19 MINH. There currently remains such an incompatible temperament
20 between JIM and MINH that a happy marital relationship can no longer
21 exist.

22 WHEREFORE, JIM respectfully prays that the Court enter judgment
23 as follows:

24 1. That the bonds of matrimony now and heretofore existing
25 between JIM and MINH be dissolved, set aside, and forever held for
26 naught, and that JIM be awarded a Decree of Divorce and the parties
27 hereto and each of them be restored to their status of being a single,
28 unmarried person.

1 2. That the Court award the parties' joint legal and physical
2 custody of their minor children.

3 3. That the Court enter appropriate child support orders as
4 requested above in this Complaint.

5 4. That the parties' Premarital Agreement be ratified, confirmed,
6 approved, and enforced by the Court.

7 5. That the Court confirm to JIM his separate property and
8 separate debt.

9 6. That the Court confirm to MINH her separate property and
10 separate debt.

11 7. That the Court order that neither party is entitle to be awarded
12 alimony to be paid to him or her by the other party.

13 8. For such other and further relief as the Court may determine
14 to be just and proper in the premises, specifically including, but not
15 limited to, an appropriate award to JIM of his attorneys' fees and litigation
16 costs incurred in this action should MINH contest or attack, or seek to
17 revise, set aside, or rescind, all or any part of the Premarital Agreement, as
18 requested by JIM in paragraph XXI of this Complaint.

19 DATED this 19th day of December, 2018.

20 THE DICKERSON KARACSONYI
21 LAW GROUP

22 By Robert P. Dickerson

23 ROBERT P. DICKERSON, ESQ.
24 Nevada Bar No. 000945
25 1745 Village Center Circle
26 Las Vegas, Nevada 89134
27 Attorneys for Plaintiff
28

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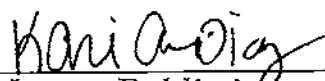
VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } SS:

JAMES W. VAHEY, being first duly sworn upon oath, deposes and says: That he is the Plaintiff in the above-entitled action; that he read the foregoing Complaint for Divorce and knows the contents thereof, and that the same is true of his own knowledge except for those matters therein stated on information and belief, and as for those matters, he believes the same to be true.


JAMES W. VAHEY

Subscribed and sworn to before me
this 18th day of December, 2018.


Notary Public in and for said
County and State.

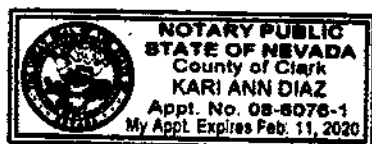
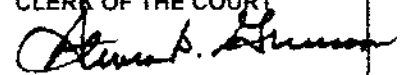


EXHIBIT 2

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EXHIBIT 2



1 ANSC
2 NEIL M. MULLINS, ESQ.
3 Nevada Bar No. 3544
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129
7 PH: (702) 823-4900
8 FX: (702) 823-4488
9 Service@KainenLawGroup.com
10 Attorney for Defendant
11 Minh Nguyet Luong

7 EIGHTH JUDICIAL DISTRICT COURT - FAMILY DIVISION
8 COUNTY OF CLARK, STATE OF NEVADA

10 JAMES W. VAHEY,
11
12 Plaintiff

13 v.

14 MINH NGUYET LUONG,
15
16 Defendant.

CASE NO. D-18-581444-D
DEPT NO. H

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

18
19 **ANSWER AND COUNTERCLAIM FOR DIVORCE**

20 COMES NOW, Defendant, MINH NGUYET LUONG, and answers Plaintiff's
21 Complaint for Divorce on file herein as follows:

22 1. Defendant admits the allegations contained in Paragraph 1 of Plaintiff's
23 Complaint.

24 2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's
25 Complaint.

26 3. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's
27 Complaint.

28 ...

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3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

- 1 4. Defendant denies the allegations contained in Paragraph 4 of Plaintiff's
- 2 Complaint.
- 3 5. Defendant admits the allegations contained in Paragraph 5 of Plaintiff's
- 4 Complaint.
- 5 6. Defendant admits the allegations contained in Paragraph 6 of Plaintiff's
- 6 Complaint.
- 7 7. Defendant admits the allegations contained in Paragraph 7 of Plaintiff's
- 8 Complaint.
- 9 8. Defendant admits the allegations contained in Paragraph 8 of Plaintiff's
- 10 Complaint.
- 11 9. Defendant admits the allegations contained in Paragraph 9 of Plaintiff's
- 12 Complaint.
- 13 10. Defendant admits the allegations contained in Paragraph 10 of Plaintiff's
- 14 Complaint.
- 15 11. Defendant admits the allegations contained in Paragraph 11 of Plaintiff's
- 16 Complaint.
- 17 12. Defendant admits the allegations contained in Paragraph 12 of Plaintiff's
- 18 Complaint.
- 19 13. Defendant admits the allegations contained in Paragraph 13 of Plaintiff's
- 20 Complaint.
- 21 14. Defendant admits the allegations contained in Paragraph 14 of Plaintiff's
- 22 Complaint.
- 23 15. Defendant admits the allegations contained in Paragraph 15 of Plaintiff's
- 24 Complaint.
- 25 16. Defendant admits the allegations contained in Paragraph 16 of Plaintiff's
- 26 Complaint.
- 27 17. Defendant admits the allegations contained in Paragraph 17 of Plaintiff's
- 28 Complaint.

1 18. Defendant admits the allegations contained in Paragraph 18 of Plaintiff's
2 Complaint.

3 19. Defendant admits the allegations contained in Paragraph 19 of Plaintiff's
4 Complaint.

5 20. Defendant admits the allegations contained in Paragraph 20 of Plaintiff's
6 Complaint.

7 21. Defendant admits the allegations contained in Paragraph 21 of Plaintiff's
8 Complaint.

9 22. Defendant admits the allegations contained in Paragraph 22 of Plaintiff's
10 Complaint.

11 **COUNTERCLAIM FOR DIVORCE**

12 COMES NOW, Defendant, MINH NGUYET LUONG, and states her cause of
13 action against Plaintiff, JAMES W. VAHEY, as follows:

14 1. That Plaintiff and Defendant are residents of the State of Nevada, and for a
15 period of more than six weeks before commencement of this action has resided and been
16 physically present and domiciled therein, and during all of said period of time, Plaintiff
17 has had, and still has, the intent to make said State of Nevada, his home, residence and
18 domicile for an indefinite period of time.

19 2. That Plaintiff and Defendant were intermarried in Henderson County,
20 Nevada, on or about July 8, 2006, and are husband and wife.

21 3. That the parties have three (3) minor children, to wit: HANNAH VAHEY,
22 born March 19, 2009, MATTHEW VAHEY, born June 26, 2010 and SELINA VAHEY,
23 born April 4, 2014. Defendant is not currently pregnant.

24 4. Plaintiff and Defendant are fit and proper persons to have joint legal custody
25 of their minor children.

26 ...

27 ...

28 ...

1 5. That Defendant seeks primary physical custody and permission to remove
2 the children to her separate property residence in Irvine, California, which suits the best
3 interests of the minor children. Defendant will more particularly outline her legal and
4 factual basis for relocation in a motion to be filed forthwith.

5 6. That child support should be calculated and set in accordance with Nevada
6 law, specifically Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998).

7 7. That the parties shall provide health insurance for the minor children, with
8 the parties equally dividing the premium for said coverage, as well as equally dividing
9 any medical, surgical, dental, orthodontic, optical, and psychological expenses not
10 otherwise covered by such insurance.

11 8. That prior to marriage the parties executed a valid, enforceable Premarital
12 Agreement that should be ratified, approved and confirmed by this Honorable Court.

13 9. That neither party should pay alimony/spousal support to the other party
14 herein, consistent with the terms of the Premarital Agreement.

15 10. That there is no community property to be divided.

16 11. That each party be awarded their respective separate property and separate
17 debts, consistent with the Premarital Agreement.

18 12. That there maybe personal joint assets held by the parties herein to be
19 adjudicated by the Court, in accordance with the Premarital Agreement.

20 13. That any and all promissory notes executed by Plaintiff in favor of
21 Defendant be enforced, and survive the entry of the Decree in this matter.

22 14. That Defendant requests this Court to jointly restrain the parties herein in
23 accordance with the terms of the Joint Preliminary Injunction issued herein.

24 15. That Defendant has had to incur the services of an attorney to prosecute
25 this action and should therefore be awarded reasonable attorney fees and costs, so long
26 as not contrary to the terms of the Premarital Agreement.

27 ...

28 ...

WHEREFORE, Defendant prays judgment as follows:

1. That Plaintiff take nothing by way of his Complaint in this matter; but that the Court grant all relief requested by Defendant pursuant to this Counterclaim for divorce.

2. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved; that Defendant be granted an absolute Decree of Divorce; and that each of the parties hereto be restored to the status of a single, unmarried person;

3. That the Court award the parties joint legal custody of their three (3) minor children;

4. That Defendant be awarded primary physical custody and permission to relocate with the children to Irvine, California.

5. That Plaintiff be awarded reasonable, liberal and alternative visitation with the children.

6. That in lieu of child support, that Plaintiff pay the reasonable costs of transporting his children for visitation.

7. That Defendant be ordered to provide health insurance for the minor children, with the parties equally dividing the premium for said coverages, as well as equally dividing any medical, surgical, dental, orthodontic, optical, and psychological expenses not otherwise covered by such insurance;

8. That neither party be ordered to pay alimony/spousal support to the other party herein.

9. That Defendant be awarded reasonable attorney fees and costs if the matter is unreasonably contested, so long as not contrary to the terms of the parties' Premarital Agreement.

10. For such other and further relief as this Honorable Court deems just and proper in the premises.

...

...

1 DATED this 11th day of January, 2019.

2
3 KAINEN LAW GROUP, PLLC

4
5 By: 

6 NEIL MULLINS, ESQ.

7 Nevada Bar No. 3544
8 3303 Novat Street, Suite 200
9 Las Vegas, Nevada 89129
10 Attorney for Defendant
11
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1 VERIFICATION

2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:

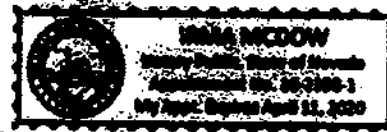
4 MINH NGUYET LUONG, being first duly sworn, deposes and says:

5 That I am the Defendant herein; that I have read the foregoing Answer and
6 Counterclaim for Divorce and the same is true of my own knowledge, except for those
7 matters which are therein stated upon information and belief, and as to those matters, I
8 believe them to be true.

9
10 
11 MINH NGUYET LUONG

12 SUBSCRIBED AND SWORN to
13 before me this 10th day of January,
14 2019, by MINH NGUYET LUONG.

15
16 



17 NOTARY PUBLIC in and for said
18 County and State

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of January 2019, I caused to be served foregoing Answer and Counterclaim for Divorce to all interested parties as follows:


___ BY MAIL: Pursuant to N.R.C.P. 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 true copies 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 N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es):

info@thedklawgroup.com

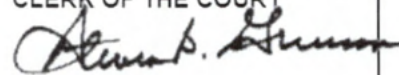


Employee of the
KAINEN LAW GROUP, PLLC

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3



1 RCCM
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 SABRINA M. DOLSON
6 Nevada Bar No. 013105
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10 Facsimile: (702) 388-0210
11 Email: info@TheDKlawgroup.com

12 Attorneys for Plaintiff/Counterdefendant

13
14 DISTRICT COURT
15 FAMILY DIVISION
16 CLARK COUNTY, NEVADA

17 JAMES W. VAHEY,

18 Plaintiff/Counterdefendant,
19 v.

20 MINH NGUYET LUONG,

21 Defendant/Counterclaimant.

22 CASE NO. D-18-581444-D
23 DEPT NO. H

24 REPLY TO COUNTERCLAIM FOR DIVORCE

25 COMES NOW Plaintiff/Counterdefendant, JAMES W. VAHEY
26 ("JIM" or "Plaintiff"), by and through his attorneys, ROBERT P.
27 DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE
28 DICKERSON KARACSONYI LAW GROUP, and as and for his Reply to
the Counterclaim for Divorce (the "Counterclaim") filed herein by
Defendant, MINH NGUYET LUONG ("MINH" or "Defendant"), admits,
denies, alleges, and states as follows:

1. JIM denies all allegations of Defendant's Counterclaim not
specifically admitted herein.

...

1 2. Answering paragraphs 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 14 of
2 the Counterclaim, JIM admits each and every allegation contained therein.

3 3. Answering paragraph 2 of the Counterclaim, JIM admits the
4 parties are husband and wife, and that they have been married to each
5 other since July 8, 2006. With respect to the remaining allegations
6 contained in paragraph 2 of the Counterclaim, JIM denies the parties were
7 married in "Henderson County," Nevada, and affirmatively alleges and
8 states that the parties were married on July 8, 2006, in Henderson, Clark
9 County, Nevada.

10 4. Answering paragraph 5 of the Counterclaim, and regardless of
11 what Defendant may "seek," JIM denies each and every allegation
12 contained therein. JIM not only denies each and every allegation
13 contained in paragraph 5 of the Counterclaim, but JIM also affirmatively
14 alleges and states that Defendant should not be permitted to relocate from
15 the State of Nevada, and it is in the best interest of the parties' children
16 for the parties to be awarded joint legal and joint physical custody of the
17 minor children.

18 5. Answering paragraph 13 of the Counterclaim, JIM is without
19 sufficient knowledge or information upon which to form a belief as to the
20 truth of the allegations contained therein, and, therefore, JIM respectfully
21 denies the same.

22 6. Answering paragraph 15 of the Counterclaim, JIM generally
23 and specifically denies each and every allegation contained therein.

24 AFFIRMATIVE DEFENSES

25 FIRST AFFIRMATIVE DEFENSE

26 MINH's Counterclaim fails to state a cause of action upon which the
27 Court may grant any relief in favor of MINH and against JIM.

28 ...

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Figure 1

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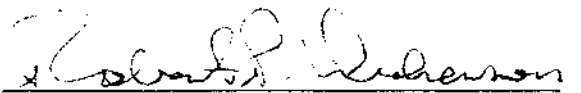
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1 3. For such other and further relief as the Court may determine
2 to be just and proper in the premises.

3 DATED this 24th day of January, 2019.

4 THE DICKERSON KARACSONYI
5 LAW GROUP

6 By 

7 ROBERT P. DICKERSON, ESQ.
8 Nevada Bar No. 000945
9 SABRINA M. DOLSON, ESQ.
10 Nevada Bar No. 013105
11 1745 Village Center Circle
12 Las Vegas, Nevada 89134
13 Attorneys for Plaintiff/
14 Counterdefendant
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EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

Steven D. Grierson

1 NEOJ

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ***

7 JAMES W. VAHEY,

8 Plaintiff,

9 vs.

10 MINH NGUYET LUONG,

11 Defendant.

CASE NO.: D-18-581444-D
DEPARTMENT H

12 **NOTICE OF ENTRY OF ORDER**

13 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

14
15 Please take notice that the Findings of Fact, Conclusions of Law, Decision and
16 Order was prepared and filed by the court. A copy of the Decision and Order is
17 attached hereto, and the following is a true and correct copy thereof.


18
19 I hereby certify that on or about the file stamp date the foregoing Notice of Entry of
20 Order was:

21 ☒ E-Served pursuant to NEFCR 9; placed in attorney folder(s) at the RJC; or
22 mailed to proper person litigants, via first-class mail, postage fully prepaid to:

23 Robert P. Dickerson, Esq.
24 Sabrina M. Dolson, Esq. for
25 PLAINTIFF

26 Neil M. Mullins, Esq. for
27 DEFENDANT

28
Katrina Rausch
Katrina Rausch
Judicial Executive Assistant
Department H



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

CASE NO. D-18-581444-D
DEPT. NO. "H"

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

Dates of Hearing: August 8, 2019, September 5, 2019, September 11, 2019
Time of Hearing: 9:00 a.m. – 5:00 p.m., 9:00 a.m. – 5:00 p.m., 1:30 – 5:00 p.m.

This matter came on for evidentiary hearing before Art Ritchie, District Court Judge, Family Division, Department H. James Vahey was present and represented by his attorneys, THE DICKERSON KARACSONYI LAW GROUP, and Robert P. Dickerson, Esq. and Sabrina M. Dolson, Esq. Minh Luong was present and represented by her attorneys, KAINEN LAW GROUP, and Neil M. Mullins, Esq. The court reviewed the papers and pleadings on file, the evidence

1 admitted at the hearing, and for good cause, makes the following findings of fact,
2 conclusions of law, decision and order.

3 **I. STATEMENT OF THE CASE**

4 This matter is a pre-judgment custody dispute arising out of this divorce
5 case. This court was asked to resolve both parties' claims for legal and physical
6 custody, and Minh Luong's motion for an order allowing her to remove the
7 parties' minor children from Nevada to California over James Vahey's objection.
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10 James Vahey, age 56, and Minh Luong, age 46, were married in
11 Henderson, Nevada on July 8, 2006. Three children were born the issue of their
12 relationship, Hannah Vahey, who was born on March 19, 2009, Matthew Vahey,
13 who was born on June 26, 2010, and Selena Vahey, who was born on April 4,
14 2014.
15

16 James Vahey filed a Complaint for Divorce on December 13, 2018,
17 seeking a divorce on no-fault grounds of incompatibility. James Vahey alleged in
18 his complaint that the Plaintiff and the Defendant are proper persons to be
19 awarded joint legal and joint physical custody of their children. Minh Luong filed
20 an Answer and Counterclaim for Divorce on January 11, 2019. Minh Luong
21 alleged in her counterclaim that the Plaintiff and the Defendant are proper persons
22 to be awarded joint legal custody. Minh Luong alleged that it is in the best
23 interest of the children that she have primary physical custody, and she seeks
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1 permission to remove the children from Nevada to California. James Vahey
2 opposes the request to remove the children from Nevada.

3 Minh Luong filed a motion to resolve parent/ child issues, for removal, for
4 support, and for other relief on January 29, 2019. The motion was set for hearing
5 on March 12, 2019. James Vahey filed his opposition and countermotion on
6 February 20, 2019. Minh Luong's reply to opposition and opposition to
7 countermotion was filed on March 5, 2019.
8

9 The parties' motions were heard on March 12, 2019. On that date, both
10 parties appeared with counsel. The court ordered that the parties share joint legal
11 and joint physical custody of the children pending an evidentiary hearing. The
12 court's temporary order provided that James Vahey have custodial responsibility
13 from Monday at 9:00 a.m. to Wednesday at 9:00 a.m., and that Minh Luong have
14 custodial responsibility from Wednesday at 9:00 a.m. to Friday at 9:00 a.m. The
15 court ordered the parties alternate weekends defined as Friday at 9:00 a.m. to
16 Monday at 9:00 a.m. The court set a discovery schedule and continued the case
17 management conference to May 28, 2019. The Order from the March 12, 2019
18 hearing was filed on May 2, 2019.
19

20 On May 31, 2019, the court entered an order setting the matter for
21 evidentiary hearing on August 8, 2019. The court held an evidentiary hearing on
22 August 8, 2019, September 5, 2019, and September 11, 2019. The court received
23 documentary proof and heard the testimony from six witnesses, Hieu Luong,
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1 Minh Luong, James Vahey, Richard Landeis, Bowena Bautista, and Imelda
2 Vahey. This court concludes that the evidence presented at the hearing was
3 sufficient for the court to decide the custody issues in this case.
4

5 **II. FINDINGS AND CONCLUSIONS**

6 This court has custody jurisdiction and personal jurisdiction over the
7 parties to this case because of their general appearance and their connections and
8 contact with Nevada. Both parties are residents of Clark County, Nevada.
9 Minh Luong owns a residence in Nevada and California, and since the parties'
10 separation in January, 2019, she has spent time at both residences. Nevada is the
11 home state of the parties' minor children pursuant to the UCCJEA as adopted in
12 the Nevada Revised Statutes.
13
14

15 **A. CHILD CUSTODY**

16 Child custody orders necessarily address legal custody, which is an
17 expression of parental rights, and physical custody, which is an expression of
18 child placement and custodial responsibility. There is a presumption in Nevada
19 that parents share parental rights through joint legal custody, and a preference that
20 parents share joint physical custody through a parenting plan that affords parents
21 meaningful time and responsibility for minor children for at least 146 days of the
22 year. If a court has not made a determination regarding the custody of a child,
23 each parent has joint legal and joint physical custody of the child until otherwise
24 ordered by a court of competent jurisdiction. NRS 125C.0015 (2).
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1 This court has been asked to establish physical custody orders incident to
2 divorce, and to order the removal of the three minor children from Nevada to
3 California. In considering this request, the court is required to consider the best
4 interest of the children. In any action for determining physical custody of a
5 minor child, the sole consideration of the court is the best interest of the child.
6 NRS 125C.0035 (1). In removing the children from the jurisdiction where the
7 children currently live, the best interest of the children should also be the
8 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
9 1268, 1271 (1991).
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13 The court, with this pre-judgment custody order, makes an order that it
14 finds is in the children's best interest.
15

16 **1. Legal Custody**

17 NRS 125C.002 provides, in part, that when a court is making a
18 determination regarding the legal custody of a child, there is a presumption,
19 affecting the burden of proof, that joint legal custody would be in the best interest
20 of a minor child if: (a) The parents have agreed to an award of joint legal custody
21 or so agree in open court at a hearing for the purpose of determining the legal
22 custody of the minor child.
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25 Joint legal custody has been the order in this case by agreement, and it is
26 not at issue in these pre-judgment proceedings. The parties have both pled and
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28

1 agreed that they should share the legal rights and responsibilities of raising the
2 children jointly.

3
4 **2. Physical Custody**

5 **NRS 125C.001**, provides, in part, that the Legislature declares that it is the
6 policy of this State to ensure that minor children have frequent associations and a
7 continuing relationship with both parents after the parents have ended their
8 relationship, become separated, or dissolved their marriage.
9

10 **NRS 125C.0015 Parents have joint custody until otherwise ordered**
11 **by court.**

12 1. The parent and child relationship extends equally to every child and to
13 every parent, regardless of the marital status of the parents.

14 2. If a court has not made a determination regarding the custody of a
15 child, each parent has joint legal custody and joint physical custody of the
16 child until otherwise ordered by a court of competent jurisdiction.

17 This divorce case requires the establishment of a physical custody order. Minh
18 Luong seeks an order granting her primary physical custody of the children, and
19 she seeks an order allowing her to remove the children to Irvine, California over
20 James Vahey's objection. Minh Luong had the burden to prove that it is in the
21 children's best interest that she have primary physical custody. Based on the
22 findings below, the court concludes that Minh Luong did not provide sufficient
23 proof to support a conclusion that she have primary physical custody. The
24 evidence supports a conclusion that it is in the best interest of the children that the
25 parties share joint physical custody.
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1 **3. Removal to Irvine, California**

2 Minh Luong seeks an order allowing her to remove the children from
3 Nevada to Irvine, California. Minh Luong has the burden to prove that it is in the
4 children's best interest to be removed from Nevada to Irvine, California, over
5 their father's objection. Even though the court concluded that Minh Luong did
6 not provide sufficient proof to have primary physical custody, the court evaluated
7 the move request factors found in NRS 125C.007. Based on the findings below,
8 the court concludes that Minh Luong did not provide sufficient proof to support a
9 removal of the children to California.
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13 **B. MINH LUONG'S MOTION FOR PRIMARY PHYSICAL**
14 **CUSTODY AND FOR PERMISSION TO RELOCATE WITH**
15 **THE CHILDREN TO IRVINE, CALIFORNIA**

16 Nevada statutes and case law provide that the district court has broad
17 discretion concerning child custody matters. *Rooney v. Rooney*, 109 Nev. 540,
18 853 P.2d 123 (1993). This pre-judgment evidentiary hearing establishes the
19 legal and physical custody orders for the parties' divorce judgment.
20

21 **1. Best Interest Findings**

22 The "best interest" standard applies when parents seek to establish a
23 physical custody order. In a contested case, the district court weighs factors that
24 may affect the consequence of placement. Factors the court considers are found
25 in statutes and in decisional law.
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1 James Vahey has lived in Clark County, Nevada since 1995. James Vahey
2 is an orthopedic surgeon, and has practiced medicine in Nevada for twenty four
3 years. Dr. Vahey testified that he has a busy practice but that he has some control
4 over his patient and surgery schedule. Dr. Vahey testified that his office is
5 located a few miles from the children's school, and that he organizes his work
6 schedule to accommodate his custodial obligations. Bowena Bautista, Dr.
7 Vahey's practice manager, testified that Dr. Vahey sees patients on Mondays and
8 Wednesdays from approximately 9:00 a.m. - 2:00 p.m., and on Fridays from 9:00
9 a.m.-11:00 a.m. Dr. Vahey's surgeries are scheduled on Tuesdays and Thursdays.
10 Dr. Vahey testified that he earns approximately \$700,000 per year from
11 employment.
12

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15 Minh Luong has lived in Clark County, Nevada since 2001. Minh Luong
16 is a dentist, and has practiced in Nevada for eighteen years. Dr. Luong is the
17 owner of Tooth Fairy Dental. The business has an office located in Las Vegas,
18 Nevada, and in Henderson, Nevada. Dr. Luong's sister, Hieu Luong worked in
19 the dental offices for approximately five years. Hieu Luong testified that Dr.
20 Luong worked three to four days per week at the dental offices during the time
21 that she worked there. Dr. Luong testified that she worked two to three days a
22 week during the marriage, and she currently works two days per month, every
23 other Wednesday, and she has hired two staff dentists to work her practice. Dr.
24 Luong testified that she plans to retire and have associates run the practice, or sell
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1 the practice. Dr. Luong testified that she earns approximately \$1,000,000 per
2 year, and she would earn between \$700,000 and \$800,000 per year if she
3 employed other dentists to run the practice.
4

5 Minh Luong has owned a home in Las Vegas, Nevada since 2002. The
6 parties lived in James Vahey's home located at Lake Las Vegas in Henderson,
7 Nevada, from 2006 until January, 2019. Minh Luong testified that in January,
8 2019, she moved into her Las Vegas, Nevada home, and she and the children
9 spend her custodial time there.
10

11 In October, 2017, Minh Luong purchased a home in Irvine, California.
12 Minh Luong testified that the parties had discussed moving to California during
13 the marriage, and there was an express agreement or tacit understanding that the
14 parties would retire and move to California. James Vahey disputed this claim.
15 The court concludes that the parties did not reach an agreement to move to
16 California, even though Minh Luong purchased a separate property home there in
17 2017. In support of this conclusion, the court finds that neither party has retired
18 or sold their practice. The parties' marital difficulties predated Minh Luong's
19 purchase of a home in Irvine, California. Minh Luong testified that prior to
20 2017, she and her husband were parties in a civil suit concerning an investment.
21 Minh Luong testified that after the case was settled, she was hurt and angry, and
22 she told James Vahey that she was going to purchase a home in California, and he
23 could follow her there if he wanted. Minh Luong testified that she discussed
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1 moving the family to California many times with James Vahey. Minh Luong
2 testified that in an April, 2018 meeting with a therapist, James Vahey told her he
3 was not on board with moving to California.
4

5 The court finds that both parties are dedicated to raising their children.
6 Married couples often establish a division of labor that is related to the parties'
7 routines and interests. Both parents in this case have demanding jobs, and they
8 both have successfully guided their busy family through the rigors of raising three
9 children. Both parents have been involved in managing the children's daily
10 routines, sharing responsibilities for supervision, guidance, and education. Minh
11 Luong's allegation that James Vahey was a disengaged or neglectful parent, or
12 that she was the primary parent or the more suitable parent, was not credible, and
13 was not supported by sufficient proof. Minh Luong's testimony in this regard,
14 and these allegations were contradicted by documentary proof and witness
15 testimony that was credible. Hieu Luong, Richard Landeis, Bowena Bautista, and
16 Imelda Vahey testified that James Vahey was an active, engaged parent. James
17 Vahey testified that Minh Luong was an exceptional parent.
18

19 NRS 125C.0035 (4) sets forth factors that courts are required to consider as
20 part of the balancing test. This court, in evaluating this custody dispute,
21 considered the applicable statutory factors and the decisional law factors.
22 Specifically:
23

24 **(a) The wishes of the child if the child is of sufficient age and capacity**
25 **to form an intelligent preference as to his or her physical custody.**
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1 Hannah Vahey is ten (10) years of age, Matthew Vahey is nine (9) years of
2 age, and Selena Vahey is five (5) years of age. None of the children are of
3 sufficient age to form a preference.
4

5 **(b) Any nomination of a guardian for the child by a parent.**

6 The court is considering custodial placement only with the parents. This
7 factor is not an applicable factor.
8

9 **(c) Which parent is more likely to allow the child to have frequent**
10 **associations and a continuing relationship with the noncustodial**
11 **parent.**

12 The court finds that James Vahey is more likely to allow the children to
13 have a frequent and continuing relationship with the other parent. The court has
14 concerns that Minh Luong's negative attitude towards James Vahey that stems
15 from his refusal to allow her to move the children to California has caused her to
16 negatively influence the relationship between the children and their father.
17 Evidence was presented at the hearing that showed Minh Luong has discussed
18 this dispute with the parties' children. James Vahey's account of the events in
19 August, 2019 when Hannah was upset and crying on the first day of school was
20 credible. James Vahey testified that Minh Luong told him in the presence of the
21 children that he had forced the kids to go to school in Nevada instead of Irvine
22 where he promised, and said to him, in front of the children, that he misled all of
23 us. Evidence was presented that supports a finding that Minh Luong encouraged
24 Hannah and Matthew to discuss the move to California with their father. Minh
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1 Luong testified that when asked by the children about moving to California, she
2 told the children to ask their dad. James Vahey testified that shortly after the
3 separation, Selena, age 4, told him at a custody exchange that mommy told me to
4 tell you to let her stay with her all of the time. This dialog shows poor judgment
5 and has the potential to alienate the children from their father.
6

7 Minh Luong alleged that James Vahey was a good father when he was
8 around, that he did not support the children's emotional needs, and discounted his
9 contributions to their schooling and extracurricular activities. Conversely, James
10 Vahey alleged that it was in the best interest of the children for both parents to
11 share physical custody. James Vahey complimented Minh Luong's parenting and
12 dedication to the children. Of the two parents, James Vahey is less likely to
13 undermine or interfere with the parent-child relationship. The court concludes
14 that James Vahey is more likely to foster and encourage a healthy relationship
15 between the children and the other parent.
16

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19 **(d) The level of conflict between the parents.**
20

21 The parties have moderate conflict. Minh Luong's decision to seek
22 primary physical custody and removal of the children from Nevada was a catalyst
23 for the filing of this divorce case. Removal disputes within a divorce case can
24 create significant conflict. James Vahey testified that Minh Luong does not speak
25 to him verbally, even in front of the children. Minh Luong insists on texting as
26 the mode of communication between the parties. The court reviewed text
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28

1 communications admitted into evidence. These communications were rational,
2 devoid of foul language or personal attacks. The court concludes that the parties
3 communicate well enough to address the children's daily needs. The parties
4 disagreed on the frequency of extracurricular activities of the children, and had
5 disagreements concerning parenting style, but both parties demonstrated a
6 commitment to communicate for the benefit of the children.
7

8
9 **(e) The ability of the parents to cooperate to meet the needs of the**
10 **child.**

11 The evidence supports a finding that the parties have the ability to
12 cooperate to meet the needs of the children. During the marriage, the parties
13 coordinated busy work schedules and busy parenting schedules. Despite the fact
14 that Minh Luong testified she cannot co-parent with James Vahey, they have
15 cooperated to meet the needs of the children.
16

17 **(f) The mental and physical health of the parents.**
18

19 The court finds that both parties are mentally and physically fit to care for
20 the children.
21

22 **(g) The physical, developmental and emotional needs of the child.**

23 The children are school age. They attend the Challenger School located in
24 Las Vegas, Nevada. The children are in important developmental stages that
25 requires the support of both parents. Neither parent presented evidence that the
26 children have anything but normal physical, developmental, or emotional needs.
27

28 **(h) The nature of the relationship of the child with each parent.**

1 The court finds that the children are well-adjusted with a loving
2 relationship with both parents. There was ample evidence showing that Minh
3 Luong and James Vahey participated in many activities with the children, and that
4 both were engaged in the children's schooling, and extracurricular activities.
5

6 **(i) The ability of the child to maintain a relationship with any sibling.**

7 The court concludes that the sibling relationship is important to maintain.
8
9 Neither parent suggested a parenting plan that would separate the children from
10 each other.

11
12 **(j) Any history of parental abuse or neglect of the child or a sibling of the child.**

13 The court finds that neither party proved parental abuse or neglect of the
14 children.
15

16 **(k) Whether either parent or any other person seeking physical**
17 **custody has engaged in an act of domestic violence against the child, a**
18 **parent of the child or any other person residing with the child.**

19 The court finds that neither party provided sufficient proof that the other
20 parent engaged in an act of domestic violence against the children or against any
21 person living with children.
22

23 **(l) Whether either parent or any other person seeking physical**
24 **custody has committed any act of abduction against the child or any**
25 **other child.**

26 The court finds that neither party proved that the other parent engaged in an
27 act of abduction of the children.

28 ////

1 **Best Interest Conclusion**

2 The court concludes that it is in the best interest of the children that the
3 parties share joint physical custody. A joint physical custody order is only
4 possible if the parties live near one another. Minh Luong testified that she will
5 decide to live in Irvine, California after the divorce, regardless of the outcome of
6 her custody and removal request. If she moves to California, Minh Luong cannot
7 share joint physical custody, and James Vahey shall have primary physical
8 custody by default.
9
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11 Based on NRS 125C, when the court concludes that a party fails to make a
12 case for primary physical custody, the secondary request for removal fails.
13 However, because the removal considerations overlap the best interest
14 considerations, the court made findings on the removal request.
15
16

17 **1. Removal Findings**

18 For the purpose of considering this removal request, the parties have joint
19 physical custody. NRS 125C.0015 (2) provides, in part:
20

21 If a court has not made a determination regarding the custody of a child,
22 each parent has joint legal custody and joint physical custody of the child
23 until otherwise ordered by a court of competent jurisdiction.

24 125C.0065 provides, in part,

25 1. If joint physical custody has been established pursuant to an order,
26 judgment or decree of a court and one parent intends to relocate his or her
27 residence to a place outside of this State or to a place within this State that
28 is at such a distance that would substantially impair the ability of the other
parent to maintain a meaningful relationship with the child, and the
relocating parent desires to take the child with him or her, the relocating

1 parent shall, before relocating: (a) Attempt to obtain the written consent of
2 the non-relocating parent to relocate with the child; and (b) If the non-
3 relocating parent refuses to give that consent, petition the court for primary
4 physical custody for the purpose of relocating.

5 Removal of a minor child from Nevada by the custodial parent is a separate
6 and distinct issue from child custody. However, some of the same factual and
7 policy considerations overlap. In removing the child from the jurisdiction where
8 the child currently lives, the best interest of the child should also be the
9 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
10 1268, 1271 (1991). Determination of the best interest of a child in the removal
11 context necessarily involves a fact-specific inquiry and cannot be reduced to a
12 rigid "bright line" test. *Schwartz* at 1270, (citing *In re Marriage of Eckert*, 518
13 N.E. 2d 1041, 1045 (Ill. 1988), and *Cooper v. Cooper*, 491 A.2d 606, 614-15
14 (N.J. 1984)).

15 The court considered the proof and the factors to be weighed by the court
16 found in NRS 125C.007.

17 **NRS 125C.007 1 (a)**

18 **There exists a sensible, good-faith reason for the move, and the move is**
19 **not intended to deprive the non-relocating parent of his or her**
20 **parenting time;**

21 The court finds that Minh Luong was sincere in her desire to move to
22 Irvine, California, but concludes that her decision to move is not sensible because
23 joint physical custody is in the best interest of these children, and because the
24 move would deprive James Vahey of the opportunity to share joint physical
25

1 custody of the children. The court concludes that it is in the best interest of the
2 children for their parents to live near enough to each other to share physical
3 custody.
4

5 Minh Luong testified that she has nine sensible, good faith reasons for the
6 move. They are: (1) The Irvine, California public school is better than the
7 children's Nevada school; (2) Irvine, California is a better community than
8 Henderson, Nevada; (3) Irvine, California is more child friendly than Henderson,
9 Nevada; (4) Irvine, California has better weather than Henderson, Nevada; (5)
10 There is better family support in Irvine, California compared to Henderson,
11 Nevada; (6) The children would be raised by Minh Luong 24/7 in Irvine,
12 California; (7) There are better opportunities for the children in Irvine, California
13 compared to Henderson, Nevada; (8) There are better opportunities for
14 extracurricular activities for the children in Irvine, California compared to
15 Henderson, Nevada; and (9) There are cultural advantages in Irvine, California
16 compared to Henderson, Nevada, because there is a greater Vietnamese
17 population.
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22 Many of these reasons are subjective, and the court accepts that Minh
23 Luong is sincere in her belief that these reasons are sensible. The evidentiary
24 hearing lasted two and one-half days. The court heard several hours of testimony,
25 and yet did not receive sufficient proof to support a favorable finding on these
26 reasons. Minh Luong did not prove that the public school in Irvine, California is
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1 better for the children than the Challenger private school where the children
2 currently attend. The court concludes that Minh Luong did not prove that Irvine,
3 California is a better community, is more child friendly, has better weather, has
4 better family support, has better opportunities for the children, has better
5 extracurricular activities for the children, or has cultural advantages compared to
6 Henderson, Nevada. Regarding the reason that the move would benefit the
7 children by being raised by Minh Luong 24/7 in Irvine, California the findings in
8 this order show that the court does not conclude that this is sensible or an
9 advantage for the children.
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13 The court finds that Minh Luong's intention to move is, in part, to deprive
14 James Vahey of his parenting time. She suggested that the children would be
15 better served by being raised by Minh Luong 24/7 in Irvine, California. Minh
16 Luong testified that she has been unhappy living in Las Vegas, Nevada for years.
17 Minh Luong testified that she has been trying to persuade James Vahey to move
18 to California since 2015. Between 2015 and 2017, the parties looked at vacation
19 homes in California. After the civil suit was resolved in July, 2017, Minh Luong
20 told James Vahey that he did not care about her, and she was going to purchase a
21 home in California, and you can follow if you want. James Vahey testified that
22 later in July, 2017 he told Minh Luong he was not on board with her plan to move
23 to Irvine, California. Minh Luong then purchased the home in California in
24 October, 2017. The parties continued to live in the marital residence in
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1 Henderson, Nevada throughout 2017 and 2018. Minh Luong testified that in a
2 therapy session in April, 2018 James Vahey again told her that he was not on
3 board with her moving to California with the children. The court is concerned
4 that Minh Luong's decision to live in California is intended to create a distance
5 between the parties, and to create a distance between the children and their father,
6 to avoid the sometimes tedious and inconvenient aspects of co-parenting.
7

8
9 Both parents have significant financial independence. Minh Luong and
10 James Vahey have separate property and substantial income that give them
11 parenting options that many parties cannot afford.
12

13 The court concludes that the move to Irvine, California is not sensible
14 because it eliminates the ability of the parties to share the children jointly, and
15 because Minh Luong provided insufficient proof to show that the decision to live
16 in Irvine, California is sensible. Even though the court concludes that Minh
17 Luong did not prove a sensible, good faith reason for the move, the court
18 considered the proof concerning the other factors found in NRS 125C.007, in the
19 event Minh Luong's reason for moving is sensible and made in good faith.
20
21

22 **NRS 125C.007 1 (b)**

23 **The best interests of the child are served by allowing the relocating**
24 **parent to relocate with the child;**

25 The court concludes that the children's best interests are not served by
26 allowing Minh Luong to relocate with them to Irvine, California. In support of
27 this conclusion, the court references the best interest findings made in this order.
28

1 The court concludes that the children's best interest would be served by the
2 parties sharing joint physical custody.

3 **NRS 125C.007 1 (c)**

4 **The child and the relocating parent will benefit from an actual**
5 **advantage as a result of the relocation.**

6 Minh Luong did not show that her decision to move to Irvine, California
7 was for her economic advantage. The court finds that Minh Luong was sincere
8 that she prefers Irvine, California to Nevada. This opinion or preference is
9 subjective, however, and was not proven by the presentation of sufficient
10 evidence.
11

12 **NRS 125C.007 2 (a)**

13 **The extent to which the relocation is likely to improve the quality of**
14 **life for the child and the relocating parent;**

15 The court finds that Minh Luong did not prove that the move to Irvine,
16 California improves the children's quality of life. Minh Luong testified that she
17 thought the schools and environment was better for the children in Irvine,
18 California. Her testimony was the evidence offered to the court. The court
19 concludes that she did not prove that schools in Irvine, California were better than
20 the children's current school in Las Vegas, Nevada, or that the children's
21 opportunities and environment would be better in Irvine, California.
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25 **NRS 125C.007 2 (b)**

26 **Whether the motives of the relocating parent are honorable and not**
27 **designed to frustrate or defeat any visitation rights accorded to the**
28 **non-relocating parent;**

1 It is Minh Luong's burden to show that her motives are honorable and not
2 designed to defeat James Vahey's custody rights. The court concludes that she
3 provided insufficient proof of this critical element. The court finds that Minh
4 Luong's motives for the move are suspect, and finds that the move would
5 frustrate and limit James Vahey's opportunity to share custody of the children.
6

7 The court was unpersuaded that a move to California is best for the
8 children. The court finds that Minh Luong did prove that her home in Irvine,
9 California is larger and more appealing than her home in Las Vegas, Nevada. It
10 was built in 2017, and the photographs of the home admitted into evidence show
11 that it is a beautiful home. Minh Luong described her Las Vegas, Nevada home
12 where she has exercised her custodial time since January, 2019 as a rental home.
13
14

15 **NRS 125C.007 2 (c)**

16 **Whether the relocating parent will comply with any substitute**
17 **visitation orders issued by the court if permission to relocate is**
18 **granted;**

19 Both parties have followed the court orders that were entered in March,
20 2019 while this matter was pending, and the parties have shared physical custody
21 of the children. The court concludes that both parties will comply with the
22 custody orders that will be entered in this case.
23

24 **NRS 125C.007 2 (d)**

25 **Whether the motives of the non-relocating parent are honorable in**
26 **resisting the petition for permission to relocate or to what extent any**
27 **opposition to the petition for permission to relocate is intended to**
28 **secure a financial advantage in the form of ongoing support obligations**
or otherwise;

1 The court finds that James Vahey's motives are honorable in opposing the
2 request to remove his children to Irvine, California. James Vahey cannot
3 maintain a joint physical custody schedule with the children if they live in
4 California. The children are school age, and his custodial time would be limited
5 to school breaks. The court finds that removal of the children would reduce his
6 time by a significant percentage each year, but more importantly, would change
7 the character of his time with the children.
8

9
10 **NRS 125C.007 2 (e)**

11 **Whether there will be a realistic opportunity for the non-relocating**
12 **parent to maintain a visitation schedule that will adequately foster and**
13 **preserve the parental relationship between the child and the non-**
14 **relocating parent if permission to relocate is granted; and**

15 Both parents would have a custody or visitation schedule that would
16 preserve the parental relationship between the children and the other parent, if one
17 parent lives in Clark County, Nevada and one parent lives in Irvine, California.
18 The parent who does not have primary physical custody would have a material
19 reduction in custodial time and a material diminution in custodial responsibility.
20

21 **NRS 125C.007 2 (f)**

22 **Any other factor necessary to assist the court in determining whether**
23 **to grant permission to relocate.**

24 Without Minh Luong's settled purpose to leave Clark County, Nevada to
25 live in Irvine, California, the evidence in this case supports a conclusion that the
26 parties should share joint physical custody. Minh Luong's decision to move to
27 Irvine, California requires the court to fashion a primary/secondary custodial
28

1 schedule. Minh Luong should be afforded some reasonable time to consider the
2 effect of this decision in order and take the necessary steps to preserve her joint
3 physical custody rights. The court is directing the parties to submit a divorce
4 judgment by October 18, 2019. If, after considering this decision, and prior to
5 the entry of the divorce judgment, Minh Luong elects to remain in Clark County,
6 Nevada, the parties should notify the court of their intention to share joint legal
7 and joint physical custody of the children. The court shall accept the parties' joint
8 physical custody agreement, or shall place the matter on calendar to establish a
9 joint physical custody schedule. If Minh Luong's settled purpose to live in Irvine,
10 California remains unchanged, James Vahey shall become the primary physical
11 custodian.
12
13
14

15 **C. CHILD SUPPORT**
16

17 There are financial implications to this custody order. Both parents have
18 an obligation to support their children pursuant to NRS 125B.020. The
19 obligation to support three children is 29% of the obligor's gross monthly income
20 pursuant to NRS 125B.070. Both parties testified that they earn in excess of
21 \$700,000 per year from employment. The parties agree that because of their
22 significant incomes, neither party shall pay child support to the other parent.
23 James Vahey specifically waives child support from Minh Luong in consideration
24 for an agreement that the parties share equally the significant private school
25 tuition and related expenses, all medical and dental expenses for the children that
26
27
28

1 are not covered by insurance, expenses for the children's extracurricular activities
2 that the parties agree are best for the children, and tutoring or education expenses
3 that the parties agree are best for the children.
4

5 The court finds that this child support agreement and order complies with
6 Nevada law.

7 **D. ATTORNEYS FEES / COSTS**
8

9 The Nevada Supreme Court held that factors found in *Brunzell v. Golden*
10 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family
11 law cases. Two requirements must be met before making an attorney's fees
12 award:
13

- 14 (1) There must be a legal basis for the award. Fees must be allowed
15 by an express or implied agreement or when authorized by statute
16 or rule; and
17 (2) Fees must be appropriate and reasonable. Courts must consider:
18 (a) The qualities of the advocate;
19 (b) The character and difficulty of the work performed;
20 (c) The work actually performed; and
21 (d) The result obtained.

22 *Miller v. Wilfong*, 121 Nev. Adv. Op. 61, 119 P.3d 727 (9/22/2005).

23 **a. NRS 18.010 and EDCR 7.60 (b)**

24 While there is a legal basis in statutes for an award of attorney's fees and
25 costs, this court concludes that the claim pursuant to NRS 18.010 and EDCR 7.60
26

27 (b) lacks merit and should be denied.
28

1 The parties litigated the contested issue of physical custody incident to
2 their divorce case. Both parties have the right to their day in court to advance a
3 custody order that they believe is in the children's best interest.

4 NRS 18.080 permits litigants to recover their attorneys' fees "when the
5 court finds that the claim... or defense of the opposing party was brought without
6 reasonable ground or to harass the prevailing party." EDCR 7.60 (b) provides
7 that the court may, after notice and an opportunity to be heard, impose upon an
8 attorney or a party any and all sanctions which may, under the facts of the case,
9 be reasonable, including the imposition of fines, costs or attorney's fees when an
10 attorney or a party without just cause: (1) Presents to the court a motion or an
11 opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
12 (2) Fails to prepare for a presentation. (3) So multiplies the proceedings in a case
13 as to increase costs unreasonably and veraciously.

14 This court concludes that this statute and rule should not be applied to this
15 case. NRS 18.010 and EDCR 7.60 are tools allowing courts to remedy claims
16 that are brought without reasonable ground. The court concludes that both
17 parties, through counsel, advanced factual claims and legal arguments that were
18 made in good faith, and with a reasonable basis based on their particular
19 perspective. The work done by counsel was excellent, and reasonable in light of
20 the position of the parties.

21
22 **b. Disparity in Income and Financial Resources**

1 There is a legal basis in statutes and in decisional law for an award of
2 attorney's fees and costs based on the disparity of income between the parties.

3 The case at bar is a divorce action. NRS 125.150(3) provides, in part, as follows:
4

5 Whether or not application for suit money has been made under the
6 provisions of NRS 125.040, the court may award a reasonable attorney's
7 fee to either party to an action for divorce if those fees are in issue under
the pleadings.

8 The district court must also consider the disparity in income of the parties in
9 awarding fees. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d. 1071, 1073
10 (1998). Further, the power of the court to award attorney's fees in divorce
11 actions remains part of the continuing jurisdiction of the court in appropriate post-
12 judgment motions relating to support and child custody. *Halbrook v. Halbrook*,
13 114 Nev. 1455, 971 P.2d 1262 (1998).
14
15

16 This court finds that both parties have incurred substantial fees and costs in
17 this case. Custody disputes that involve removal are difficult to resolve, and
18 difficult to present. The amount of fees and costs incurred was a significant
19 investment by the parties. The court accepts that the work performed reflects the
20 quality of the advocates, and the intention of the parties to make a significant
21 financial investment in their claims and defenses. This court concludes that the
22 parties are in similar financial circumstances. The fees and cost incurred, while
23 significant, are well within the parties' ability to pay, and the fees and costs
24 incurred do not significantly affect their financial condition.
25
26
27
28

1 Therefore, this court concludes that the parties should bear their own
2 attorney's fees and costs.

3 **E. NOTICES**

4
5 a. Pursuant to NRS 125.510 (6), the parties are hereby placed on
6 notice of the following:

7 **"PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,**
8 **CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS**
9 **ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN**
10 **NRS 193.130. NRS 200.359 provides that every person having a limited right of**
11 **custody to a child or any parent having no right of custody to the child who**
12 **willfully detains, conceals or removes the child from a parent, guardian or other**
13 **person having lawful custody or a right of visitation of the child in violation of an**
14 **order of this court, or removes the child from the jurisdiction of the court without**
15 **the consent of either the court or all persons who have the right to custody or**
16 **visitation is subject to being punished for a category D felony as provided in NRS**
17 **193.130."**

18 b. Pursuant to NRS 125.510 (7) and (8), the parties are hereby
19 placed on notice that the terms of the Hague Convention of October
20 25, 1980, adopted by the 14th Session of the Hague Conference on
21 Private International Law, apply if a parent abducts or wrongfully
22 retains a child in a foreign country.

23 c. NOTICE IS HEREBY GIVEN that the parties are subject to
24 the provisions of NRS 31A and 125.450 regarding the collection of
25 delinquent child support payments, and that either party may request
26 a review of child support in accordance with NRS 125B.145.

27
28 ////

ORDER

WHEREFORE, IT IS HEREBY ORDERED that Minh Luong and James Vahey shall share joint legal and joint physical custody of Hannah Vahey, Matthew Vahey, and Selena Vahey. James Vahey shall have primary physical custody, subject to Minh Luong's visitation. Joint legal custody shall be defined as follows:

The parents shall consult and cooperate with each other in substantial questions relating to religious upbringing, educational programs, significant changes in social environment, and health care of the children. Both parents shall have access to medical and school records pertaining to their children and be permitted to independently consult with any and all professionals involved with the children. Each parent is to notify the other parent as soon as reasonably possible of any illness requiring medical attention or any emergency involving the children. Each parent shall have the power to obtain emergency health care for the children without the consent of the other parent. However, the parent must inform the other parent of the emergency and the healthcare provided as soon as reasonably possible. Each parent acknowledges and agrees that they each currently have and will continue to have adequate access to all information concerning the wellbeing of the children, including, but not limited to, copies of report cards; school meeting notices; vacation schedules; class programs; requests for conferences; results of standardized or diagnostic tests; notices of activities

1 involving the children; samples of school work; order forms for school pictures;
2 all communications from health care providers; the names, addresses and
3 telephone numbers of all schools, health care providers, regular day care
4 providers, and counselors. Each parent shall have the right to obtain information
5 concerning the athletic and social events in which the children participate. Both
6 parents may participate in school activities for the children such as open houses,
7 attendance at athletic events, etc. Each parent shall provide the other parent with
8 the address and telephone number of the residence where the minor children
9 reside when in that parent's care. In the event that the address and/or telephone
10 number of the residence changes, the parent shall notify the other parent of the
11 new address two (2) weeks prior to any change of address and/or shall provide the
12 other parent with the new telephone number as soon as the number is assigned.
13 The parent vacationing with the minor children shall provide the other parent with
14 a travel itinerary, which shall include telephone numbers, expected times of
15 arrival and departure and destinations.

16
17 **IT IS FURTHER ORDERED** that James Vahey shall have primary
18 physical custody of Hannah Vahey, Matthew Vahey, and Selena Vahey, subject
19 to Minh Luong's visitation. Specifically:

- 20
21
22 **1. Weekend Holidays:** Minh Luong shall have the children for weekend
23 holidays listed below. The weekend holiday time may be exercised in
24
25
26
27
28

1 California and shall be defined as 4:00 p.m. the day school recesses
2 until 6:00 p.m. the day before school resumes.

- 3
4 a. Martin Luther King Day Weekend
5 b. President's Day Weekend
6 c. Memorial Day Weekend
7 d. Labor Day Weekend
8 e. Nevada Day Weekend

9
10 **2. Weekend Visitation:** Minh Luong may have the children for one, non-
11 holiday weekend in Nevada each calendar month. The weekend shall
12 be defined as 4:00 p.m. the day school recesses until 6:00 p.m. on
13 Sunday. Minh Luong shall provide James Vahey with written notice
14 of her intention to exercise a weekend visitation seven days in advance.

15 **3. Holidays:** The Holiday schedule shall take precedence over Weekend
16 Holidays, Weekend Visitation, and Summer Break.

17 a. **Mother's Day:** This holiday is defined as Friday at 4:00 p.m.
18 through Sunday at 6:00 p.m. Minh Luong shall have the children
19 each year for Mother's Day.

20
21 b. **Father's Day:** This holiday is defined as Friday at 4:00 p.m.
22 through Sunday at 6:00 p.m. James Vahey shall have the children
23 each year for Father's Day.

24
25 c. **Spring Break:** Minh Luong shall have the children every year
26 for Spring Break defined as 4:00 p.m. the day school recesses
27 until 6:00 p.m. the day before school resumes.
28

1 d. **Summer Break:** Minh Luong shall have the children for six
2 consecutive weeks each summer in California beginning at 4:00
3 p.m. the day after school recesses.
4

5 e. **Thanksgiving Break:** Minh Luong shall have the children for
6 Thanksgiving Break in 2019 and in odd-numbered years.
7 Thanksgiving Break shall be defined as 4:00 p.m. the day school
8 recesses until 6:00 p.m. the day before school resumes. James
9 Vahey shall have the children for Thanksgiving Break in even-
10 numbered years.
11
12

13 f. **Winter Break:** The Winter Break shall be shared by the parties.
14 James Vahey shall have the first portion of the Winter Break each
15 year defined as the day school recesses until 4:00 p.m. on
16 December 27. Minh Luong shall have the children for the second
17 portion of the Winter Break each year defined as 4:00 p.m. on
18 December 27, until 6:00 p.m. the day before school resumes.
19
20

21 4. **Transportation.** Absent an agreement of the parties, Minh Luong shall
22 provide transportation for the children for her custodial time.
23

24 **IT IS FURTHER ORDERED** that Minh Luong's motion for primary
25 physical custody and for permission to remove the children to Irvine, California is
26 denied.
27
28

IT IS FURTHER ORDERED that neither party shall pay child support to the other. The parties agree to share equally private school tuition and related expenses, all medical and dental expenses for the children that are not covered by insurance, expenses for the children's extracurricular activities that the parties agree are best for the children, and tutoring or education expenses that the parties agree are best for the children. If one party has paid for a shared expense, reimbursement shall be made pursuant to the 30/30 rule for expenses. The parent who paid for the expenses shall provide the other parent a copy of the receipt of payment within 30 days of payment. The other parent should reimburse one-half of the expenses within 30 days.

IT IS FURTHER ORDERED that both parties shall provide health insurance for the children if it is offered through employment.

IT IS FURTHER ORDERED that each party shall be responsible for their own attorney's fees and costs.

IT IS FURTHER ORDERED that the court directs the parties to submit a stipulated divorce judgment to the court by October 18, 2019.

DATED this 20 day of September, 2019.

DISTRICT COURT JUDGE
T. ART RITCHIE, JR.

Vahey / Luong

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

Steven D. Grierson

BREF
THE DICKERSON KARACSONYI LAW GROUP
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Nevada Bar No. 000945
SABRINA M. DOLSON, ESQ.
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Email: info@thedcklawgroup.com
Attorneys for Plaintiff

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

JAMES W. VAHEY,
Plaintiff,

v.

MINH NGUYET LUONG,
Defendant.

CASE NO. D-18-581444-D
DEPT NO. II

**PLAINTIFF'S INDIVIDUAL CASE MANAGEMENT
CONFERENCE BRIEF**

Date and Time of Case Management Conference:
February 18, 2020, at 10:00 a.m.

COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, and hereby submits his Individual Case Management Conference Brief, pursuant to Eighth Judicial District Court Rules, Rule 5.401 (2020).

I. STATEMENT OF JURISDICTION

It is undisputed this Court has subject matter jurisdiction over this action and personal jurisdiction over the parties hereto.

...

...

1 **II. DESCRIPTION OF NATURE OF ACTION AND CLAIMS FOR**
2 **RELIEF**

3 Jim and Minh were married on July 8, 2006. On June 14, 2006, the
4 parties entered into a Premarital Agreement. The parties have three (3)
5 minor children the issue of their marriage: Hannah, born March 19, 2009,
6 Matthew, born June 26, 2010, and Selena, born April 4, 2014.

7 On December 13, 2018, Jim filed his Complaint for Divorce,
8 asserting the parties' Premarital Agreement is a valid and binding
9 agreement between the parties and "addresses, controls, and resolves all
10 marital issues that exist between the parties which are incident to the
11 parties' divorce, with the sole exception of the issues of child custody and
12 child support." Complaint for Divorce, pg. 3. Minh filed her Answer and
13 Counterclaim for Divorce on January 11, 2019, admitting to the foregoing
14 allegations. Given child custody and child support were the only issues to
15 be addressed by the Court, an evidentiary hearing was held on August 8,
16 September 5, and September 11, 2019. This Court issued its Findings of
17 Fact, Conclusions of Law, and Decision and Order ("Decision and Order")
18 on September 20, 2019, setting forth its orders regarding child custody
19 and child support. In the Decision and Order, this Court directed "the
20 parties to submit a stipulated divorce judgment to the court by October
21 18, 2019." Decision and Order, pg. 32, lines 19-21.

22 On October 4, 2019, Robert P. Dickerson, Esq., emailed Minh's
23 counsel at that time, Neil Mullins, Esq., informing him he would prepare
24 the Stipulated Decree of Divorce if he had not already begun to do so, and
25 requesting a response to a previous email Mr. Dickerson sent on August
26 19, 2019 regarding revisions to the proposed Marital Settlement
27 Agreement. On October 7, 2019, Mr. Mullins informed Mr. Dickerson he
28 had been relieved as counsel and Minh had retained Fred Page, Esq., to

1 substitute as counsel. On October 9, 2019, Mr. Page filed his Substitution
2 of Attorney.

3 On November 30, 2019, Mr. Dickerson provided Mr. Page with the
4 proposed Marital Settlement Agreement, which Mr. Dickerson and Mr.
5 Mullins had exchanged multiple times and had made many revisions, and
6 the Decree of Divorce. Mr. Dickerson emailed Mr. Page on December 4,
7 5, and 12, 2019 to follow up on the status of Mr. Page's and Minh's
8 review of the documents. On December 23, 2019, Mr. Page provided
9 Minh's requested revisions to the Decree of Divorce; however, Mr. Page
10 and Minh did not review the most recent version Mr. Dickerson had
11 emailed on November 30, 2019, which led to some confusion. Mr.
12 Dickerson responded to Mr. Page's requested revisions that same day,
13 informing him he and Minh had reviewed older versions of the documents.
14 On December 24, 2019, Mr. Dickerson resent a copy of the proposed
15 Decree of Divorce and Marital Settlement Agreement, which he had
16 previously sent on November 30, 2019.

17 On December 29, 2019, Mr. Page emailed Mr. Dickerson a list of
18 requested revisions to be made to the Decree of Divorce. On December
19 30, 2019, Mr. Page emailed Mr. Dickerson a list of requested revisions to
20 the Marital Settlement Agreement. On January 1, 2020, Mr. Dickerson
21 emailed Mr. Page the revised Decree of Divorce and Marital Settlement
22 Agreement. Mr. Dickerson emailed Mr. Page to follow up on the status
23 of his and Minh's review of the revised Decree of Divorce and Marital
24 Settlement Agreement on January 7, 2020, and again on January 17
25 2020, after receiving no response since January 1, 2020.

26 On January 21, 2020, Mr. Page responded to Mr. Dickerson
27 providing additional requested revisions to the Decree of Divorce and
28 Marital Settlement Agreement. On January 22, 2020, this Court entered

1 its Notice of Hearing, setting a Case Management Conference regarding
2 the Decree of Divorce for February 18, 2020. On January 28, 2020,
3 Sabrina M. Dolson, Esq. emailed Mr. Page the revised Decree of Divorce
4 and Marital Settlement Agreement and correspondence from Mr.
5 Dickerson regarding finalizing of same. In the correspondence, Mr.
6 Dickerson addressed Mr. Page's requested revisions, indicating which
7 revisions were made and which were not. To date, Minh has not signed
8 nor requested any additional revisions to the Decree of Divorce or Marital
9 Settlement Agreement, and Mr. Page has not responded to Mr.
10 Dickerson's letter. Accordingly, Jim is requesting this Court order Minh
11 to identify the language in the Marital Settlement Agreement and Decree
12 of Divorce to which she does not agree and any proposed revisions so this
13 Court may resolve any disputed issues at the February 18, 2020 Case
14 Management Conference. Attached for this Court's review are the Decree
15 of Divorce (Exhibit 1) and Marital Settlement Agreement (Exhibit 2),
16 which were sent to Minh on January 28, 2020.

17 **III. CHILD CUSTODY**

18 This Court held an evidentiary hearing on child custody and child
19 support on August 8, September 5, and September 11, 2019. This Court
20 issued its Findings of Fact, Conclusions of Law, and Decision and Order
21 ("Decision and Order") on September 20, 2019, setting forth its orders
22 regarding child custody and child support.

23 **IV. LIST OF PROPERTY LITIGANT SEEKS TO BE AWARDED**

24 The parties' property should be divided pursuant to the June 14
25 2006 Premarital Agreement, and as set forth in Exhibits 1 and 2.

26 . . .

27 . . .

28 . . .

1 **V. IDENTIFICATION OF ISSUES PREVENTING IMMEDIATE**
2 **GLOBAL RESOLUTION**

3 The only issue preventing immediate global resolution is the
4 finalization of the language in the Marital Settlement Agreement and
5 Decree of Divorce. Jim is requesting this Court order Minh to identify the
6 language in these documents to which she does not agree and the
7 proposed revisions she requests be made so that this Court may resolve the
8 remaining disputes.

9 **VI. INAPPLICABLE EDCR 5.401 FACTORS**

10 As stated above, because this Court has issued orders on child
11 support and child custody, and the parties' Premarital Agreement
12 "addresses, controls, and resolves all marital issues that exist between the
13 parties which are incident to the parties' divorce, with the sole exception
14 of the issues of child custody and child support," the factors set forth in
15 subsections (d), (e), (f), (h), (j), and (k) of EDCR 5.401 are not applicable.

16 DATED this 10th day of February, 2020.

17 THE DICKERSON
18 KARACSONYI LAW GROUP

19 By Sabrina M. Dolson
20 ROBERT P. DICKERSON, ESQ.
21 Nevada Bar No. 000945
22 SABRINA M. DOLSON, ESQ.
23 Nevada Bar No. 013105
24 1745 Village Center Circle
25 Las Vegas, Nevada 89134
26 Attorneys for Plaintiff
27
28

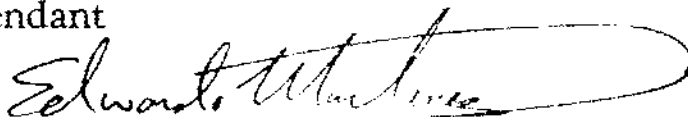
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of THE
3 DICKERSON KARACSONYI LAW GROUP, and that on this 10th day
4 of February, 2020, I caused the above and foregoing document entitled
5 PLAINTIFF'S INDIVIDUAL CASE MANAGEMENT CONFERENCE
6 BRIEF, to be served as follows:

- 7 [X] pursuant to NEFCR 9, NRCP 5(b)(2)(E) and Administrative
8 Order 14-2 captioned "In the Administrative Matter of
9 Mandatory Electronic Service in the Eighth Judicial District
10 Court," by mandatory electronic service through the Eighth
11 Judicial District Court's electronic filing system;
12 [] pursuant to NRCP 5(b)(2)(C), by placing same to be deposited
13 for mailing in the United States Mail, in a sealed envelope
14 upon which first class postage was prepaid in Las Vegas,
15 Nevada;
16 [] pursuant to NRCP 5(b)(2)(F), to be sent via facsimile, by duly
17 executed consent for service by electronic means;
18 [] pursuant to NRCP 5(b)(2)(A), by hand-delivery with signed
19 Receipt of Copy.

20 To the attorney(s) and/or person(s) listed below at the address, email
21 address, and/or facsimile number indicated below:

22 FRED PAGE, ESQ.
23 PAGE LAW FIRM
24 6930 South Cimarron Road, Suite 140
25 Las Vegas, Nevada 89113
26 fpage@pagelawoffices.com
27 Attorney for Defendant
28

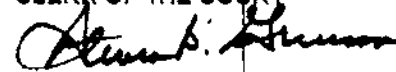


An employee of The Dickerson Karacsonyi Law Group

EXHIBIT 6

EXHIBIT 6

EXHIBIT 6



BREF

FRED PAGE, ESQ.
NEVADA STATE BAR NO. 6080
PAGE LAW FIRM
6930 SOUTH CIMARRON ROAD, SUITE 140
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Attorney for Defendant

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

Case No.: D-18-581444-D

Dept.: H

Hearing Date: February 18, 2020

Hearing Time: 10:00 a.m.

**DEFENDANT'S INDIVIDUAL CASE MANAGEMENT CONFERENCE
BRIEF**

Defendant, MINH NGUYET LUONG, by and through her attorney, Fred Page, Esq. hereby submits her Individual Case Management Conference Brief pursuant to Eight Judicial District Court Rule 5.401.

**I.
STATEMENT OF JURISDICTION**

Both parties were physically present in Nevada for six weeks prior to the filing of the Complaint for Divorce. The Court has personal and subject matter jurisdiction.

///

1 **a. If Custody Is At Issue in the Case, a Proposed Custodial**
2 **Timeshare and a Proposed Holiday, Special Day, and Vacation**
3 **Schedule:**

4 Please see Findings of Fact, Conclusions of Law, Decision and Order filed
5
6 September 20, 2019. The children, particularly Hannah, are not doing well at
7
8 school, or emotionally. Hannah and Matthew have already tried to run away from
9
10 Jim's house at 5:30 a.m. but only got as far as the guard house before they could go
11
12 no further.

13 The exchanges of the children are going badly as well with the children
14
15 having be physically removed kicking and crying from Minh's vehicle. The police
16
17 have had to be involved a number of times already. Rather than acknowledge the
18
19 distress in which the children find themselves, Jim's response has been to blame
20
21 Minh.

22 The therapist for the children who was selected is providing no value to
23
24 either the children or the parties. Both counsel agree that the therapist should be
25
26 replaced.

27 **b. Unresolved Issues:**

28 **1. Finalization of the Decree of Divorce**

29 After a number of back and forth revisions, it appears that the language in
30
31 the Decree of Divorce has been agreed upon. However, as set forth below, the
32

language in the Marital Settlement Agreement, which will need to be incorporated into the Decree of Divorce, has not yet been agreed upon.

2. Finalization of the Marital Settlement Agreement

There are a number of issues with the Marial Settlement Agreement (hereinafter "MSA"). A line item listing of those issues is set out below.

a. The Proposal Regarding The Taxes Is Incorrect

Jim is trying to claim on pages 13-14 of the MSA that taxes owed for 2014, 2015, 2016, and 2017 tax years are still outstanding. They are not. The taxes were paid when they were owed. Both parties per their agreement each paid one-half for the balance that was owed. The evidence will show that each party wrote a check to the Internal Revunue Service for their one-half share. The parties by their conduct, the subsequent passage of time, and by the act of each writing a check, modified any prior agreement that may have existed in the MSA.

The parties are unable to come to an agreement regarding the MSA in this regard. Paragraph C from Section IV on pages 13-14 should be removed.

b. The Children's 529 Account Should Be Confirmed As Being Minh's Separate Property on Behalf of the Children With Her Being in Control as the Trustee

The 529 accounts being held on behalf of the children has a balance of roughly \$1,000,000. The accounts are solely in Minh's name. The vast majority of the contributions were made by Minh or by Minh's family. Despite the

1 accounts being held solely in Minh's name, and the vast majority of the
2 contributions coming from Minh or her family. Jim is wanting that 25 percent of
3 the accounts to be transferred into his name.
4

5 The prenuptial agreement, on page 8, states that there will be no
6 transmutation of separate property. The agreement further states on page 9, that
7 "all property owned by either party at any time during the parties' marriage shall
8 be such party's sole and separate property, and that the parties shall never have or
9 create any community property at any time during their marriage." On page 10,
10 the agreement states that separate property will include "all property, wherever
11 situated, owened or acquired by either party at any time during the parties'
12 marriage . . ."
13

14 On page 23, of the agreement, the parties agreed that there is a conclusive
15 presumption that any property in which title is held in the sole name of either party
16 at any time after their marriage conclusively shall be presumed to be the sole and
17 separate property of the party in whose sole name title is held regardless of the
18 source of funds used to acquire the property.
19

20 **c. The Exhibits referenced in the Marital Settlement**
21 **Agreement Appear to be Either Incorrect or are**
22 **Incorrectly Labeled**

23 The MSA references a number of Exhibits. One Exhibit referenced is Jim's
24 Exhibit B which purports to be the assets owned by him. The total assets is listed

1 as being \$9,041,039. When one adds up the numbers on the page, the total actually
2 comes to \$4,361,162. Either the numbers are incorrect or a page is missing from
3 the Exhibit.
4

5 Minh further advises that Jim's profit sharing through his business is missing
6 and defined benefit plan through Etrade is missing. Minh further advises that the
7 balances on the mortgages for which Jim owes her are incorrect. The MSA further
8 fails to account for an approximately \$60,000 forbearance that Minh took when
9 she purchased the mortgage on the building housing the medical practice because
10 Jim was unable to refinance the loan after the ten year term expired.
11

12 Until those errors and omissions are corrected, there can be no agreement on
13 the MSA.
14

15 In addition, there was no Exhibit C attached to the email sent from Jim's
16 counsel. What should be Exhibit C is actually labeled "Exhibit B" which caused a
17 significant amount of confusion in trying to determined what was being referenced
18 by Jim. Notwithstanding that, many of the accounts and numbers are no longer
19 correct. Examples include,
20

- 21 1. MidCounty Bank checking account ending in 9082 no longer exists.
- 22 2. MidCounty Bank chcking account ending in 9096 no longer exists.
- 23 3. MidCountry Bank check account ending in 9243 no longer exists.
- 24 4. MidCountry Bank checking account ending in 9250 no longer exists.

5. MidCounty Bank checking account ending in 9537 no longer exists.
6. The balance of Capital Group American Funds 401k/profit sharing plan is incorrect.
7. The Toothfairy/HCON Defined Benefit Plan Etrade (retirement plan) ending in 0517 balance is incorrect.
8. The value of the Telsa is incorrect.
9. The Sahara Surgery Center Office no longer exists.
10. The value of the business is at best \$900,000, not \$1,500,000 as listed by Jim.
11. The value of the land in Arizona is much much less than what is listed. In addition, Jim fails to list the land entirely in his Exhibit B.

In summary, all of the assets for Jim are not listed, and the assets listed for Minh are greatly overstated and include assets that have not existed for years, in addition to the Exhibit for Minh's assets and debts being apparently mislabeled.

(d) Documents Provided at or as a Result of the Case Conference

No Joint Case Conference has been held. Financial Disclosure Forms have been previously filed by both parties.

(e) Documents not provided under NRCP 16.2(D)

No documents have been provided.

(f) Statement of Documents Needed and Discovery Plan

Documents necessary, statements and canceled checks to resolve the remaining issues regarding the MSA need to be produced.

(g) A List of the Property Each Litigant Seeks to Be Awarded

(h) List of Witnesses

1. Defendant
2. Plaintiff

(i) What Issues Are Preventing Settlement

Please see above.

(j) Litigation budget

Less than \$5,000 to \$7,500

(k) Proposed Trial Dates

One-half day, preferably in March 2020

DATED this 14 day of February, 2020

PAGE FAW FIRM

ERIC D. PAGE, ESQ.

Nevada Bar No. 00801

6930 South Cimarron Road, Suite 140

Las Vegas, Nevada 89113

(702) 466-3278

Attorney for Defendant Counterclaimant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of February 2020 that the foregoing CASE MANAGEMENT CONFERENCE BRIEF was served pursuant to N.E.C.R. 9 via e-service to Robert Dickerson, Esq. attorney for Defendant.



An employee of Page Law Firm

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

Steven D. Grierson

1 MOT
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 SABRINA M. DOLSON, ESQ.
6 Nevada Bar No. 013105
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
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10 Facsimile: (702) 388-0210
11 Email: info@thedklawgroup.com
12 Attorneys for Plaintiff

13 DISTRICT COURT
14 FAMILY DIVISION
15 CLARK COUNTY, NEVADA

16 JAMES W. VAHEY,

17 Plaintiff,

18 v.

19 MINH NGUYET LUONG,

20 Defendant.

21 CASE NO. D-18-581444-D
22 DEPT NO. 11

23 Oral Argument Requested: Yes

24 NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS
25 MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE
26 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14
27 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
28 WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN
14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN
THE REQUESTED RELIEF BEING GRANTED BY THE COURT
WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING
DATE.

29 PLAINTIFF'S EMERGENCY MOTION FOR IMMEDIATE
30 RETURN OF THE CHILDREN, DISSOLUTION OF TPO,
31 MODIFICATION OF CHILD CUSTODY, APPOINTMENT OF A
32 NEW THERAPIST FOR THE CHILDREN, AN ORDER TO SHOW
33 CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN
34 CONTEMPT, AND TO RESOLVE OTHER PARENT CHILD
35 ISSUES

36 COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and
37 through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA
38 M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW
GROUP, and submits Plaintiff's Emergency Motion for Immediate Return

1 of the Children, Dissolution of TPO, Modification of Child Custody,
2 Appointment of a New Therapist for the Children, an Order to Show
3 Cause Why Defendant Should Not Be Held in Contempt, and to Resolve
4 Other Parent Child Issues ("Emergency Motion"). Specifically, Jim
5 requests this Court enter the following orders:

6 1. An Order directing Defendant, MINH NGUYET LUONG
7 ("Minh"), to immediately return the children to Jim's custody;

8 2. An Order dissolving the Temporary Order for Protection
9 Against Domestic Violence ("TPO") Minh obtained against Jim;

10 3. An Order requiring Minh's visitation be suspended or
11 supervised in Nevada until the children and Minh participate in therapy
12 with a therapist who specializes in dealing with manipulation and
13 alienation issues;

14 4. An Order appointing a new therapist who specializes in dealing
15 with manipulation and alienation issues;

16 5. An Order to Show Cause requiring Minh to demonstrate why
17 she should not be held in contempt for her multiple violations of this
18 Court's Orders; and

19 6. For such other relief as the Court deems just and proper in the
20 premises.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 This Emergency Motion is made and based upon the following
2 Memorandum of Points and Authorities, the Declaration of Jim attached
3 hereto, the attached exhibits, all papers and pleadings on file herein, as well
4 as oral argument of counsel as may be permitted at the hearing on this
5 matter.

6 DATED this 27th day of March, 2020.

7 THE DICKERSON
8 KARACSONYI LAW GROUP

9
10 By /s/ Sabrina M. Dolson
11 ROBERT P. DICKERSON, ESQ.
12 Nevada Bar No. 000945
13 SABRINA M. DOLSON, ESQ.
14 Nevada Bar No. 013105
15 1745 Village Center Circle
16 Las Vegas, Nevada 89134
17 Attorneys for Plaintiff
18
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21
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28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL STATEMENT**

3 **A. Factual and Procedural Background**

4 Jim and Minh were married on July 8, 2006. On June 14, 2006, the
5 parties entered into a Premarital Agreement. The parties have three (3)
6 minor children the issue of their marriage: Hannah, born March 19, 2009
7 (eleven (11) years old), Matthew, born June 26, 2010 (nine (9) years old),
8 and Selena, born April 4, 2014 (five (5) years old). On December 13,
9 2018, Jim filed his Complaint for Divorce, asserting the parties' Premarital
10 Agreement is a valid and binding agreement between the parties and
11 addresses all marital issues with the sole exception of child custody and
12 child support. Minh filed her Answer and Counterclaim for Divorce on
13 January 11, 2019, admitting to same. On January 29, 2019, Minh filed a
14 motion seeking primary physical custody of the parties' children and
15 permission to relocate with them to Irvine, California. Jim filed his
16 Opposition and Countermotion for Joint Physical Custody on February 20,
17 2019. This Court held an evidentiary hearing on the child custody and
18 support issues on August 8, September 5, and September 11, 2019.

19 This Court issued its Findings of Fact, Conclusions of Law, and
20 Decision and Order ("Decision and Order") on September 20, 2019,
21 setting forth its orders regarding child custody and child support. This
22 Court ordered the parties to share joint legal custody and awarded Jim
23 primary physical custody. Decision and Order, pg. 28, lines 5-8. Minh
24 has visitation with the children on certain enumerated holiday weekends
25 and extended school breaks throughout the year, which she can exercise in
26 California, and one non-holiday weekend each month, which she must
27 exercise in Nevada. Decision and Order, pg. 29, line 21, to pg. 30, line 13.

28 . . .

1 In determining it was in the children's best interest for Jim to have
2 primary physical custody, the Court found Jim was the parent more likely
3 to allow the children to have a frequent and continuing relationship with
4 the other parent. Decision and Order, pg. 11, lines 11-3. Minh testified
5 at the evidentiary hearing that she cannot co-parent with Jim. Decision
6 and Order, pg. 13, lines 14-17. The Court raised its concerns that Minh's
7 negative attitude toward Jim based on his refusal to allow her to move to
8 California has caused her to negatively influence the children's relationship
9 with Jim. Decision and Order, pg. 11, lines 13-17. The Court noted it
10 received evidence demonstrating Minh had discussed the dispute with the
11 parties' children and advised them to discuss same with their father.
12 Decision and Order, pg. 11, lines 18-27. The Court determined that
13 Minh's dialog with the children "has the potential to alienate the children
14 from their father." Decision and Order, pg. 12, lines 5-6. The Court
15 further stated it "is concerned that Minh Luong's decision to live in
16 California is intended to create a distance between the parties, and to
17 create a distance between the children and their father, to avoid the
18 sometimes tedious and inconvenient aspects of co-parenting." Decision
19 and Order, pg. 19, lines 3-8. The Court found that Minh's "intention to
20 move is, in part, to deprive [Jim] of [his] parenting time." Decision and
21 Order, pg. 18, lines 13-15. As will be discussed below, the Court's
22 concerns have been realized.

23 Regarding the Court's order that the parties share joint legal custody,
24 the Court stated: "Each parent acknowledges and agrees that they each
25 currently have and will continue to have adequate access to all information
26 concerning the wellbeing of the children" Decision and Order, pg. 28,
27 line 22, to pg. 29, line 5. In addition, when a parent vacations with the
28 children, that parent must provide the other parent with a travel itinerary,

1 which shall include telephone numbers, expected times of arrival and
2 departure, and destinations. Decision and Order, pg. 29, lines 16-20.

3 The Court ordered that neither party would pay child support.
4 Decision and Order, pg. 32, lines 1-3. However, the Court entered orders
5 confirming the parties' agreement to share equally in the cost of the
6 children's private school tuition and related expenses. Decision and Order,
7 pg. 32, lines 2-4. The Court specifically noted that Jim

8 waives child support from Minh Luong in consideration for an
9 agreement that the parties share equally the significant private
10 school tuition and related expenses, all medical and dental
11 expenses for the children that are not covered by insurance,
12 expenses for the children's extracurricular activities that the
13 parties agree are best for the children, and tutoring or
14 education expenses that the parties agree are best for the
15 children.

16 Decision and Order, pg. 23, line 24, to pg. 24, line 4. The Court ordered
17 the parties shall follow the 30/30 rule for expenses, which requires the
18 parent who paid for the expense to provide the other parent a copy of the
19 receipt of payment within thirty (30) days of payment, and the other
20 parent to reimburse one-half of such expenses within thirty (30) days.
21 Decision and Order, pg. 32, lines 7-13.

22 B. Issues Since the Court's Decision and Order Was Entered

23 1. *Minh's Continued Refusal to Coparent and Communicate with Jim*

24 Jim testified at the evidentiary hearing that Minh refuses to
25 communicate with him verbally, even in front of the children. See
26 Decision and Order, pg. 12, lines 25-28. Minh confirmed at the
27 evidentiary hearing she cannot (i.e., refuses to) coparent with Jim.
28 Decision and Order, pg. 13, lines 14-17. Minh has continued with this
inappropriate behavior in the presence of the children and only
communicates with Jim to denigrate and disparage him. Minh will not
make eye contact with Jim and treats him as if he does not exist at the

1 custodial exchanges and any event for the children in which they both
2 attend. On multiple occasions, Minh has called Jim an idiot, scum of the
3 earth, and a piece of shit in front of the children.

4 At the custodial exchange on March 1, 2020, after Jim waited
5 approximately an hour and a half for the children to get out of Minh's RV,
6 the parties had the following conversation while Jim was attempting to get
7 Hannah and Matthew out of Minh's car with no help from Minh:

8 Jim: Are you helping to bring them in or are you
9 just sitting there (inaudible)

10 Minh: You are beneath me. I don't need to talk to
11 you.

12 Jim: Alright. I'm beneath you. Nguyet,
13 Hannah and Matthew. Hannah and
14 Matthew, let's go.
15 Have they eaten? I'm trying to ask you.

16 Minh: Don't talk to me.

17 Jim: Please answer me.

18 Minh: Don't need to talk to me.

19 Jim: No. No. We need to take care of our
20 children. Have they eaten? Have they eaten?

21 Minh: You can ask them yourself.

22 Jim: You can answer me.

23 Minh: No. I don't.

24 Jim: You're their mother.

25 Minh: You're a low life.

26 Jim: You're their mother.

27 Minh: You're their father. Now act like one.

28 Jim: I have been.

Minh: Besides . . .

Jim: I have been.

Minh: . . . just thinking of yourself.

1 Jim: I have been.
2 Minh: No, you haven't.
3 Jim: Oh, really?
4 Minh: You're selfish. You selfish SOB. I don't want
5 to look at your face. I don't want to see you.
6 Do you know that? You're just beneath dirt.
7 Unbelievable.
8 Jim: If you have those thoughts, please . . .
9 Minh: I don't want to hear anything you're saying.
10 Don't say anything to me.
11 Jim: . . . please don't say those in front of the
12 children.
13 Minh: Don't talk to me! I ask you not to talk to
14 me!
15 Jim: Hannah and Matthew. Hannah and
16 Matthew, it is not good for you to hear any of
17 this. Come inside now. Bring them inside.

18 **Exhibit 1**, Audio Recording of March 1, 2020 Custodial Exchange. Minh
19 is so consumed by her hate and anger toward Jim she cannot engage in a
20 simple conversation regarding whether the children have eaten and will not
21 help him get the children out of her vehicle. During this exchange, Jim had
22 tried to coax the children to leave Minh's RV five (5) separate times over
23 the period of an hour and a half with no assistance from Minh. At one
24 point, Minh was hugging Hannah, clearly showing her support for the
25 children in their refusal to go to Jim. During another time when Jim tried
26 to get the children, the children were in the back bed of the RV and Minh
27 was sitting in the middle of the RV, texting.

28 Whenever there is confusion over the custodial schedule, Jim cannot
communicate with Minh to resolve any issues as Minh is nonresponsive.
For instance, Jim and Minh agreed Minh would have the children for her
weekend visitation in Nevada for the month of March from March 20-22,
2020. Attached as **Exhibit 2** is a calendar Minh provided to Jim shortly

1 after the Court entered its Decision and Order, which provides the dates
2 on which she will exercise her weekend visitation in Nevada. Thereafter,
3 Jim received an email that the children's Spring Break was being moved
4 from April 6-10, 2020, to March 23-27, 2020. Jim mistakenly thought
5 Spring Break was moved up only one week. Jim and Minh exchanged the
6 following text messages regarding Spring Break, which demonstrates Jim's
7 mistake:

8 Jim: The kids school made some changes regarding
9 subject material and timing of spring break. I
10 wanted to make sure you were aware of it as soon
11 as possible. Spring break is going to be a week
12 earlier. Let me know what you would like to do. I
13 can make accommodations for whatever you would
14 like. Let me know.

15 I forwarded the email to you.

16 Minh: I will take the kids for that week but that also mean
17 I am owed a weekend. I will forward that weekend
18 to a later weekend.

19 **Exhibit 3**, March 15, 2020 Text Messages Regarding Spring Break.
20 Despite Jim forwarding the email regarding the Spring Break change to
21 Minh, she did not correct Jim on his mistake. Thus, Jim believed Minh
22 would be exercising her one weekend visitation in Nevada, pursuant to the
23 calendar she provided to him, from March 20-22, 2020, and would be
24 exercising her Spring Break visitation from March 30 - April 3, 2020.

25 Given Jim mistakenly believed that Minh was exercising her weekend
26 visitation in Nevada beginning March 20, 2020, Jim attempted to
27 communicate with Minh regarding her plans for where she would be
28 spending the weekend with the children as he was concerned she would be
traveling to California. Prior to the outbreak of COVID-19 and the
recommendations for avoiding unnecessary travel, Minh had asked Jim if
she could take the children to California for her March 20-22 weekend.
Jim had informed Minh he did not think such a short trip, with the hours

1 they would spend traveling, was sensible, but told Minh it was her
2 decision. After the outbreak of COVID-19 and after Nevada and
3 California started closing nonessential businesses and advising against
4 unnecessary travel, Jim knew it would be safer for the children to stay in
5 Nevada as there are far fewer cases of COVID-19 in Nevada than there are
6 in California. Jim was also reasonably concerned Minh would travel with
7 the children to California and then use the California Governor's "shelter
8 in place" order to keep the children and refuse to return them to him. Jim
9 and Minh exchanged the following text messages:

10 Jim: I'm concerned about our kids' safety. I think it
11 would be best not to travel to California right now.
12 There are a lot of cases in California, and they
13 really believe the actual number is very
14 underestimated. Please don't risk exposing the kids
15 to the virus.

16 Minh: You just had a gathering of a non family member
17 came over to your house. And now you want to tell
18 me you are concerned? Please get the kids ready
19 and my gear at your office. I will pick them up at
20 4.

21 Jim: The Court's custodial order provides you have one
22 weekend of visitation each month here in Nevada.
23 In addition, given the current issues surrounding
24 COVID-19 and the recommendation that people
25 avoid unnecessary travel, I do not approve nor
26 consent to the children's traveling outside of Las
27 Vegas this weekend. Can you please confirm you
28 will be complying with the court's order?

We are at the house. We're not going to the office.
I'll see you at 4 o'clock per the court's order.

Minh: I will comply with court order
As always

Jim: Thank you for giving me a straight answer. We can
only coparent together if we understand how
important it is for us to communicate with each
other and appropriately respond to each other with
honest answers to legitimate questions concerning
the well-being of our children. I was concerned
about our children, and I appreciate your giving me
a straight answer to my question.

1 **Exhibit 4.** March 19-20, 2020, Text Messages Regarding Visitation. As
2 is evident from Minh's misleading response of "I will comply with court
3 order," Minh was well aware Jim had the dates for Spring Break mistaken
4 and rather than correct him, allowed him to believe she would be spending
5 the weekend in Nevada with the children.

6 Jim's counsel received a similar misleading and nonresponsive email
7 from Minh's counsel when attempting to discuss the issue. On March 20,
8 2020, Sabrina Dolson, sent the following email to Fred Page:

9 Mr. Page:

10 Your assistance is needed as Dr. Luong is refusing to
11 communicate and coparent with Dr. Vahey. Dr. Luong will
12 not confirm with Dr. Vahey whether she intends to take the
13 children to California, in violation of the Court's order, this
14 weekend. The Court's Findings of Fact, Conclusions of Law,
15 Decision and Order, entered September 20, 2019, provides Dr.
16 Luong is to have the children for one, non-holiday weekend in
17 Nevada each calendar month. Pg. 30, lines 7-9. In addition,
18 as I'm sure you are aware, unnecessary travel is not
19 recommended at this time given the risks caused by COVID-
20 19, and California's Governor has issued a "Stay-at-Home"
21 order. Can you please confirm with Dr. Luong that she will
22 not be traveling with the children this weekend in violation of
23 the Court's order?

24 Thank you for your time and attention to this matter.

25 **Exhibit 5.** March 20, 2020 Emails Exchanged Between Sabrina M.
26 Dolson, Esq., and Fred Page, Esq. Mr. Page responded the same day:

27 Ms. Dolson,

28 It is incorrect to allege that Dr. Luong is not communicating
and co-parenting with Dr. Vahey. Dr. Luong is adhering to the
Court's orders. It is libelous for Dr. Vahey to suggest otherwise.
It is requested that you ask that Dr. Vahey cease trying to
create conflict where none should exist. It is required that Dr.
Vahey obey the Court's orders. Please ensure that Dr. Vahey
obeys the Court's orders.

Exhibit 5. Mr. Page had no intention of helping to clarify the confusion
and confirm where Minh would be taking the children during her
visitation.

1 Minh also refuses to provide an itinerary to Jim when she takes the
2 children on vacation. Jim asked Minh to provide him an itinerary when
3 she took the children to Brianhead, but she refused to do so. The only
4 reason Minh informed Jim about this vacation is because she needed Jim
5 to give her the children's ski gear. Jim organized and packed all of the
6 children's gear for their Brianhead trip and delivered it to Minh on
7 December 27, 2019. After the vacation, Jim asked Minh to return the
8 children's ski gear as he had a ski trip with the children, his brother, and
9 his nephew planned for February 7, 2020. Minh refused to return the
10 children's gear. Instead, Minh tried to bargain the return of the children's
11 ski gear for items she wanted from Jim's home. Jim offered to give her the
12 items she requested, but Minh refused to respond to Jim and to return the
13 children's gear. Jim ended up spending approximately \$1,000, and a
14 considerable amount of time, to purchase new gear for the children.

15 Jim believes Minh took the children to Northern Nevada during her
16 visitation on January 25-26, 2020, in an RV she purchased; however, Minh
17 did not provide Jim an itinerary so he does not know where the children
18 and Minh stayed. Jim also believes Minh took the children on a fishing
19 and camping trip on February 29 and March 1, 2020. Again, Minh did
20 not provide Jim any information about the trip. When Jim asked the
21 children about their weekend, the kids became secretive and defensive. Jim
22 asked Hannah how fishing was and Hannah became awkwardly defensive
23 and stated that they did not leave the state. On a separate occasion when
24 Jim asked the children about their visit with Minh, Matthew told Hannah
25 and Selena their father was trying to trick them. When Jim asked Hannah
26 and Selena what Matthew said to them, Matthew stated: "He's trying to
27 get us to tell him our secret. Don't answer him. He's trying to trick us
28 into telling him. Do you remember what we talked about?"

1 Considering Minh usually does not answer Jim's telephone calls,
2 FaceTime calls, and text messages when the children are with her during
3 her visitation, it is extremely concerning that Minh also does not provide
4 Jim with an itinerary when she takes the children on vacation, including
5 telephone numbers, expected times of arrival and departure, and
6 destinations. If anything were to happen to the children or Minh, Jim
7 would not have any information about where they were.

8 In addition, Minh has refused to coparent with Jim regarding paying
9 for the children's expenses. The Decision and Order provides:

10 The parties agree to share equally private school tuition and
11 related expenses, all medical and dental expenses for the
12 children that are not covered by insurance, expenses for the
13 children's extracurricular activities that the parties agree are
14 best for the children, and tutoring or education expenses that
15 the parties agree are best for the children.

16 Decision and Order, pg. 32, lines 2-8. Within a week of the Court
17 entering its Decision and Order, Minh informed Jim she no longer
18 approved of the extracurricular activities in which the children were
19 enrolled in Nevada and would not contribute to the cost. **Exhibit 6**,
20 September 27, 2019 Email from Minh to Jim. Minh has also refused to
21 reimburse Jim for her one-half (1/2) portion of the children's school tuition,
22 owing \$2,140 for each month from August 2019 to the present, school
23 uniforms, and medical expenses. **Exhibit 7**, Reimbursement Emails.
24 Despite refusing to reimburse Jim for these expenses, Jim received a bill in
25 the amount of \$4,341 in the mail from Minh for dental work she
26 completed on the children. **Exhibit 8**, Toothfairy Children's Dental
27 Statement of Account, dated March 20, 2020. Minh did not discuss any
28 of this dental work with Jim. Without Jim's knowledge, Minh completed
dental work on the children on March 1, 2020, in the amount of \$2,170
and, according to the Statement of Account, Minh forwarded a balance of

1 S2,171 to Jim for prior work she purportedly completed on the children.
2 This is the type of game playing Jim has dealt with since the Court's
3 Decision and Order.

4 2. *Minh's Alienation and Manipulation of the Children*

5 At the evidentiary hearing, Jim presented evidence that Minh has
6 been alienating, manipulating, and coaching the children. Minh has not
7 ceased such actions, which is having a detrimental effect on the children.
8 In an effort to provide the children with the therapy they need to cope
9 with their parents' divorce, the parties entered into a Stipulation and
10 Order Appointing Dr. Michelle Gravley as Children's Therapist, filed on
11 July 30, 2019. Unfortunately, Dr. Gravley has not been effective in
12 helping the children. The children's behavior is very concerning, especially
13 immediately following their return from Minh.

14 During the custodial exchanges, Minh refuses to help Jim get the
15 children out of her vehicle. The children are upset to be leaving Minh,
16 which Jim understands given the children went from having their mother
17 involved in their every day lives to seeing her only a few days a month.
18 The children also are initially resentful of Jim upon returning from Minh's,
19 and blame him for Minh's decision to move to California without them.
20 The children follow Minh's lead and avoid talking to Jim when Minh is
21 present. When the parties first started following the custodial schedule,
22 Jim only had behavior issues with Hannah and Matthew. Now, Selena is
23 starting to copy the older children's behavior. Minh sits in her vehicle as
24 the children, who are visibly upset, resist leaving her. Thankfully, the
25 children typically return to their normal behavior by the following day.
26 However, the ordeal that occurs every time the parties exchange custody
27 is exhausting for the parties and the children, and raises serious concerns
28 for the psychological harm the children are incurring.

1 There was one instance in which the children took longer than usual
2 to return to their normal behavior. After the children visited with Minh
3 from December 13-15, 2019, they formed a plan to leave Jim's home in the
4 morning before school on December 17, 2019. At approximately 5:45 a.m.
5 on that day, Hannah and Matthew snuck out of Jim's home and rode their
6 bicycles to the guard station of Jim's gated community. Jim realized
7 Hannah and Matthew had left his home shortly after they snuck out, and
8 he immediately got Selena into his vehicle, called the guard station at his
9 development, and confirmed the children were with the guard. Jim picked
10 up the children from the guard station and learned Hannah and Matthew
11 had called Minh from the guard station at approximately 5:55 a.m.
12 Despite speaking to Hannah and Matthew about what they had done, and
13 knowing Jim, as any parent, would be in a state of panic, Minh did not
14 immediately call Jim to inform him she knew where the children were.
15 Rather, Minh waited until 6:15 a.m., twenty minutes after she spoke to
16 Hannah and Matthew, before she called Jim. When Jim answered Minh's
17 telephone call, Minh hung up on him without saying a word. Jim later
18 learned that Minh had been on her way to pick up the children, and
19 planned to do so without informing him.

20 After Jim returned the children to his home, and while he helped
21 them get ready for school, the police arrived at Jim's home. Jim does not
22 know if the security guard at the guard station or Minh called the police.
23 Nevertheless, after Jim explained the situation to the police and the police
24 spoke to Hannah and Matthew, they left. Jim discussed the children's
25 actions with them and informed them such behavior is unacceptable. Jim
26 took away Hannah's use of her cell phone and Matthew's use of his iPad
27 as consequences for their actions. Despite taking away the children's
28 electronics, he did not prevent them from communicating with Minh.

1 which Minh accused Jim of doing. The children called Minh later that
2 day, but she did not answer.

3 Minh also saw the children later that same day at the children's
4 school because the parties' youngest child, Selena, had a school Christmas
5 performance, which Jim, Minh, Hannah, and Matthew attended. Minh
6 could not even coparent with Jim for that one event. When Jim arrived at
7 Selena's school to watch her performance, he sat next to Hannah, who was
8 sitting next to Minh. Shortly after Jim sat down next to Hannah, Minh
9 got up with Hannah and moved to a different part of the bleachers just so
10 Jim could not sit with them. Minh acted similarly during Hannah's
11 Christmas performance. Minh sat far away from Jim in an area where
12 there was no room for him to sit with her and Selena as they watched
13 Hannah's performance. This obviously sends a horrible message to the
14 parties' children, especially Hannah, who is having the most difficult time
15 coping with the parties' divorce.

16 Since the December 17, 2019, incident, Minh has called the police
17 approximately three (3) times to have the children forced by police officers
18 to either enter her vehicle at her home, or to have the children removed
19 from her vehicle at Jim's home. This spectacle is completely unnecessary.
20 The parties should be able to exchange the children without police
21 involvement as long as they coparent. However, it appears Minh is
22 attempting to create a record of the children not wanting to return to Jim
23 to support a future request for this Court to change its custody orders.

24 Not surprisingly, the children's rhetoric is starting to parallel Minh's.
25 Hannah has told Jim he is selfish, he only cares about himself, and he loves
26 his job more than her. During one instance, Hannah lost her composure
27 after getting into an argument with Selena over popcorn. Hannah became
28 very upset and went on a tirade against Jim, repeating much of Minh's

1 rhetoric. Hannah told Jim he was selfish and only does what he wants to
2 do. Hannah said she does not matter or exist, and that Jim does not love
3 her. Hannah said "mommy actually loves me." Hannah asked Jim why he
4 did not just let her be in California with Minh. Hannah told Jim he ruined
5 everything and they could have been happy and had a good life in
6 California, but he made them stay in Nevada. Hannah told Jim he only
7 cares about his reputation, he does not need to work, and he lied when he
8 told her he would not choose his job over the children. Hannah asked Jim
9 why he wanted them anyway because he did not care about them.
10 Hannah's statements and feelings demonstrate these children are hurting
11 and they need better treatment to prevent Minh from destroying Jim's
12 relationship with them.

13 Even the parties' youngest child, Selena, who is only five (5) years
14 old, has parroted Minh's rhetoric. Selena recently told Jim she wanted to
15 go to school in California. When Jim asked why, Selena said it would be
16 so easy, she could just climb over the fence and walk to school. Selena said
17 the children could walk or ride their bikes to school. Jim does not believe
18 this is reasoning Selena would reach on her own at her age. Selena is
19 hearing this rationale from Minh.

20 Minh is also teaching the children to be distrustful of their father.
21 Minh has provided the children with electronics they can use to
22 communicate with her, with passwords to prevent Jim from accessing their
23 devices. The children know they are to keep their passwords secret from
24 Jim. Considering the young age of the children, both parents should have
25 access to the children's devices to supervise their use. Minh also has the
26 children keep secrets regarding where they spend their visitation weekends
27 with Minh. As detailed above, the children have a secret about where they
28 were on the weekend of February 29, 2020.

1 Minh has also manipulated the children to believe Jim is recording
2 and spying on them, and that they have no privacy. When Minh speaks
3 to the children on FaceTime, she tells them to go to their bedrooms so they
4 can have privacy from Jim. Minh has also made Hannah put headphones
5 on when speaking to her so Jim cannot hear what Minh says. Hannah
6 often stays in her bedroom when she speaks to Minh, but on one occasion,
7 while Hannah was speaking to Minh, she went to the kitchen to microwave
8 some food. When Minh noticed Hannah was not in her room, she harshly
9 asked Hannah: "Why are you out there? Why aren't you in your room?"
10 When Jim drives the children to school, Hannah will cover her head with
11 a blanket and text Minh. Jim would create restrictions for the children
12 regarding their use of electronics, but fears Minh will accuse him of
13 preventing the children from communicating with her.

14 Minh also convinced Hannah that there was a camera or recording
15 device in her bedroom. There is a motion sensor in Hannah's bedroom
16 that has been there since the home was built. Recently, a red light on the
17 motion sensor started blinking. It was part of a security system the parties
18 had in the home during their marriage, but it is no longer active. Needless
19 to say, the motion sensor has no video or audio recording capabilities.
20 Selena has also told Jim that Minh told her there are cameras and recorders
21 in Jim's home and she needs to be careful about what she says.

22 In addition, as demonstrated at the evidentiary hearing, Minh
23 continues to interrogate the children about what occurs at Jim's house.
24 Minh asks the children what they eat, what time they go to bed, when the
25 babysitter is present, if the babysitter's daughter accompanies the
26 babysitter, etc. Minh interjects her disapproval whenever she dislikes what
27 the children relay to her. If Minh is speaking to one child and wants to
28 speak to another who is sleeping, she will make whomever she is speaking

1 to show her the other child is sleeping. This has occurred on at least two
2 occasions. In one instance, Minh made Selena give the telephone to
3 Matthew to have him show her Hannah was sleeping, and in another
4 instance, Minh told Hannah to show her Matthew was actually sleeping.

5 Minh has inappropriate conversations with the children. Minh tells
6 the children how lonely and unhappy she is, and how she wishes they were
7 with her. This causes the children to feel as if they are needed in
8 California for the sake of their mother's happiness. Minh has discussed
9 with Hannah her belief that when Hannah is thirteen (13) years old, she
10 can decide with whom she wants to live. Jim has overheard Hannah
11 complain, "why do I have to wait until I'm thirteen for everything?" Minh
12 also directs the children to do her bidding. Rather than communicate with
13 Jim about what she would like the children to bring for her visitation,
14 Minh, who has a constant, irrational belief that Jim has most of the
15 children's clothing, will tell the children to bring certain items with them
16 to the custodial exchange. During one instance, Jim recalls Hannah was
17 very stressed as she tried to gather all the clothing Minh requested she
18 bring in a bag and secretly try to get the bag into Jim's vehicle. During
19 another exchange, Minh made Hannah and Matthew go back inside Jim's
20 house to grab a pile of their clothing and bring it to her in the garage. In
21 addition, Minh refused to return the children's school uniforms prior to
22 the start of school, despite Jim's requests. Jim had to purchase new school
23 uniforms at the beginning of the school year. Jim requested Minh
24 reimburse him for her one-half portion of the cost, but she has failed to do
25 so. Minh eventually returned the children's old school uniforms, but since
26 March 1, 2020, Minh has kept the children's new school uniforms that Jim
27 purchased.

28 . . .

1 When the children are with Minh during her visitation, she rarely
2 allows Jim to speak to the children. Jim has tried calling and FaceTiming
3 the children when they are with Minh, but his calls usually go unanswered.
4 Jim has also tried to text message Minh to speak to the children, but he
5 typically receives no response. When Minh had the children for ten (10)
6 days over Winter Break, Jim did not speak to the children the entire time.

7 As is evident, there are a number of issues that need to be addressed
8 through therapy for the children. Unfortunately, Dr. Gravley has not been
9 effective in helping the children cope with Minh's alienation and
10 manipulation as they continue to exhibit concerning behavior upon
11 returning from Minh's care. The children need a therapist who specializes
12 in treating children who have been subjected to alienation and
13 manipulation. Although the parties agree that Dr. Gravley is ineffective,
14 they have not agreed to a new therapist. Jim has continued to take the
15 children to Dr. Gravley for therapy pursuant to the Stipulation and Order
16 entered July 30, 2019. On the contrary, Minh has refused to comply with
17 the Stipulation and Order, and informed Dr. Gravley she no longer
18 supports the children's therapy sessions and will not be taking the children
19 to any therapy sessions or paying her one-half portion of the cost. **Exhibit**
20 **9**, March 3, 2020, Email from Dr. Michelle Gravley.

21 3. *Minh's False Allegation of Domestic Violence*

22 On March 20, 2020, at approximately 4:00 p.m., Minh arrived at
23 Jim's house to pick up the children for their Spring Break vacation. After
24 Minh got the children into her RV, in her typical rude manner that Jim has
25 now become accustomed to, she demanded Jim give her windsurf board to
26 her. Jim explained that he did not recall her owning a windsurf board, and
27 he did not have her windsurf board at his home. In front of the children,
28 Minh told Jim that if he did not give her the (nonexistent) windsurf board,

1 she would go in and get it herself. Jim allowed Minh into his garage to
2 look for her purported board believing that once she looked around and
3 realized Jim was not hiding her windsurf board she would leave.

4 Jim initially stayed with the children, standing outside the RV, while
5 Minh retrieved Jim's ladder and set it up in between his car and the garage
6 wall to look for her board, which she believed was stored with other boards
7 on shelves installed on the wall of his garage. Jim could tell the children
8 were uncomfortable and disturbed by Minh demanding Jim give her the
9 windsurf board as they became silent while he stayed with them.

10 Jim then noticed Minh had taken down his kitesurf board. Jim went
11 to the garage to inform Minh that the kitesurf board belonged to him and
12 was not the same thing as a windsurf board. Minh became angry and
13 aggressive, and told Jim he would need to find her windsurf board before
14 she returned his kitesurf board. Jim held onto part of the kitesurf board
15 to prevent Minh from leaving with it. Jim again told Minh he did not
16 recall her ever owning a windsurf board and was not in possession of any
17 windsurf board. Minh irrationally continued to insist that Jim find her
18 windsurf board. Jim told Minh he did not know where it was. Minh then
19 started to yell at Jim, "get out of my way!" to which Jim replied, "let go of
20 my kitesurfing board." It is unclear why Minh yelled "get out of my way"
21 as Jim was not blocking her from leaving. When Jim would not allow
22 Minh to take his kitesurf board, she became even more enraged and began
23 to bang the tail of the board on the garage floor, attempting to break the
24 tail of the board. Jim stepped to the side while still holding onto the
25 kitesurf board. Jim did not pull or wrest the board from Minh's hands.

26 Minh eventually released the board, picked up a U-shaped aluminum
27 handle, which attaches to a small trampoline and is partially wrapped with
28 foam, and proceeded to strike Jim's vehicle. Exhibit 10, Photographs of

1 Handle. Jim was shocked. Jim placed the kitesurf board in his house and
2 told Minh to stop hitting his car and to get out of his garage. Minh,
3 however, was in an incredible rage, and yelled at Jim, "you're the lowest
4 scum ever." Jim took the handle from Minh and placed it in front of his
5 vehicle, away from her reach. Minh then turned her focus to the ladder
6 she had set up in between Jim's car and the side wall of the garage and
7 tried to tip it onto Jim's car. Jim was able to stop the ladder from hitting
8 his car, and stated: "Oh my God. Get out of here now." Jim then closed
9 the ladder and placed it partially inside his house. The ladder was leaning
10 on its side against the open door leading from the garage to the house and
11 a wall inside Jim's house. **Exhibit 11**, Photograph of Ladder.

12 While Jim did this, Minh initially tried to pull a key rack off his
13 garage wall. Then, as Jim was standing up after he laid the ladder down,
14 Minh advanced toward him, pushed him back with her leg so that he was
15 leaning against the doorframe, put her face within six (6) inches of Jim's,
16 and baited him to hit her. Minh said: "Go ahead, hit me." Jim replied: "I
17 would never hit you." Minh then sarcastically stated: "Really?" Jim
18 replied: "You're the one who hits me. You're the one who does violent
19 things." Minh replied: "Who pushed me when I was in the house?" Jim
20 has no idea to what Minh is referring. Minh was not in Jim's house during
21 this encounter, and regardless, Jim has never pushed Minh.

22 Minh then forcefully started to bang the ladder against the door
23 frame and wall. Jim pleaded with Minh to stop, and asked what happened
24 to her. Minh yelled at Jim, "you're a son of a bitch," and continued to
25 bang the ladder side to side. Minh then lifted the ladder and struck the
26 marble floor with it. Jim tried to hold the ladder to prevent Minh from
27 continuing to strike the marble, and Minh started to kick Jim in the shins
28 and continued to try to bang the ladder against the marble and door frame.

1 At this time, Minh falsely accuses Jim of pushing her. Jim again told Minh
2 to get out of his home and that he was going to call the police. Jim then
3 took his phone out of his pocket, which was audio recording the incident,
4 and started video recording Minh. This finally induced Minh to leave. As
5 Minh walked back to her vehicle, where the children were the entire time,
6 she yelled at Jim, "you pushed me." Jim never pushed or hit Minh during
7 this entire ordeal. Jim was keenly aware Minh was attempting to bait him
8 to hit her so she would claim to have a basis to change custody. Exhibit
9 12, Audio Recording and Transcript. Exhibit 13, Video Recording and
10 Transcript. Exhibit 14, Photographs of the Damage Minh Caused.

11 Once Minh finally left Jim's garage, she stayed in her RV for about
12 ten (10) minutes. Jim called Lake Las Vegas Security to have them make
13 sure she left his property and could not return to cause more damage. A
14 security officer arrived and spoke to Minh. After this conversation Minh
15 then drove away.

16 At approximately 7:00 p.m. that night, police officers from the
17 Henderson Police Department arrived at Jim's home. Despite his warning
18 that he was going to call the police to get Minh to stop damaging his
19 possessions and attacking him, Jim did not call the police. Minh, however,
20 did and filed a police report alleging Jim battered her. Jim spoke to the
21 police, who had him write a statement, and was then arrested. Jim was
22 taken to the Henderson Detention Center, where he was processed and
23 kept overnight for approximately fifteen (15) hours. Jim was released at
24 approximately 11:00 a.m. the following morning. Needless to say, this was
25 a humiliating, demeaning, and extremely uncomfortable experience for Jim.
26 Jim was attacked in his own home, had his property damaged, and, yet, he
27 was arrested.

28 . . .

1 At 9:16 p.m. that same night, Mr. Page sent the following email to
2 Mr. Dickerson, with a description of Minh's distorted perception of the
3 facts:

4 Bob,

5 Dr. Luong went to pick up the children today for spring break.
6 After Dr. Luong put the children in her vehicle, she told Jim
7 that she still had some of her personal belongings there and
8 wanted to pick up her windsurfing board as the board was her
9 separate property. When Dr. Luong asked for the windsurfing
10 board, she advises that Jim told her he, doesn't "know where it
11 is."

12 Dr. Luong advises she told Jim that the board was stored in the
13 garage. Because her vehicle was parked in front of the garage,
14 and it was therefore convenient to take the board from the
15 garage and put the board in the vehicle. Jim told her if she
16 could find, she should take it.

17 The windsurfing board was stored up high in the garage. Dr.
18 Luong got the ladder, climbed up the ladder, and got her
19 windsurfing board down herself. Jim refused to even hold the
20 ladder and simply watched Dr. Luong get the board. While
21 Dr. Luong was carrying the windsurfing board out of the
22 garage, Jim changed his mind and told Dr. Luong that the
23 board was his now that that [sic] Dr. Luong was "not allowed
24 to take it."

25 Dr. Luong advises that Jim looked like he was going to hit her
26 and charged at her aggressively and tried to wrest the board
27 from her. Dr. Luong further advises that Jim battered her and
28 pushed her several times, and eventually ripped the board away
from her, yelling at her, "the board is mine." Jim took the
board and threw the board inside the house. When Dr. Luong
tried to go in her board back Jim pushed her and then pushed
her again causing the ladder to fall over, and nearly strike his
car. Jim threw the ladder in the house. Jim then pushed Dr.
Luong again and screamed "get out of my house!" twice.

Jim putting his hands on Dr. Luong and battering, and then
verbally abusing her, was witnessed by the children while they
were sitting in the vehicle. There is no question that Jim was
the primary aggressor. Your client has committed acts of
domestic violence and his battering of a woman is utterly
unacceptable.

Jim's rage is extremely detrimental to the children have them
witness him attacking and battering their mother, and then
verbally abusing her before, during, and after he attacked her.
When Dr. Luong got back to her vehicle she reports she was
trembling and that Hannah and Selina hugged her and asked
her if she was okay. Dr. Luong reports that she had to sit in

1 the vehicle for several minutes to try and compose herself
2 because her hands were trembling. Dr. Luong is shaken and is
3 frightened of Jim. The children appear to be frightened of him
4 too, as well being unhappy.

5 Hannah and Matthew are doing poorly in school, they are so
6 unhappy they are seeing a therapist who is providing no
7 benefit, the children are running away, and now Jim is
8 committing acts of domestic violence against Dr. Luong in
9 front of the children, and is verbally abusive. Your client needs
10 to think about how his violent outbursts are negatively
11 impacting the children.

12 **Exhibit 15**, March 20, 2020 Email from Fred Page. Based on this email,
13 Minh has not only been manipulating the children, but has been
14 manipulating her new counsel. There is only one party in this matter who
15 has exhibited hate, anger, and rage toward the other party, and that is
16 Minh. Minh has never before claimed Jim abused her, not in her Motion
17 for Primary Physical Custody to Relocate with Minor Children to Southern
18 California, nor at the evidentiary hearing. It is not beneath Minh to make
19 such false allegations, which this Court observed at the evidentiary hearing.
20 After testifying the parties had an agreement to move to California, Minh
21 was presented with two checks she wrote for the escrow deposits of two
22 homes she attempted to purchase in California. Minh wrote on both
23 checks that the escrow deposit was for the purchase of a "vacation home."
24 Minh is not credible and will stoop to any level to get what she wants.

25 In addition to filing a false police report alleging Jim battered her,
26 Minh unnecessarily filed an application for a temporary protective order,
27 which was granted. Jim received the Temporary Order for Protection
28 Against Domestic Violence ("TPO") and a Notice for Hearing, which
provides that a hearing on Minh's Application for an extended protection
order is scheduled for March 30, 2020, at 1:00 p.m. On Sunday, March
22, 2020, Mr. Page sent another email to Mr. Dickerson, which was more
outrageous than the first. **Exhibit 16**, March 22, 2020 Email from Fred

1 Page. In this email, Mr. Page states: "Friday afternoon is the first time that
2 Dr. Luong has gone to the police to report acts of violence committed by
3 Jim against her. However, Friday afternoon was not the first time Jim has
4 been violent toward her and battered her." This is an absolutely
5 outrageous allegation considering Minh has never mentioned any abuse by
6 Jim prior to this email. Jim has never battered Minh. Jim has never been
7 violent, not in words or actions, to Minh. The only person who has
8 demonstrated hate, rage, and violence is Minh.

9 Mr. Page also informed Mr. Dickerson that Minh would not return
10 the children to Jim until the criminal trial has been conducted. Mr.
11 Page informed Mr. Dickerson that Minh was entitled to unilaterally
12 change custody for an indefinite period of time "[b]ecause the children are
13 witnesses in the pending criminal case against Jim] and, thus,] he cannot
14 have contact with the children until the criminal case is resolved." This
15 has obviously been Minh's intention and plan all along. In an effort to try
16 to bait Jim to hit her, Minh tried to steal Jim's kitesurf board, damaged his
17 kitesurf board by smashing its tail against the garage floor, struck his
18 vehicle with an aluminum handle, attempted to tip a ladder onto his
19 vehicle, damaged Jim's door and walls by banging the ladder against them,
20 tried to ruin the marble in Jim's home by smashing the ladder against it,
21 aggressively approached Jim and told him to hit her, and kicked Jim in the
22 shins. When she did not succeed in getting Jim to hit her, she resorted to
23 making false allegations. This has allowed Minh to keep the children from
24 Jim and prevent him from communicating with them, and she believes she
25 can do so indefinitely. Minh has never had any intention of following this
26 Court's Decision and Order. She has simply been trying to figure out a
27 way to circumvent it.

28 . . .

1 In addition to the above detailed description of alienation and
2 manipulation that Minh subjects the children to, this event will have a
3 detrimental effect on the children, who are already struggling. The
4 children have a mother who chose to move to California without them.
5 They are constantly witnesses to their mother's degrading and belittling
6 their father. Jim observes their dispositions upon returning from visitation
7 with Minh. They misbehave and are angry toward him for approximately
8 twelve (12) hours after they are returned by Minh. Once they recover
9 from their conflicting feelings toward their father, they once again return
10 to normal behavior, and are happy, well-behaved, fun-loving children.
11 Despite the children's ability to return to their normal selves shortly after
12 they are returned from visitation with Minh, Jim does not believe the
13 children are receiving the adequate therapy they need to deal with such
14 conflicting and changing emotions. The children will be emotionally and
15 psychologically drained if they continue to have to deal with Minh's
16 manipulation. It is heartbreaking to Jim that he is essentially powerless to
17 help his children deal with the psychological harm they are experiencing.

18 Based on the foregoing, Minh's actions and blatant disregard for how
19 her actions and treatment of Jim affect the children needs to be addressed
20 by this Court. Jim is trying his best to coparent, but it is exceptionally
21 difficult when Minh cannot have a civil discussion with him, constantly
22 demeans him in front of the children, and has now resorted to trying to
23 instigate Jim and damage his property, again when the children are present.
24 Minh did not get her way with the trial so she has resorted to the
25 manufacturing of abuse to claim she has a basis for keeping the children
26 from Jim. The situation has simply become out of hand, and Minh's
27 attorney has only acted to exacerbate Minh's conduct.

28 . . .

1 **II. LEGAL ARGUMENT**

2 **A. This Court Should Order the Immediate Return of the Children to**
3 **Jim, Enforce This Court's Decision and Order, and Dissolve the TPO**

4 Nevada Revised Statutes, Section 125C.0055, provides that when
5 minor children are removed from this State:

6 1. . . . [T]he court shall forthwith order such child to be
7 produced before it and make such disposition of the child's
8 custody as appears most advantageous to and in the best
9 interest of the child and most likely to secure to him or her the
benefit of the final order or the modification or termination of
the final order to be made in his or her behalf.

10 2. If . . . the court finds that it would be in the best interest
11 of the minor child, the court may enter an order providing that
12 a party may, with the assistance of the appropriate law
13 enforcement agency, obtain physical custody of the child from
14 the party having physical custody of the child. The order must
15 provide that if the party obtains physical custody of the child,
the child must be produced before the court as soon as
practicable to allow the court to make such disposition of the
child's custody as appears most advantageous to and in the
best interest of the child and most likely to secure to him or
her the benefit of the final order or the modification or
termination of the final order to be made in his or her behalf.

16 3. If the court enters an order pursuant to subsection 2
17 providing that a party may obtain physical custody of a child,
18 the court shall order that party to give the party having
19 physical custody of the child notice at least 24 hours before the
time at which he or she intends to obtain physical custody of
the child, unless the court deems that requiring the notice
would likely defeat the purpose of the order.

20 4. All orders for a party to appear with a child issued
21 pursuant to this section may be enforced by issuing a warrant
22 of arrest against that party to secure his or her appearance with
the child.

23 5. A proceeding under this section must be given priority on
the court calendar.

24 As set forth in detail above, Minh has unilaterally decided she will
25 not follow this Court's Decision and Order regarding custody, and **will not**
26 **return the children to Jim until the criminal trial has been conducted.**

27 Minh's allegations of domestic abuse are not supported by the audio and
28 video recordings and Jim's description of the event, which demonstrate

1 Minh was the aggressor who damaged Jim's property and physically
2 assaulted him in his garage. As evidenced by Minh's own words (i.e., "Go
3 ahead, hit me.") on the audio recording, she had hoped that damaging
4 Jim's property and physically assaulting him would bait him to hit her.
5 When Jim did not do so, Minh resorted to making false allegations of
6 abuse to support her violations of the Court's custodial orders. This Court
7 witnessed Minh lie at the evidentiary hearing about the parties' plans to
8 relocate to California and about her discussing the relocation matter with
9 Jim in front of the children on the first day of school last year. Minh has
10 continued to be dishonest. Accordingly, Jim is requesting this Court enter
11 orders dissolving the TPO and requiring Minh to immediately return the
12 children to Jim pursuant to NRS 125C.0055 as she has removed the
13 children from this State and does not intend on returning them to Jim in
14 compliance with the Court's Decision and Order. In the event Minh defies
15 the Court's order to return the children, Jim requests the Court enter an
16 order providing he may, with the assistance of the appropriate law
17 enforcement agency, obtain physical custody of the children from Minh.
18 Jim should also be entitled to make up any loss of his custodial time, of
19 which Minh has deprived him, once the Court orders the children's return.

20 B. This Court Should Modify Custody and Appoint a New Therapist
21 for the Children

22 Pursuant to NRS 125C.0045(1)(a), in any action for determining the
23 custody of a minor child, the Court may "[d]uring the pendency of the
24 action, at the final hearing or at any time thereafter during the minority of
25 the child, make such an order for the custody, care, education,
26 maintenance and support of the minor child as appears in his or her best
27 interest." NRS 125C.0035(4) sets forth the factors the Court is to
28 consider in determining the children's best interest, including the ability

1 of the parents to cooperate to meet the children's needs, the mental health
2 of the parents, and the physical, developmental, and emotional needs of
3 the children. It is in the children's best interest to be protected from the
4 manipulation and alienation to which Minh is subjecting them. The
5 Court's findings in its Decision and Order regarding its concerns that
6 Minh's behavior has the potential to alienate the children from their father
7 did not deter Minh from continuing such behavior. It is in the children's
8 best interest for Minh's visitation to be suspended or supervised here in
9 Nevada until the children and Minh participate in therapy with a therapist
10 who specializes in dealing with manipulation and alienation issues as Dr.
11 Gravley has been ineffective. This therapist should be permitted to testify
12 as a witness if necessary. The visitation granted Minh in the Decision and
13 Order should not resume until it is determined Minh can exercise such
14 visitation without manipulating and alienating the children. Jim has
15 researched therapists and believes Bree Mullins is qualified to provide such
16 therapy and her office is within seven minutes of the children's school.

17 C. The Court Should Issue an Order to Show Cause Why Minh Should
18 Not Be Held in Contempt

19 Nevada Revised Statutes, Section 22.010, enumerates the acts or
20 omissions which constitute contempt, including "[d]isobedience or
21 resistance to any lawful writ, order, rule or process issued by the court or
22 judge at chambers." Minh has violated multiple orders of this Court.

23 First, the Court ordered the parties to share joint legal custody and
24 awarded Jim primary physical custody. Decision and Order, pg. 28, lines
25 5-8. Minh has visitation with the children on certain enumerated holiday
26 weekends and extended school breaks throughout the year, which she can
27 exercise in California, and one non-holiday weekend each month, which
28 she must exercise in Nevada. Decision and Order, pg. 29, line 21, to pg.

1 30, line 13. Jim has primary physical custody of the children at all other
2 times not specifically granted to Minh in the Decision and Order. Minh
3 has falsely accused Jim of domestic violence and unilaterally decided she
4 will not return the children to Jim for indefinite period of time, until his
5 criminal trial is conducted. Minh's refusal to comply with the Court's
6 custodial orders is an act of contempt.

7 Second, the Court ordered: "Each parent acknowledges and agrees
8 that they each currently have and will continue to have adequate access to
9 all information concerning the wellbeing of the children" Decision
10 and Order, pg. 28, line 22, to pg. 29, line 5. Minh does not ensure Jim has
11 access to the well being of the children while they are in her care. Minh
12 does not communicate with Jim regarding the children's wellbeing and
13 rarely allows the children to communicate with Jim during her visitation.
14 This is particularly distressing for Jim during longer visitation periods. For
15 instance, Minh did not allow Jim to speak to the children for the ten (10)
16 days she had the children over Winter Break. In addition, when the
17 children ran away from Jim's home and called Minh, Minh did not inform
18 Jim about their whereabouts after the children called her. Minh's failure
19 to ensure Jim has adequate access to information regarding the children's
20 wellbeing is a violation of the Court's order and an act of contempt.

21 Third, the Court ordered that when a parent vacations with the
22 children, that parent must provide the other parent with a travel itinerary,
23 which shall include telephone numbers, expected times of arrival and
24 departure, and destinations. Decision and Order, pg. 29, lines 16-20. Jim
25 provided multiple examples of Minh refusing to comply with this order.
26 Although Minh informed Jim she was taking the children to Brianhead
27 (because she needed the children's ski gear from Jim), Minh refused to
28 provide Jim an itinerary at his request. Minh also takes the children on

1 vacations and directs them to keep it a secret from Jim. Jim believes Minh
2 has taken the children camping and fishing, possibly in Utah; however,
3 Minh has not provided any information regarding these vacations. Minh's
4 failure to communicate with Jim and refusal to provide Jim an itinerary are
5 violations of the Court's order and acts of contempt.

6 Fourth, the Court ordered that neither party would pay child
7 support. Decision and Order, pg. 32, lines 1-3. However, the Court
8 entered orders confirming the parties' agreement to share equally in the
9 cost of the children's private school tuition and related expenses,
10 extracurricular activities, and unreimbursed medical expenses. Decision
11 and Order, pg. 32, lines 2-4. Jim has requested Minh reimburse him for
12 her one-half portion of the children's school tuition, school uniforms, and
13 unreimbursed medical expenses, but she has refused to do so. Also, one
14 week after the Court entered its Decision and Order, Minh withdrew her
15 approval of any extracurricular activities in which the children participate
16 in Nevada and no longer pays one half of these expenses. Minh's failure
17 to pay her portion of these expenses constitute acts of contempt.

18 Lastly, Minh has violated the Stipulation and Order providing the
19 children will attend therapy with Dr. Gravley as she refuses to take them
20 to any appointments and will not pay her one-half portion of the costs.

21 NRS 22.100 provides that if a party is found guilty of contempt, the
22 Court may impose a fine not exceeding \$500, imprison the person not
23 exceeding 25 days, or both, and may award attorney's fees incurred as a
24 result of the contempt to the party seeking to enforce the Court's orders.
25 Minh has violated multiple orders of this Court and, thus, committed
26 multiple acts of contempt. For each act of contempt, this Court should
27 fine Minh \$500, and imprison her for 25 days. Jim should also be awarded
28 attorneys' fees he incurred as a result of Minh's contempt.

1 D. This Court Should Address Other Parent Child Issues

2 Pursuant to NRS 125C.0045(1)(a), in any action for determining the
3 custody of a minor child, the Court may "[d]uring the pendency of the
4 action, at the final hearing or at any time thereafter during the minority of
5 the child, make such an order for the custody, care, education,
6 maintenance and support of the minor child as appears in his or her best
7 interest." Unfortunately, due to childish behavior on Minh's part, Jim
8 must request this Court address certain parent child issues.

9 First, this Court should enter a Behavioral Order given the extent of
10 Minh's derogatory actions and communications with Jim in front of the
11 children. This Behavioral Order should also direct that neither party is to
12 communicate with the children about this matter, nor make any
13 derogatory or demeaning statements about the other parent in the presence
14 of the children. Second, this Court should order that the children's
15 clothing, belongings, and possessions are to be transferred freely with the
16 children. Minh directs the children to bring unreasonable amounts of their
17 clothing with them for their two day visitations with her. Minh does not
18 return this clothing and Jim is continually required to replenish the
19 children's clothing. This Court also should order Minh to return the
20 children's school uniforms. Jim has primary custody and takes the children
21 to and from school, while Minh has visitation a few days each month.
22 There is no reason for Minh to have the children's uniforms. Although
23 Minh may be trying to financially burden Jim by requiring him to purchase
24 more clothing and uniforms, Minh's actions only harm the children.

25 Lastly, the Court ordered both parties to provide health insurance for
26 the children if offered through employment. Minh does not provide health
27 insurance for the children so Jim is requesting this Court order Minh to
28 pay one-half of the health insurance premium Jim pays for the children.

1 **III. CONCLUSION**

2 The Court must make clear to Minh that she will not be permitted
3 to continue her game playing to the detriment of the parties' children.
4 Based on the foregoing, Jim respectfully requests the Court grant the relief
5 requested in this Emergency Motion.

6 DATED this 27th day of March, 2020.

7 THE DICKERSON
8 KARACSONYI LAW GROUP

9 By /s/ Sabrina M. Dolson

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DECLARATION OF JAMES W. VAHEY

I, JAMES W. VAHEY, declare under penalty of perjury under the law of the State of Nevada that the following statement is true and correct:

1. I am over the age of 18 years. I am the Plaintiff in this action. I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

2. I am making this declaration in support of my PLAINTIFF'S EMERGENCY MOTION FOR IMMEDIATE RETURN OF THE CHILDREN, DISSOLUTION OF TPO, MODIFICATION OF CHILD CUSTODY, APPOINTMENT OF A NEW THERAPIST FOR THE CHILDREN, AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT, AND TO RESOLVE OTHER PARENT CHILD ISSUES ("Emergency Motion"). I have read the Emergency Motion prepared by my counsel and swear, to the best of my knowledge, that the facts as set forth therein are true and accurate, save and except any fact stated upon information and belief, and as to such facts I believe them to be true. I hereby reaffirm said facts as if set forth fully herein to the extent that they are not recited herein. If called upon by this Court, I will testify as to my personal knowledge of the truth and accuracy of the statements contained therein.

3. Minh and I were married on July 8, 2006. We have three (3) children: Hannah, born March 19, 2009 (eleven (11) years old), Matthew, born June 26, 2010 (nine (9) years old), and Selena, born April 4, 2014 (five (5) years old).

4. The Court held an evidentiary hearing on the child custody and support issues on August 8, September 5, and September 11, 2019. The Court issued its Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") on September 20, 2019, setting forth its

1 orders regarding child custody and child support. The Court ordered Minh
2 and I to share joint legal custody and awarded me primary physical
3 custody. Decision and Order, pg. 28, lines 5-8. Minh has visitation with
4 the children on certain enumerated holiday weekends and extended school
5 breaks throughout the year, which she can exercise in California, and one
6 non-holiday weekend each month, which she must exercise in Nevada.
7 Decision and Order, pg. 29, line 21, to pg. 30, line 13.

8 5. In determining it was in the children's best interest for me to
9 have primary physical custody, the Court found I was the parent more
10 likely to allow the children to have a frequent and continuing relationship
11 with the other parent. Decision and Order, pg. 11, lines 11-3. Minh
12 testified at the evidentiary hearing that she cannot co-parent with me.
13 Decision and Order, pg. 13, lines 14-17. The Court raised its concerns
14 that Minh's negative attitude toward me based on my refusal to allow her
15 to move to California has caused her to negatively influence the children's
16 relationship with me. Decision and Order, pg. 11, lines 13-17. The Court
17 noted it received evidence demonstrating Minh had discussed the dispute
18 with our children and advised them to discuss same with me. Decision and
19 Order, pg. 11, lines 18-27. The Court determined that Minh's dialog with
20 the children "has the potential to alienate the children from their father."
21 Decision and Order, pg. 12, lines 5-6. The Court further stated it "is
22 concerned that Minh Luong's decision to live in California is intended to
23 create a distance between the parties, and to create a distance between the
24 children and their father, to avoid the sometimes tedious and inconvenient
25 aspects of co-parenting." Decision and Order, pg. 19, lines 3-8. The Court
26 found that Minh's "intention to move is, in part, to deprive [me] of [my]
27 parenting time." Decision and Order, pg. 18, lines 13-15. As will be
28 discussed below, the Court's concerns have been realized.

1 6. Regarding the Court's order that the parties share joint legal
2 custody, the Court stated: "Each parent acknowledges and agrees that they
3 each currently have and will continue to have adequate access to all
4 information concerning the wellbeing of the children" Decision and
5 Order, pg. 28, line 22, to pg. 29, line 5. In addition, when a parent
6 vacations with the children, that parent must provide the other parent with
7 a travel itinerary, which shall include telephone numbers, expected times
8 of arrival and departure, and destinations. Decision and Order, pg. 29,
9 lines 16-20.

10 7. The Court ordered that Minh would not pay child support.
11 Decision and Order, pg. 32, lines 1-3. However, the Court entered orders
12 confirming my and Minh's agreement to share equally in the cost of the
13 children's private school tuition and related expenses, extracurricular
14 activities, and unreimbursed medical expenses. Decision and Order, pg.
15 32, lines 2-4. The Court specifically noted that I

16 waive[] child support from Minh Luong in consideration for an
17 agreement that the parties share equally the significant private
18 school tuition and related expenses, all medical and dental
19 expenses for the children that are not covered by insurance,
20 expenses for the children's extracurricular activities that the
 parties agree are best for the children, and tutoring or
 education expenses that the parties agree are best for the
 children.

21 Decision and Order, pg. 23, line 24, to pg. 24, line 4. The Court ordered
22 Minh and I shall follow the 30/30 rule for expenses, which requires the
23 parent who paid for the expense to provide the other parent a copy of the
24 receipt of payment within thirty (30) days of payment, and the other
25 parent to reimburse one-half of such expenses within thirty (30) days.
26 Decision and Order, pg. 32, lines 7-13.

27 8. I testified at the evidentiary hearing that Minh refuses to
28 communicate with me verbally, even in front of the children. *See* Decision

1 and Order, pg. 12, lines 25-28. Minh confirmed at the evidentiary hearing
2 she cannot coparent with me. Decision and Order, pg. 13, lines 14-17.
3 Minh has continued with this inappropriate behavior in the presence of the
4 children and only communicates with me to denigrate and disparage me.
5 Minh will not make eye contact with me and treats me as if I do not exist
6 at the custodial exchanges and any event for the children in which we both
7 attend. On multiple occasions, Minh has called me an idiot, scum of the
8 earth, and a piece of shit in front of the children.

9 9. At the custodial exchange on March 1, 2020, after I waited
10 approximately an hour and a half for the children to get out of Minh's RV,
11 Minh and I had the following conversation while I was attempting to get
12 Hannah and Matthew out of Minh's car with no help from Minh:

13 Jim: Are you helping to bring them in or are you just
14 sitting there (inaudible)

15 Minh: You are beneath me. I don't need to talk to you.

16 Jim: Alright. I'm beneath you. Nguvet.
17 Hannah and Matthew. Hannah and Matthew, let's
18 go.
19 Have they eaten? I'm trying to ask you.

20 Minh: Don't talk to me.

21 Jim: Please answer me.

22 Minh: Don't need to talk to me.

23 Jim: No. No. We need to take care of our children.
24 Have they eaten? Have they eaten?

25 Minh: You can ask them yourself.

26 Jim: You can answer me.

27 Minh: No. I don't.

28 Jim: You're their mother.

Minh: You're a low life.

Jim: You're their mother.

1 Minh: You're their father. Now act like one.
2 Jim: I have been.
3 Minh: Besides . . .
4 Jim: I have been.
5 Minh: . . . just thinking of yourself.
6 Jim: I have been.
7 Minh: No, you haven't.
8 Jim: Oh, really?
9 Minh: You're selfish. You selfish SOB. I don't want to
10 look at your face. I don't want to see you. Do you
11 know that? You're just beneath dirt. Unbelievable.
12 Jim: If you have those thoughts, please . . .
13 Minh: I don't want to hear anything you're saying. Don't
14 say anything to me.
15 Jim: . . . please don't say those in front of the children.
16 Minh: Don't talk to me! I asked you not to talk to me!
17 Jim: Hannah and Matthew. Hannah and Matthew, it is
18 not good for you to hear any of this. Come inside
19 now. Bring them inside.
20

21 10. I audio recorded this exchange and it attached as **Exhibit 1** to
22 my Emergency Motion. Minh is so consumed by her hate and anger
23 toward me she cannot engage in a simple conversation regarding whether
24 the children have eaten and will not help me get the children out of her
25 vehicle. During this exchange, I had tried to coax the children to leave
26 Minh's RV five (5) separate times over the period of an hour and a half
27 with no assistance from Minh. At one point, Minh was hugging Hannah,
28 clearly showing her support for the children in their refusal to go to me.
During another time when I tried to get the children, the children were in
the back bed of the RV and Minh was sitting in the middle of the RV,
texting.

1 11. Whenever there is confusion over the custodial schedule, I
2 cannot communicate with Minh to resolve any issues as Minh is
3 nonresponsive. For instance, Minh and I agreed Minh would have the
4 children for her weekend visitation in Nevada for the month of March
5 from March 20-22, 2020. Thereafter, I received an email that the
6 children's Spring Break was being moved from April 6-10, 2020, to March
7 23-27, 2020. I mistakenly thought Spring Break was moved up only one
8 week. Minh and I exchanged the following text messages regarding Spring
9 Break, which demonstrates my mistake:

10 Jim: The kids school made some changes regarding
11 subject material and timing of spring break. I
12 wanted to make sure you were aware of it as soon
13 as possible. Spring break is going to be a week
14 earlier. Let me know what you would like to do, I
15 can make accommodations for whatever you would
16 like. Let me know.

17 I forwarded the email to you.

18 Minh: I will take the kids for that week but that also mean
19 I am owed a weekend. I will forward that weekend
20 to a later weekend.

21 This text message exchange is attached as **Exhibit 3** to my Emergency
22 Motion.

23 12. Despite my forwarding the email regarding the Spring Break
24 change to Minh, she did not correct me on my mistake. Thus, I believed
25 Minh would be exercising her one weekend visitation in Nevada, pursuant
26 to the calendar she provided to me, from March 20-22, 2020, and would
27 be exercising her Spring Break visitation from March 30 - April 3, 2020.

28 13. Given I mistakenly believed that Minh was exercising her
weekend visitation in Nevada beginning March 20, 2020, I attempted to
communicate with Minh regarding her plans for where she would be
spending the weekend with the children as I was concerned she would be
traveling to California, which I did not think was safe given the outbreak

1 of COVID-19. Prior to the outbreak of COVID-19 and the
2 recommendations for avoiding unnecessary travel, Minh had asked me if
3 she could take the children to California for her March 20-22 weekend.
4 I had informed Minh I did not think such a short trip, with the hours they
5 would spend traveling, was sensible, but told Minh it was her decision.
6 After the outbreak of COVID-19 and after Nevada and California started
7 closing nonessential businesses and advising against unnecessary travel, I
8 knew it would be safer for the children to stay in Nevada as there are far
9 fewer cases of COVID-19 in Nevada than there are in California. I was
10 also reasonably concerned Minh would travel with the children to
11 California and then use the California Governor's "shelter in place" order
12 to keep the children and refuse to return them to me. Minh and I
13 exchanged the following text messages:

14 Jim: I'm concerned about our kids' safety. I think it
15 would be best not to travel to California right now.
16 There are a lot of cases in California, and they
17 really believe the actual number is very
18 underestimated. Please don't risk exposing the kids
19 to the virus.

20 Minh: You just had a gathering of a non family member
21 came over to your house. And now you want to tell
22 me you are concerned? Please get the kids ready
23 and my gear at your office. I will pick them up at
24 4.

25 Jim: The Court's custodial order provides you have one
26 weekend of visitation each month here in Nevada.
27 In addition, given the current issues surrounding
28 COVID-19 and the recommendation that people
avoid unnecessary travel, I do not approve nor
consent to the children's traveling outside of Las
Vegas this weekend. Can you please confirm you
will be complying with the court's order?

We are at the house. We're not going to the office.
I'll see you at 4 o'clock per the court's order.

Minh: I will comply with court order
As always

1 Jim: Thank you for giving me a straight answer. We can
2 only coparent together if we understand how
3 important it is for us to communicate with each
4 other and appropriately respond to each other with
5 honest answers to legitimate questions concerning
6 the well-being of our children. I was concerned
7 about our children, and I appreciate your giving me
8 a straight answer to my question.

9 14. These text messages are attached as Exhibit 4 to my Emergency
10 Motion. As is evident from Minh's misleading response of "I will comply
11 with court order," Minh was well aware I had the dates for Spring Break
12 mistaken and rather than correct me, allowed me to believe she would be
13 spending the weekend in Nevada with the children. My counsel received
14 a similar misleading and nonresponsive email from Minh's counsel when
15 attempting to discuss the issue, and their communications are discussed in
16 my Emergency Motion.

17 15. Minh also refuses to provide an itinerary to me when she takes
18 the children on vacation. I asked Minh to provide me an itinerary when
19 she took the children to Brianhead, but she refused to do so. The only
20 reason Minh informed me about this vacation is because she needed me to
21 give her the children's ski gear. I organized and packed all of the children's
22 gear for their Brianhead trip and delivered it to Minh on December 27,
23 2019. After the vacation, I asked Minh to return the children's ski gear as
24 I had a ski trip with the children, my brother, and my nephew planned for
25 February 7, 2020. Minh refused to return the children's gear. Instead,
26 Minh tried to bargain the return of the children's ski gear for items she
27 wanted from my home. I offered to give her the items she requested, but
28 Minh refused to respond to me and to return the children's gear. I ended
up spending approximately \$1,000, and a considerable amount of time, to
purchase new gear for the children.

1 16. I believe Minh took the children to Northern Nevada during
2 her visitation on January 25 and 26, 2020, in an RV she recently
3 purchased; however, Minh did not provide me an itinerary so I do not
4 know where the children and Minh stayed. I also believe Minh took the
5 children on a fishing and camping trip the weekend of February 29 and
6 March 1, 2019. Again, Minh did not provide me any information about
7 the trip. When I asked the children about their weekend, the kids became
8 secretive and defensive. I asked Hannah how fishing was and Hannah
9 became awkwardly defensive and stated that they did not leave the state.
10 On a separate occasion when I asked the children about their visit with
11 Minh, Matthew told Hannah and Selena I was trying to trick them. When
12 I asked Hannah and Selena what Matthew said to them, Matthew stated:
13 "He's trying to get us to tell him our secret. Don't answer him. He's
14 trying to trick us into telling him. Do you remember what we talked
15 about?"

16 17. Considering Minh rarely answers my telephone calls, FaceTime
17 calls, and text messages when the children are with her during her
18 visitation, it is extremely concerning that Minh also does not provide me
19 with an itinerary when she takes the children on vacation, including
20 telephone numbers, expected times of arrival and departure, and
21 destinations. If anything were to happen to the children or Minh, I would
22 not have any information about where they were.

23 18. In addition, Minh has refused to coparent with me regarding
24 paying for the children's expenses. The Decision and Order provides:

25 The parties agree to share equally private school tuition and
26 related expenses, all medical and dental expenses for the
27 children that are not covered by insurance, expenses for the
28 children's extracurricular activities that the parties agree are
best for the children, and tutoring or education expenses that
the parties agree are best for the children.

1 Decision and Order, pg. 32, lines 2-8. Within a week of the Court
2 entering its Decision and Order, Minh informed me she no longer
3 approved of the extracurricular activities in which the children were
4 enrolled in Nevada and would not contribute to the cost. Exhibit 6.
5 Minh has also refused to reimburse me for her one-half ($\frac{1}{2}$) portion of the
6 children's private school tuition, owing \$2,140 for each month from
7 August 2019 to the present, children's school uniforms, and medical
8 expenses. Exhibit 7. Despite refusing to reimburse me for these expenses,
9 I received a bill in the amount of \$4,341 in the mail from Minh for dental
10 work she completed on the children. Exhibit 8. Minh did not discuss any
11 of this dental work with me. Without my knowledge, Minh completed
12 dental work on the children on March 1, 2020, in the amount of \$2,170
13 and, according to the Statement of Account, Minh forwarded a balance of
14 \$2,171 to me for prior work she purportedly completed on the children.
15 This is the type of game playing I have dealt with since the Court's
16 Decision and Order.

17 19. At the evidentiary hearing, I presented evidence that Minh has
18 been alienating, manipulating, and coaching the children. Minh has not
19 ceased such actions, which is having a detrimental effect on the children.
20 In an effort to provide the children with the therapy they need to cope
21 with our divorce, Minh and I entered into a Stipulation and Order
22 Appointing Dr. Michelle Gravley as Children's Therapist, filed on July 30,
23 2019. Unfortunately, Dr. Gravley has not been effective in helping the
24 children. The children's behavior is very concerning, especially
25 immediately following their return from Minh.

26 20. During the custodial exchanges, Minh refuses to help me get
27 the children out of her vehicle. The children are upset to be leaving Minh,
28 which I understand given the children went from having their mother

1 involved in their every day lives to seeing her only a few days a month.
2 The children also are initially resentful of me upon returning from Minh's,
3 and blame me for Minh's decision to move to California without them.
4 The children follow Minh's lead and avoid talking to me when Minh is
5 present. When we first started following the custodial schedule, I only had
6 behavior issues with Hannah and Matthew. Now, Selena is starting to
7 copy the older children's behavior. Minh sits in her vehicle as the children,
8 who are visibly upset, resist leaving her. Thankfully, the children typically
9 return to their normal behavior by the following day. However, the ordeal
10 that occurs every time we exchange custody is exhausting for Minh and I
11 and the children, and raises serious concerns for the psychological harm
12 the children are incurring.

13 21. There was one instance in which the children took longer than
14 usual to return to their normal behavior. After the children visited with
15 Minh from December 13-15, 2019, they formed a plan to leave my home
16 in the morning before school on December 17, 2019. At approximately
17 5:45 a.m. on that day, Hannah and Matthew snuck out of my home and
18 rode their bicycles to the guard station of my gated community. I realized
19 Hannah and Matthew had left my home shortly after they snuck out, and
20 I immediately got Selena into my vehicle, called the guard station at my
21 development, and confirmed the children were with the guard. I picked up
22 Hannah and Matthew from the guard station and learned they had called
23 Minh from the guard station at approximately 5:55 a.m. Despite speaking
24 to Hannah and Matthew about what they had done, and knowing I, as any
25 parent, would be in a state of panic, Minh did not immediately call me to
26 inform me she knew where the children were. Rather, Minh waited until
27 6:15 a.m., twenty minutes after she spoke to Hannah and Matthew, before
28 she called me. When I answered Minh's telephone call, Minh hung up on

1 me without saying a word. I later learned that Minh had been on her way
2 to pick up the children, and planned to do so without informing me.

3 22. After I returned the children to my home, and while I was
4 getting the children ready for school, the police arrived at my home. I
5 informed them what happened, and they spoke to Hannah and Matthew
6 and then left. I discussed the children's actions with them and informed
7 them such behavior is unacceptable. I took away Hannah's use of her cell
8 phone and Matthew's use of his iPad as the consequences for their
9 behavior. I informed the children they could receive their electronics back
10 after they provided me with a list of ten (10) reasons why their actions
11 were dangerous and why they would not do anything like that again.
12 Despite taking away the children's electronics, I did not prevent them from
13 communicating with Minh, which Minh accused me of doing. The
14 children called Minh later that day, but she did not answer.

15 23. Minh also saw the children later that same day at the children's
16 school because our youngest child, Selena, had a school Christmas
17 performance, which I, Minh, Hannah, and Matthew attended. Minh could
18 not even coparent with me for that one event. When I arrived at Selena's
19 school to watch her performance, I sat next to Hannah, who was sitting
20 next to Minh. Shortly after I sat down next to Hannah, Minh got up with
21 Hannah and moved to a different part of the bleachers just so I could not
22 sit with them. Minh acted similarly during Hannah's Christmas
23 performance. Minh sat far away from me in an area where there was no
24 room for me to sit with her and Selena as they watched Hannah's
25 performance. This obviously sends a horrible message to our children,
26 especially Hannah, who is having the most difficult time coping with the
27 our divorce.

28 . . .

1 24. Since the December 17, 2019, incident, Minh has called the
2 police approximately three (3) times to have the children forced by police
3 officers to either enter her vehicle to be returned to me, or to have the
4 children removed from her vehicle at my home. This spectacle is
5 completely unnecessary. Minh and I should be able to exchange the
6 children without police involvement as long as we coparent. However, it
7 appears Minh is attempting to create a record of the children not wanting
8 to return to me to support a future request for the Court to change its
9 custody orders.

10 25. Not surprisingly, the children's rhetoric is starting to parallel
11 Minh's. Hannah has told me I am selfish, I only care about myself, and I
12 love my job more than her. During one instance, Hannah lost her
13 composure after getting into an argument with Selena over popcorn.
14 Hannah became very upset and went on a tirade against me, repeating
15 much of Minh's rhetoric. Hannah told me I am selfish and only do what
16 I want to do. Hannah said she does not matter or exist, and that I do not
17 love her. Hannah said "mommy actually loves me." Hannah asked me
18 why I did not just let her be in California with Minh. Hannah told me I
19 ruined everything and they could have been happy and had a good life in
20 California, but I made them stay in Nevada. Hannah told me I only care
21 about my reputation, I do not need to work, and I lied when I told her I
22 would not choose my job over her. Hannah asked me why I wanted them
23 anyway because I did not care about them. Hannah's statements and
24 feelings demonstrate these children are hurting and they need better
25 treatment to prevent Minh from destroying my relationship with them.

26 26. Even our youngest child, Selena, who is only five (5) years old,
27 has parroted Minh's rhetoric. Selena recently told me she wanted to go to
28 school in California. When I asked why, Selena said it would be so easy,

1 she could just climb over the fence and walk to school. Selena said she and
2 her siblings could walk or ride their bikes to school. I do not believe this
3 is reasoning Selena would reach on her own at her age. Selena is hearing
4 this rationale from Minh.

5 27. Minh is also teaching the children to be distrustful of me.
6 Minh has provided the children with electronics they can use to
7 communicate with her, with passwords to prevent me from accessing their
8 devices. The children know they are to keep their passwords secret from
9 me. Minh also has the children keep secrets regarding where they spend
10 their visitation weekends with Minh. As I explained above, the children
11 have a secret about where they were on the weekend of February 29, 2020.

12 28. Minh has also manipulated the children to believe I am
13 recording and spying on them, and that they have no privacy. When
14 Minh speaks to the children on FaceTime, she tells them to go their
15 bedrooms so they can have privacy from me. Minh has also made Hannah
16 put headphones on when speaking to her so I cannot hear what Minh says.
17 Hannah often stays in her bedroom when she speaks to Minh, but on one
18 occasion, while Hannah was speaking to Minh, she went to the kitchen to
19 microwave some food. When Minh noticed Hannah was not in her room,
20 she harshly asked Hannah: "Why are you out there? Why aren't you in
21 your room?" When I drive the children to school, Hannah will cover her
22 head with a blanket and text message Minh. I would create restrictions for
23 the children and their use of their electronics, but I fear Minh will accuse
24 me of preventing the children from communicating with her.

25 29. Minh also convinced Hannah that there was a camera or
26 recording device in her bedroom. There is a motion sensor in Hannah's
27 bedroom that has been there since the home was built. Recently, a red
28 light on the motion sensor started blinking. It was part of a security

1 system Minh and I had in the home throughout our marriage, but it is no
2 longer active. Needless to say, the motion sensor has no video or audio
3 recording capabilities. Selena has also told me that Minh told her there are
4 cameras and recorders in my home and she needs to be careful about what
5 she says.

6 30. Minh continues to interrogate the children about what occurs
7 at my house. Minh asks the children what they eat, what time they go to
8 bed, when the babysitter is present, if the babysitter's daughter
9 accompanies the babysitter, etc. Minh interjects her disapproval whenever
10 she dislikes what the children relay to her. If Minh is speaking to one child
11 and wants to speak to another who is sleeping, she will make whomever
12 she is speaking to show her the other child is sleeping. This has occurred
13 on at least two occasions. In one instance, Minh made Selena give the
14 telephone to Matthew to have him show her Hannah was sleeping, and in
15 another instance, Minh told Hannah to show her Matthew was actually
16 sleeping.

17 31. Minh has inappropriate conversations with the children. Minh
18 tells the children how lonely and unhappy she is, and how she wishes they
19 were with her. This causes the children to feel as if they are needed in
20 California for the sake of their mother's happiness.

21 32. Minh has discussed with Hannah her belief that when Hannah
22 is thirteen (13) years old, she can decide who she wants to live with. I
23 have overheard Hannah complain, "why do I have to wait until I'm
24 thirteen for everything?"

25 33. Minh also directs the children to do her bidding. Rather than
26 communicate with me about what she would like the children to bring for
27 her visitation, Minh, who has a constant, irrational belief that I have most
28 of the children's clothing, will tell the children to bring certain items with

1 them to the custodial exchange. During one instance, Hannah was very
2 stressed as she tried to gather all the clothing Minh requested she bring in
3 a bag and secretly try to get the bag into my vehicle.

4 34. During another exchange, Minh made Hannah and Matthew
5 go back inside my house to grab a pile of their clothing and bring it to her
6 in the garage. In addition, despite having the children only a few days
7 each month, Minh has had the children's school uniforms since March 1,
8 2020 and refuses to return them, despite my requests.

9 35. When the children are with Minh during her visitation, she
10 rarely allows me to speak to the children. I have tried calling and
11 FaceTiming the children when they are with Minh, but most of my calls
12 go unanswered. I have also tried to text message Minh to speak to the
13 children, but I usually receive no response. When Minh had the children
14 for ten (10) days over Winter Break, I did not speak to the children the
15 entire time.

16 36. As is evident, there are a number of issues that need to be
17 addressed through therapy for the children. Unfortunately, Dr. Gravley
18 has not been effective in helping the children cope with Minh's alienation,
19 manipulation, and coaching as they continue to exhibit concerning
20 behavior upon returning from Minh's care. The children need a therapist
21 who specializes in treating children who have been subjected to the
22 alienation and manipulation the children are experiencing. Although Minh
23 and I agree that Dr. Gravley is ineffective, we have not agreed to a new
24 therapist. Thus, I have continued to take the children to Dr. Gravley for
25 their therapy sessions pursuant to the Stipulation and Order entered July
26 30, 2019. On the contrary, Minh has refused to comply with the
27 Stipulation and Order, and informed Dr. Gravley she no longer supports
28 . . .

1 the children's therapy sessions and will not be taking the children to any
2 therapy sessions or paying her one-half portion of the cost.

3 37. On Friday, March 20, 2020, at approximately 4:00 p.m., Minh
4 arrived at my house to pick up the children for their Spring Break vacation.
5 After Minh got the children into her RV, in her typical rude manner that
6 I have now become accustomed to, she demanded I give her windsurf
7 board to her. I explained to Minh that I did not recall her having a
8 windsurf board, and I did not have a windsurf board at my house. In front
9 of the children, Minh told me that if I did not give her the nonexistent
10 windsurf board, she would go in and get it herself. I allowed Minh into my
11 garage to look for her purported windsurf board believing that once she
12 looked around herself and realized I was not hiding her windsurf board she
13 would leave.

14 38. I initially stayed with the children, standing outside the van,
15 while Minh retrieved my ladder and set it up in between my car and the
16 garage wall to look for her board, which she believed was stored with other
17 boards I have hanging high on the wall of my garage. I could tell the
18 children were uncomfortable and disturbed by Minh demanding I give her
19 the wind surfboard as they became silent while I stayed with them. I then
20 noticed Minh had taken down my kitesurf board. I went to the garage to
21 inform Minh that the kitesurf board belonged to me and was not the same
22 thing as a windsurf board. Minh became angry and aggressive, and told
23 me I would need to find her windsurf board before she returned my
24 kitesurf board. I held onto part of the kitesurf board to prevent Minh
25 from leaving with it. I again told Minh I did not recall her ever owning a
26 windsurf board and was not in possession of her windsurf board. Minh
27 irrationally continued to insist that I find her windsurf board. I told Minh
28 I did not know where it was. Minh then started to yell at me, "get out of

1 my way!" to which I replied, "let go of my kitesurfing board." It is unclear
2 why Minh yelled "get out of my way" as I was not preventing her from
3 leaving. When I would not allow Minh to take my kitesurf board, she
4 became even more enraged and began to bang the tail of the kitesurf board
5 on the garage floor, attempting to break the tail of the board. I stepped to
6 the side while still holding onto the kitesurf board. I did not pull or wrest
7 the board out of Minh's hands.

8 39. Minh eventually released the kitesurf board, picked up from the
9 ground a U-shaped aluminum handle, which attaches to a trampoline and
10 has a foam covering at the bottom of the "U," and proceeded to strike my
11 vehicle. I took a photograph of aluminum handle and it is attached as
12 **Exhibit 10** to my Emergency Motion. I was shocked. I placed the kitesurf
13 board in my house and told Minh to stop hitting my car and to get out of
14 my garage. Minh, however, was in an incredible rage, and yelled at me,
15 "you're the lowest scum ever." I took the aluminum handle from Minh
16 and placed it in front of my vehicle, away from her reach. Minh then
17 turned her focus to the ladder she had set up in between my car and the
18 side wall of the garage and tried to tip it onto my car. I was able to stop
19 the ladder from hitting my car, and stated: "Oh my God. Get out of here
20 now." I then closed the ladder and placed it partially inside my house.
21 The ladder was leaning on its side against the open door leading from the
22 garage to the house and a wall inside my house. **Exhibit 11**.

23 40. While I did this, Minh initially tried to pull a key rack off my
24 garage wall. Then, as I was standing up after I laid the ladder down, Minh
25 advanced toward me, pushed me back with her leg so that I was leaning
26 against the doorframe, put her face within six (6) inches of mine, and
27 baited me to hit her. Minh said: "Go ahead, hit me." I replied: "I would
28 never hit you." Minh then sarcastically stated: "Really?" I replied: "You're

1 the one who hits me. You're the one who does violent things." Minh
2 replied: "Who pushed me when I was in the house?" I have no idea to
3 what Minh is referring in this statement. Minh was not in my house
4 during this encounter, and regardless, I have never pushed Minh, prior to
5 or during this incident.

6 41. Minh then forcefully started to bang the ladder against the door
7 frame and wall. I pleaded with Minh to stop, and asked what happened
8 to her. Minh yelled at me, "you're a son of a bitch," and continued to
9 bang the ladder side to side. Minh then lifted the ladder and struck the
10 marble floor with it. I tried to hold the ladder to prevent Minh from
11 continuing to strike the marble with it, and Minh started to kick me in the
12 shins and continued to try to bang the ladder against the marble and door
13 frame. At this time, Minh falsely accused me of pushing her. I again told
14 Minh to get out of my home and that I was going to call the police. I then
15 took my phone out of my pocket, which was audio recording the entire
16 incident, and started video recording Minh. This finally induced Minh to
17 leave. As Minh walked back to her vehicle, where the children were the
18 entire time, she yelled at me, "you pushed me," presumably to have her
19 false accusation on my video recording. I never pushed or hit Minh during
20 this entire ordeal. I was keenly aware Minh was attempting to bait me to
21 hit her so she would claim to have a basis to change custody. The audio
22 recording of the incident, and a transcript of same, is attached as Exhibit
23 12, the video recording, and a transcript of same, is attached as Exhibit
24 13, and photographs of the damage Minh caused are attached as Exhibit
25 14 to my Emergency Motion.

26 42. Once Minh finally left my garage, she sat in her RV at the end
27 of my driveway for about ten (10) minutes. I called Lake Las Vegas
28 Security to have them make sure she left my property and could not return

1 to cause more damage. A security officer arrived and spoke to Minh. After
2 this conversation Minh then drove away.

3 43. At approximately 7:00 p.m. that night, police officers for the
4 Henderson Police Department arrived at my home. Despite my threats to
5 call the police to get Minh removed from my property and stop her
6 damaging my possessions, I did not call the police. Minh, however, did
7 and filed a police report alleging I battered her. I spoke to the police, who
8 had me write a statement, and was then arrested. I was taken to the
9 Henderson Detention Center, where I was processed and kept overnight
10 for approximately fifteen (15) hours. I was released at approximately
11 11:00 a.m. the following morning. Needless to say, this was a humiliating,
12 demeaning, and extremely uncomfortable experience for me. I was
13 attacked in my own garage, had my property damaged, and, yet, I was
14 arrested.

15 44. In addition to filing a false police report alleging I battered her,
16 Minh unnecessarily filed an application for a temporary protective order,
17 which was granted. I received the Temporary Order for Protection Against
18 Domestic Violence and a Notice for Hearing, which provides that a hearing
19 on Minh's Application for an extended protection order is scheduled for
20 March 30, 2020, at 1:00 p.m.

21 45. On Sunday, March 22, 2020, Minh's counsel sent an email to
22 my counsel, which was forwarded to me. This email is attached as
23 **Exhibit 16** to my Emergency Motion. In this email, Mr. Page states:
24 "Friday afternoon is the first time that Dr. Luong has gone to the police to
25 report acts of violence committed by Jim against her. However, Friday
26 afternoon was not the first time Jim has been violent toward her and
27 battered her." This is an absolutely outrageous allegation. I have never

28 . . .

1 been violent toward Minh, not in actions or words. The only person who
2 has demonstrated hate, rage, and violence is Minh.


3 46. Mr. Page also stated that Minh would not return the children
4 to me until the criminal trial has been conducted. Mr. Page stated that
5 Minh was entitled to unilaterally change custody for an indefinite period
6 of time "[b]ecause the children are witnesses in the pending criminal case
7 against Jim[and, thus,] he cannot have contact with the children until the
8 criminal case is resolved." This has obviously been Minh's intention and
9 plan all along. In an effort to try to bait me to hit her, Minh tried to steal
10 my kitesurf board, damaged my kitesurf board by smashing its tail against
11 the garage floor, struck my vehicle with an aluminum handle, attempted
12 to tip a ladder onto my vehicle, damaged my door and walls by banging the
13 ladder against them, tried to ruin the marble in my home by smashing the
14 ladder against it, aggressively approached me and told me to hit her, and
15 kicked me in the shins. When she did not succeed in getting me to hit her,
16 she resorted to making false allegations. I believe Minh has never had any
17 intention of following the Court's Decision and Order. She has simply
18 been trying to figure out a way to circumvent it.

19 47. In addition to the above detailed description of alienation and
20 manipulation that Minh subjects the children to, this event will have a
21 detrimental effect on the children, who are already struggling. The
22 children have a mother who chose to move to California without them.
23 They are constantly witnesses to their mother degrading and belittling
24 their father. I observe their dispositions upon returning from visitation
25 with Minh. They misbehave and are angry toward me for approximately
26 twelve (12) hours after they are returned by Minh. Once they recover
27 from their conflicting feelings, they once again return to normal behavior,
28 and are happy, well-behaved, fun-loving children. Unfortunately, despite

1 the children's ability to return to their normal selves shortly after they are
2 returned from visitation with Minh, I do not believe the children are
3 receiving the adequate therapy they need to deal with such conflicting and
4 changing emotions. The children will be emotionally and psychologically
5 drained if they continue to have to deal with Minh's manipulation. It is
6 heartbreaking to me that I am essentially powerless to help my children
7 deal with the psychological harm they are experiencing.

8 I, JAMES W. VAHEY, declare under penalty of perjury under the
9 law of the State of Nevada that the foregoing is true and correct.

10 Executed on 3-27-20

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13 JAMES W. VAHEY
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☒ pursuant to NEFCR 9, NRCP 5(b)(2)(E) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ pursuant to NRCP 5(b)(2)(C), by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ pursuant to NRCP 5(b)(2)(F), to be sent via facsimile, by duly executed consent for service by electronic means;

☐ pursuant to NRCP 5(b)(2)(A), by hand-delivery with signed Receipt of Copy.

FRED PAGE, ESQ.
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Las Vegas, Nevada 89113
fpage@pagelawoffices.com
Attorney for Defendant

26
27
28

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

Steven D. Grierson

MOT
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Attorney for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA**

JAMES W. VAHEY,

Plaintiff,

v.

MINH NGUYEN HUONG,

Defendant.

) Case No.: D-18-581444-D

) Dept.: 11

) Hearing Date:

) Hearing Time:

) Oral Argument Requested

ORAL ARGUMENT REQUESTED ☒ YES ☐ NO

NOTICE: 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 14 DAYS OF YOUR
RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH
THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS
MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE
COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

**DEFENDANT'S MOTION TO EXTEND TEMPORARY PROTECTIVE
ORDER T-20-204489-T, TO CHANGE CUSTODY ON AN INTERIM
BASIS, FOR AN INTERVIEW OF THE MINOR CHILDREN
AND
TO CHANGE CUSTODY**

1 COMES NOW Defendant, MINH NGUYEN HUONG, by and through her
2 counsel, Fred Page Esq., of Page Law Firm and hereby submits her Motion to
3
4 Extend Temporary Protective Order T-20-204489-1 to Change Custody on an
5 Interim Basis, for an Interview of the Minor Children, and to Change Custody.
6 This Motion is based upon the papers and pleadings on file the attached Points
7
8 and Authorities and any oral argument that that the Court may wish to entertain.

9 DATED this 27th day of March 2020

10 PAGE LAW FIRM
11
12
13

14 Fred Page, Esq.
15 Nevada State Bar No. 6080
16 6930 South Cimarron Road, Suite 140
17 Las Vegas, Nevada 89113
18 (702) 823-2888
19 *Attorney for Defendant*
20
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1 The Court entered its Findings of Fact, Conclusions of Law, Decision and
2 Order (hereinafter "Order") on September 20, 2019. In the Order, it was ordered
3 that if Minh moved to California, as was her stated intent that Jim would receive
4 primary physical custody. The parties were ordered to share joint legal custody.
5

6 Minh was ordered to have the following pertinent visitation if she
7 relocated back to California,
8

9 1. **Weekend Visitation:** Minh Luong may have the children for one,
10 non-holiday weekend in Nevada each calendar month. The weekend
11 shall be defined as 4:00 p.m. the day school recesses until 6:00 p.m.
12 on Sunday. Minh Luong shall provide James Vahey with written
13 notice of her intention to exercise a weekend visitation seven days in
14 advance.
15

16
17 ...

18 2. **Spring Break:** Minh Luong shall have the children every year for
19 Spring Break defined as 4:00 p.m. the day school recesses until 6:00
20 p.m. the day before school resumes.
21

22 Since the Order was entered, Minh relocated back to California. Minh has
23 been exercising all of the time she has been given under the terms of the Order.
24 The children have been failing to thrive since Jim assumed primary physical
25 custody. The children's behavior has deteriorated and the children's grades have
26 deteriorated.
27
28

1 The police have had to be involved a number of times already. Rather
2 than acknowledge the distress in which the children find themselves, Jim's
3 response has been to blame Minh.
4

5 On December 17, 2019, Hannah and Matthew ran away from Jim's house.
6 The children biked in the dark and cold in 30 degree weather at 6:00 a.m. uphill
7 for 1.7 miles which is the distance from Jim's house to the guardhouse. The
8 children only got as far as the guardhouse. When the children got to the
9 guardhouse they informed the guard they missed their mother and wanted to be
10 with her.¹
11

12
13 The guard contacted Minh, and the Henderson Police Department. The
14 children were then taken back to Jim's house.² Upon being notified, Minh
15 immediately drove to Lake Las Vegas.³ When she got there, the Henderson
16 Police Department was already there, taking a report of what had transpired.⁴
17
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21 ¹ That is the length to which the children would go to be with their mother.

22 ² Jim may be seen as being negligent in allowing the children to exit the house,
23 at apparently any time. The situation was one in which potentially could have
24 Child Protective Service become involved.

25 ³ Jim's complaint is that Minh did not call fast enough to inform him.

26 ⁴ A copy of the Case Information Sheet provided by the Henderson Police
27 Department to Minh is attached for the Court's convenience as Exhibit A.
28

1 Minh asked Jim to enter the house so that she could check on the children. Jim's
2 response was to refuse her reasonable request and shut the door in her face.⁵
3

4 It was further pointed out in that correspondence that Hannah's grades had
5 dropped from "A's" and "B's" to "C's" and "D's" and an "F." It was further
6 advised to Jim's counsel that Matthew lays on the floor of the van and cries and
7 screams at the custody exchanges.
8

9 It was additionally pointed out that since he obtained physical custody Jim
10 placed a surveillance camera inside Hannah's bedroom depriving her of any
11 privacy.⁶
12

13 Complaints also had to be made regarding the fact that joint legal custody
14 requires that each parent is entitled to privacy during their communications with
15 the other parent. Minh has been complaining that Jim has been taking away the
16 children's iPhones and iPads.
17

18 When it suits Jim, the children were being required to communicate with
19 Minh on Jim's phone. Minh reports the children have to communicate through
20

21
22 ⁵ Jim's counsel was contacted, discuss what had occurred, they initially
23 disclaimed any knowledge as to what happened. When it was reported to Jim's
24 counsel as what had happened and the concerns, Minh had, she was attacked that
25 was "brainwashing" the children and there was no acceptance of any
26 responsibility on Jim's part as to the children running away. Jim's counsel later
27 tried to claim that they "knew of what happened shortly after it occurred."
28

27 ⁶ Jim later denied that claiming that the surveillance camera was placed outside
28 of the house near a window outside of Hannah's bedroom.

1 earpieces. When Minh would speak with the children the children only have one
2 earpiece in their ear. The other earpiece is in Jim's car so that he could monitor
3 the communications. Correspondence had to be sent to Jim's counsel requesting
4 that Jim return the children's iPhones and iPads and that he will respect the
5 children's right of privacy. The children complain that Jim is recording the
6 Facetime conversations that that they have with Minh.
7

8
9 Reluctant agreement was provided from Jim that the therapist, Dr.
10 Gravely, was failing to provide any meaningful assistance. Despite the children
11 running away and plummeting grades, Jim still tried to deny the fact that the
12 children were failing to thrive in his care.
13

14
15 Hannah reported after she was returned to Jim after running away that Jim
16 choked her by pulling her purse which was around her neck, and by pulling the
17 collar of her shirt. Rather than looking for a root cause as to why they were
18 running away and addressing that Mathew reported to Minh that Jim was simply
19 mean to them.
20

21 The exchanges of the children are going badly as well with the children
22 having be physically removed kicking and crying from Minh's vehicle by Minh
23 because the children refuse to return to Jim.
24
25
26
27
28

1 On January 5, 2020, Metro had to be called because the children locked
2 themselves in the bathroom at Minh's house and refused to get out of the car to
3 go to Jim.⁷
4

5 Since the exchanges have occurred at Jim's house, the children refuse to
6 get out of the car at every single exchange. Minh advises that each of these
7 exchanges take at least an hour at each visitation exchange and the children
8 refuse to go to Jim and she has to physically pull them out of the car.
9

10 Generally, Jim will step outside for a moment, tell Minh, "you bring them
11 in and leave," and then around go back inside and watch television leaving Minh
12 by herself to try and get the children out of her car. Minh estimates she has
13 contacted the Henderson Police Department four or five times to enlist their help
14 in trying to get the children out of the car and into the house.⁸
15
16

17 Minh advises that there was one time in which Jim did something more
18 than turn around and go back inside the house. The children were refusing to get
19 out of the car. Minh advises that Selena was hiding under a blanket at the back of
20 her van. Minh was at the front of the van. Jim walked to the back of the van, put
21 his hand under the blanket at which point Selena began crying.
22
23

24
25 ⁷ A copy of the card provided by Metro dated January 5, 2020, is attached for the
26 Court's convenience as Exhibit B.

27 ⁸ Minh is in the process of getting those other incident reports.
28

1 Jim at that point, left and went back into the house. Selena was crying
2 saying "daddy twisted by arm, he did it two times already."⁹ Minh, at that point,
3
4 contacted the Henderson Police Department who took a statement.

5 The children, particularly Hannah, are not doing well at school, or
6 emotionally. Hannah's grades are now a "D" for grammar, "C+" for spelling, a
7
8 "D" for science, and a "C" for history for the period ending 12/22/19.¹⁰ Hannah
9 was a 4.0 student. Hannah is now a 2.35 grade point average student. To put it
10 another way, Hannah's grades have declined by 41 percent since Jim assumed
11
12 primary physical custody.¹¹

13 Matthew's grades have decreased as well, but not to the same degree as
14 Hannah. Like Hannah, Matthew was essentially a straight "A" student. Matthew
15
16 has gone from straight "A's" to straight "B's" and a "C."¹² Matthew is now a 3.2
17 grade point average student. To put it another way, Matthew's grades have
18
19
20

21
22 ⁹ Apparently, Jim reaching under the blanket for her caused her to remember
23 when it happened previously causing her to cry out.

24 ¹⁰ A copy of Hannah's most recent grade report is attached as Exhibit C.

25 ¹¹ $2.35/4.0 - 1 = .4125$

26 ¹² A copy of Matthew's grades is attached for the Court's convenience as Exhibit
27 D.

1 declined by approximately 20 percent since Jim assumed primary physical
2 custody.¹³

3
4 Selena, because of her age, has either "satisfactory" or "needs
5 improvement." Selena only has one area in which she excels and four areas in
6 which she "needs improvement."¹⁴

7
8 Spring Break was moved by Challenger School to March 20, from April
9 6. Challenger school sent out an email to all of the parents. It appears from text
10 messages from Jim to Minh and vice versa that Jim was aware that Spring Break
11 had been moved up.
12

13 On Sunday, March 22, Jim sent Minh a text message telling her that
14 Challenger made a change and that Spring Break was going to be a week earlier
15 Minh responded that she would take the children for that week but that she
16 would be owed a weekend.¹⁵

17
18 On Friday, March 20, 2020, Jim's counsel sent a cryptic emergency
19 email falsely alleging that Minh was "not cooperating" and "not
20 communicating." The email stated,
21

22 _____
23 ¹³ 3.2/4.0 - 1 = .20

24 ¹⁴ A copy of Selena's Achievement Report is attached for the Court's
25 convenience as Exhibit F.

26 ¹⁵ A copy of the text message string is attached for the Court's convenience as
27 Exhibit F.
28

1 Your assistance is needed as Dr. Luong is refusing to
2 communicate and coparent with Dr. Vahey. Dr. Luong will not
3 confirm with Dr. Vahey whether she intends to take the children
4 to California, in violation of the Court's order, this weekend. The
5 Court's Findings of Fact, Conclusions of Law, Decision and
6 Order, entered September 20, 2019, provides Dr. Luong is to
7 have the children for one, non-holiday weekend in Nevada each
8 calendar month. Pg. 30, lines 7-9. In addition, as I'm sure you are
9 aware, unnecessary travel is not recommended at this time given
10 the risks caused by COVID-19, and California's Governor has
11 issued a "State-at-Home" order. Can you please confirm with Dr.
12 Luong that she will not be traveling with the children this
13 weekend in violation of the Court's order?

14 A response was provided back that it was incorrect and libelous to allege
15 that Minh was "refusing to communicate and coparent."¹⁶ It was further
16 requested that Jim stop trying to create conflict and ensure that Jim obey the
17 Court's orders.

18 On March 20, 2020, Minh arrived at the former marital residence to pick
19 up the children for Spring Break visitation. After Minh put the children in her
20 vehicle, she told Jim that she still had some of her personal belongings there and
21 wanted to pick up her windsurfing board as the board was her separate property.
22 When Minh asked for the windsurfing board, she advises that Jim told her he
23 did not "know where it is."

24
25
26 ¹⁶ It appeared that Jim was attempting to manufacture a situation wherein he
27 would refuse to turn over the children. There was no other reason to send an
28 "emergency email, given that earlier in the week the parties had already
discussed Spring Break visitation, and agreed upon it."

1 Minh advises she told Jim that the board was stored in the garage.
2 Because her vehicle was parked in front of the garage, and it was convenient for
3
4 Minh to take the board from the garage and put the board in the vehicle. Jim
5 told Minh if she could find the board, she should take it.

6 The windsurfing board was stored up high in the garage. Minh got the
7
8 ladder, climbed up the ladder, and got her windsurfing board down herself. Jim
9 refused to even hold the ladder and simply watched Minh get the board. After
10 Minh got the board down and while Minh was carrying the windsurfing board
11
12 out of the garage, Jim changed his mind and told Minh that the board was his
13 now that that Minh was "not allowed to take it."

14 Minh advises that Jim looked like he was going to hit her and charged at
15
16 her aggressively and tried to wrest the board from her. Minh further advises that
17 Jim battered her and pushed her several times, and eventually ripped the board
18
19 away from her, yelling at her, "the board is mine." Jim took the board and threw
20 the board inside the house.

21 Jim pushed her and then pushed her again causing the ladder to fall over,
22
23 and nearly strike his car. Jim threw the ladder in the house. Jim then pushed
24 Minh again and screamed "get out of my house!" twice.

25 When Minh got back to her vehicle she reports she was trembling and that
26
27 Hannah and Selena hugged her and asked her if she was okay. Minh reports that
28

1 she had to sit in the vehicle for several minutes to try and compose herself
2 because her hands were trembling. Minh is shaken and is frightened of Jim.

3
4 After Jim attacked her, Minh advises that she went to the Henderson
5 Police Department to file a report as to what Jim did to her.¹⁷ Minh was
6 interviewed as were the children as the children were percipient witnesses.¹⁸
7
8 Minh advises that the children were interviewed separately to ensure that their
9 statements were consistent.

10 After Minh and the children were interviewed, during the evening of
11 March 20, Jim was arrested by the Henderson Police Department for
12 battery/domestic violence for attacking Minh and battering her in front of the
13 children. Jim has been charged with battery constituting domestic violence. The
14 case number is 20CR002146.¹⁹

15
16
17 Friday afternoon was the first time that Minh has gone to the police to
18 report acts of violence committed by Jim against her. However, Friday
19 afternoon was not the first time Jim has been violent toward her and battered
20

21
22 ¹⁷ A copy of the print out provided by the Henderson Police Department is
23 attached for the Court's convenience as Exhibit G.

24 ¹⁸ Minh's witness statement dated March 20, is attached for the Court's
25 convenience as Exhibit H.

26 ¹⁹ A copy of the printout of the Henderson Municipal Court is attached for the
27 Court's convenience as Exhibit I.

1 her. Minh is very traumatized as to what Jim did. The children are
2 understandably shaken up as well.

3
4 After Jim was arrested, Minh has sought and received protective order.
5 The protective order covers the children as well since the children were
6 witnesses to the battery committed by Jim against Minh.²⁰ The protective order
7 is scheduled to expire March 30.
8

9 In addition to the protective order, the pending criminal charges for
10 battery constituting domestic violence should also result in a no contact order
11 against Jim for the protection of Minh. Because the children are witnesses in
12 the pending criminal case against Jim, he cannot have contact with the children
13 until the criminal case is resolved.²¹
14

15
16 The children are still currently with Minh. She advises when she tries to
17 get the children to go outside to get some fresh air, Selena refuses to go outside
18 because she associates going outside with having to go back to Jim.
19

20 ///

21 ///

22
23
24 ²⁰ Inexplicably, Minh advises that Jim actually had Henderson Police
25 Department call her on Saturday and asking for her to bail him out.

26 ²¹ It is no different that if there is a witness to a murder or a robbery, the
27 perpetrator cannot have any contact with the witnesses. It also appears that Jim
28 may have put his license to practice medicine at risk.

1 4) The authorities, with the information given, felt confident not
2 only charging Jim but also incarcerating him.

3
4 5) Minh and the children are fearful of future violent behavior they
5 experienced and witnessed.

6
7 6) Jim has become very aggressive angry bringing concerns that he
8 could retaliate against Minh or the children right now.

9 NRS 33.020 States:

- 10 1. If it appears to the satisfaction of the court from specific facts
11 shown by a verified application that an act of domestic
12 violence has occurred or there exists a threat of domestic
13 violence, the court may grant a temporary or extended order.
14 A court shall only consider whether the act of domestic
15 violence or the threat thereof satisfies the requirements
16 of NRS 33.018 without considering any other factor in its
17 determination to grant the temporary or extended order.

18 In this verified Motion for an extension for an Order of Protection, the
19 standards set forth in NRS 33.020 (1) are met by Minh. Jim has been charged
20 with and incarcerated for an act of domestic violence against her as battery does
21 satisfy the requirements set forth in NRS 33.018.²⁴

22
23 (...Continued)

24 ²³ After authorities interviewed Minh and the minor children, The Henderson
25 Police Department charged Jim with battery constituting domestic violence and
26 arrested him.

27 ²⁴ NRS 33.018 Acts which constitute domestic violence; exceptions.

- 28 1. Domestic violence occurs when a person commits one of the
following acts against or upon the person's spouse or former spouse,

(Continued...)

1 Only six days have passed since Jim was arrested for attacking Minh in
2 the presence of their children. Minh is gravely concerned for her safety and the
3
4 safety of the minor children and needs protection from this Court.²⁵

5
6 (...Continued)

7 any other person to whom the person is related by blood or marriage,
8 any other person with whom the person has had or is having a dating
9 relationship, any other person with whom the person has a child in
10 common, the minor child of any of those persons, the person's minor
11 child or any other person who has been appointed the custodian or
12 legal guardian for the person's minor child:

- 11 (a) A battery.
12 (b) An assault.
13 (c) Coercion pursuant to NRS 207.190.
14 (d) A sexual assault.
15 (e) A knowing, purposeful or reckless course of conduct
16 intended to harass the other person. Such conduct may include, but
17 is not limited to:

- 16 (1) Stalking.
17 (2) Arson.
18 (3) Trespassing.
19 (4) Larceny.
20 (5) Destruction of private property.
21 (6) Carrying a concealed weapon without a permit.
22 (7) Injuring or killing an animal.
23 (8) Burglary.
24 (9) An invasion

25 ²⁵ NRS 125.0045 states in pertinent part,

26
27 1. In any action for determining the custody of a minor child,
28 the court may, except as otherwise provided in this section
and NRS 125C.0601 to 125C.0693, inclusive, and chapter 130 of
NRS:

- (a) During the pendency of the action, at the final hearing or
at any time thereafter during the minority of the child, make such

(Continued...)

1 There is no admonition that can be given that will dissuade Jim from
2 tampering with the primary witnesses in the State's case. There is no
3 admonition that can be given to prevent Jim from attempting undue influence
4 with children with threats and/or intimidation of "you don't want to see your
5 dad go to jail do you?"
6

7
8 To protect the integrity of the criminal investigation and prosecution, and
9 thereby protect Minh and the children's best interests, the protective order should
10 be extended until the criminal matter is resolved.²⁶ The TPO is set to expire for
11
12 on March 30, 2020.

13 ///

14 ///

15 ///

16

17
18 (...Continued)

19 an order for the custody, care, education, maintenance and
20 support of the minor child as appears in his or her best interest;
21 and

22 (b) At any time modify or vacate its order, even if custody
23 was determined pursuant to an action for divorce and the divorce
24 was obtained by default without an appearance in the action by
25 one of the parties.

26 ²⁶ Under Chapter 178 of the Nevada Revised Statutes victim and witness
27 information shall remain confidential. It should go without saying that if victim
28 and witness information shall remain confidential there shall be no contact
between the perpetrator of the crime and the witnesses to the crime.

1 **C. Minh Should Receive Interim Sole Legal and Sole Physical Custody**
2 **Until the Criminal Matter is Resolved**

3 The Court is authorized to enters as appears in the children's best interests
4 at any point during their minority pursuant to NRS 125C.0045. The interim
5 orders should be set pursuant to what is in the children's best interests.
6

7 In addition to the protective order, the pending criminal charges should
8 also result in a no contact order against Jim for the protection of Minh. Because
9 the children are percipient witnesses in the pending criminal case against Jim,
10 he cannot have contact with the children until the criminal case is resolved.²⁷
11

12 Jim should have contact with Minh per the terms of the criminal no
13 contact order for education decisions, for health decisions, or to discuss
14 visitation. To require Minh to have contact with Jim would violate any criminal
15 no contact and would further victimize her for the crime Jim perpetrated against
16 her.
17

18 The reasons why the TPO should be extended are equally applicable as to
19 why Minh should receive sole legal and sole physical custody until the criminal
20 charge of battery constituting domestic violence that Jim committed against
21 Minh is resolved. School is online for the foreseeable future, Minh will be able
22 to ensure that the children progress academically.
23
24

25
26 ²⁷ As stated, it is no different than an accused being ordered to have no contact
27 with a witnesses in a murder or robbery case.
28

1 Accordingly, Minh should receive sole legal and sole physical custody
2 until the battery constituting domestic violence charge is resolved.

3
4 **D. The *Ellis v. Carucci*, *Infra* Standard Will Be Met**

5 For there to be a change in custody the following elements have to be
6 met, (1) there has been a substantial change in circumstances affecting the
7 welfare of the child, and (2) the child's best interest is served by the
8 modification. *Ellis v. Carucci*, 123 Nev. 145, 161 P. 3d 239 (2007).

9
10 There are multiple substantial changes in circumstances affecting the
11 welfare of the children. Those substantial changes affecting the welfare of the
12 children include: (1) a dramatic decline in the children's grades (40 percent for
13 Hannah and 20 percent for Matthew) since Jim received primary physical
14 custody, (2) Hannah and Matthew running away from home, (3) the children
15 being in counseling, (4) Jim violating legal custody by refusing to allow the
16 children to have privacy in their communications with Minh, and (5) Jim
17 committing acts of domestic violence on Minh and in front of the children for
18 which he has been arrested and has been charged criminally.

19
20 The children's best interests would be served by modification. The
21 children's grades would go back to what they were when Minh was the primary
22 caregiver which is essentially straight "A's." The children would not be
23 running away from home. The children would no longer need mental health
24 counseling. Minh would not interfere with the children's right of privacy in
25
26
27
28

1 their communications with Jim. Finally, Jim has committed acts of domestic
2 violence by clear and convincing evidence which were witnessed by the
3 children. In Minh's care, the children would be less likely to be subject to
4 witnessing acts of domestic violence against Minh by Jim.

6 **E. Minh Should Receive Permanent Primary Physical Custody**

8 NRS 125C.0035 states in pertinent part,

9 The court shall award custody in the following order of preference unless
10 in a particular case the best interest of the child requires otherwise:

12 (a) . . . If the court does not enter an order awarding joint
13 custody of a child after either parent has applied for joint
14 custody, the court shall state in its decision the reason for
its denial of the parent's application.

15 a. The wishes of the child if the child is of sufficient age
16 and capacity to form an intelligent preference as to his
17 or her physical custody

18 The children are old enough to be factual reporters. Given the how
19 poorly the visitation exchanges have been going, that counseling is not helping,
20 the steep decline in academic performance, and that Hannah and Matthew are so
21 unhappy that they are running away, it should be certain that the children would
22 prefer to remain in Minh's primary care.

24 ///

26 ///

27 //

1 **b. Any nomination of a guardian for the child by a parent**

2 Minh has historically been the primary caregiver. Because Minh has
3
4 historically been the primary caregiver Jim has nominated her to be the primary
5 caregiver.

6 **c. Which parent is more likely to allow frequent**
7 **associations and a continuing relationship with the**
8 **noncustodial parent**

9 Minh has followed all of the orders in this case. Jim refuses to respect the
10 orders regarding joint legal custody and refuses to allow privacy during
11 telephone calls.
12

13 **d. The level of conflict between the parents**

14
15 The parties' conflict in the past has been driven by Jim's violent behavior,
16 his disinterest in the children. With the recent battery Jim committed against
17 Minh, and witnessed by the children, the current level of conflict is high.
18

19 **e. The ability of the parents to cooperate to meet the**
20 **needs of the children**

21 The ability to cooperate at this point is minimal. Jim will not even assist
22 with the visitation exchanges and forces Minh to drag the children crying out of
23 her car. While the children are in distress, Jim refuses to accept any
24 responsibility and simply blames Minh.
25

26
27 ///

28 ///

1 **f. The mental and physical health of the parents**

2 Both parents appear to be physically healthy. Minh is mentally healthy
3
4 despite being traumatized by what Jim has done. Jim's mental health is at issue
5 as he has anger management/impulse control issues that he has battered Minh in
6 front of the children.

7
8 **g. The physical, developmental and emotional needs of the**
9 **children**

10 The children are at an age wherein they are able to spend longer periods
11 away from one of their parents. The children witnessed Jim violently attack
12 their mother. The conduct by Jim can only damage them. The children need
13 stability. The evidence is that Jim cannot provide stability as the children's
14 grades have dropped dramatically and the children are running away, and are
15 seeing a counselor who is providing no benefit for them. The children thrived
16 when Minh was their primary caregiver.

17
18
19 **h. The nature of the relationship of the child with each parent**

20 The relationship of the children with Minh is excellent. The children's
21 relationship with Jim is poor. The children are much more bonded with Minh
22 than Jim.

23
24 Hannah and Matthew are running away from Jim's home. The children
25 are seeing a counselor because they are living with him.
26
27
28

1 The visitation exchanges result in the children locking themselves in the
2 car because they do not want to go to Jim and Metro having to be called.
3
4 Matthew has to be dragged from Minh's car screaming, "I don't want to go, I
5 don't want to go" by Minh to Jim. In contrast, the children count the days until
6 they can be with Minh and run to her when she picks them up.

7
8 i. The ability of the child to maintain a relationship with
9 any sibling

10 Not applicable.

11 j. Any history of parental abuse or neglect of the child or a
12 sibling of the child

13
14 It is submitted that the children having to watch their mother be battered
15 by Jim is abuse and neglect.

16
17 k. Whether either parent or any other person seeking
18 custody has engaged in an act of domestic violence
19 against the child, a parent of the child or any other
20 person residing with the child

21 Jim battering Minh in front of the children is domestic violence. The
22 evidence and testimony will show that Jim has committed acts of domestic
23 violence. Because of Jim committing acts of domestic violence there is a
24 presumption that Jim is unfit to have joint or primary physical custody.

25
26 ///

1 **I. Whether either parent or any other person seeking**
2 **physical custody has committed any act of abduction**
3 **against the child or any other child**

4 Not applicable.

5 There is adequate cause for custody to be changed. Under *Rooney v.*
6 *Rooney*,²⁸ "adequate cause" arises where the moving party presents a prima
7 facie case for modification. To constitute a *prima facie* case, one must show
8 that: (1) the facts alleged in the affidavits are relevant to the grounds for
9 modification; and (2) the evidence is not merely cumulative or impeaching.
10
11
12 *Rooney* at 543.

13 There is more than sufficient adequate cause for custody to be changed
14 (1) the children's grades have gone down dramatically, (2) the Hannah and
15 Matthew are running away from home, (3) the children lock themselves inside
16 Minh's car at custody exchanges and Matthew has to be dragged to Jim, (4) Jim
17 violates legal custody by refusing to allow the children to have privacy in their
18 communications with Minh, (5) have a poor relationship with Jim, (6) Jim has
19 now been arrested and charged with battery constituting domestic violence and
20 for which the children are witnesses.
21
22
23
24 ///

25 ///

26 _____
27 ²⁸ 109 Nev. 540, 853 P.2d 123 (1993)
28

1 **F. The Children Should Be Interviewed**

2 At this point, it would be in the children's best interests that they be
3 interviewed as to what they like and dislike at each house, how they rate their
4 relationship with each parent, and how they are disciplined at each residence.
5

6 There should be no factual dispute that the children are currently in
7 distress and have been in distress for some time. An investigation in the form of
8 an interview should be conducted to find out why Hannah and Matthew are
9 running away, and why the children's grades are declining. Any negative
10 impact would be minimal under these circumstances. The evidence is needed so
11 that the Court is able to enter a more fully informed decision.
12
13

14 The Court is authorized to enter such an order pursuant to NRS
15 125C.0045. Being more fully informed would be in the children's best interests.
16 Accordingly, the children should be ordered to be interviewed.
17

18 **III.**
19 **CONCLUSION**

20 WHEREFORE, Defendant, MINH LUONG, respectfully requests that the
21 Court enter the following orders
22

- 23 1. Extending the TPO for six months.
- 24 2. Entering an interim change in custody with Minh having sole legal
25 and sole physical custody until the criminal matter is resolved.
26
- 27 3. Setting an evidentiary hearing on custody being changed.
28

4. Requiring that the children be interviewed, and:

5. For any further relief the Court deems proper and just.

DATED this 27th day of March 2020

PACI : AWP:IRM

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Las Vegas, Nevada 89113
(702) 823-2888
Attorney for Defendant

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Plaintiff Petitioner

Case No. _____

Defendant Respondent

Debit _____

**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 125C(4). 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 filed 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: _____ Date: _____

Signature of Party or Preparer: _____

AA000152

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9



1 **OPP**
2 **THE DICKERSON KARACSONYI LAW GROUP**
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 JAMES W. VAHEY,

11 Plaintiff,

12 v.

13 MINH NGUYET LUONG,

14 Defendant.

) CASE NO. D-18-58144-D
) DEPT NO. II

) Date of Hearing: April 22, 2020
) Time of Hearing: 9:00 a.m.

) Oral Argument Requested: Yes

15
16 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO**
17 **EXTEND TEMPORARY PROTECTIVE ORDER T-20-204489-T,**
18 **TO CHANGE CUSTODY ON AN INTERIM BASIS, FOR AN**
19 **INTERVIEW OF THE MINOR CHILDREN AND TO CHANGE**
20 **CUSTODY**

21 COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and
22 through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA
23 M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW
24 GROUP, and submits Plaintiff's Opposition to Defendant's Motion to
25 Extend Temporary Protective Order T-20-204489-T, to Change Custody
26 on an Interim Basis, for an Interview of the Minor Children and to Change
27 Custody ("Opposition").
28

...

...

...

1 This Opposition is made and based upon the following Memorandum
2 of Points and Authorities, the Declaration of Jim attached hereto, the
3 attached exhibits, all papers and pleadings on file herein, as well as oral
4 argument of counsel as may be permitted at the hearing on this matter.

5 DATED this 10th day of April, 2020.

6 THE DICKERSON
7 KARACSONYI LAW GROUP

8 By *s/ Sabrina M. Dolson*

9 ROBERT P. DICKERSON, ESQ.
10 Nevada Bar No. 000945
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 27, 2020, Jim filed his Emergency Motion for Immediate Return of the Children, Dissolution of TPO, Modification of Child Custody, Appointment of a New Therapist for the Children, an Order to Show Cause Why Defendant Should Not Be Held in Contempt, and to Resolve Other Parent Child Issues ("Emergency Motion"), which addresses most of the facts and issues addressed in Defendant's, MINH NGUYET LUONG ("Minh"), Motion to Extend Temporary Protective Order T-20-204489-T, to Change Custody on an Interim Basis, for an Interview of the Minor Children and to Change Custody ("Minh's Motion"). Accordingly, this Opposition focuses on addressing the facts and arguments not specifically addressed in Jim's Emergency Motion.

II. FACTUAL STATEMENT

In Minh's Motion, she addresses the Court's Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order"), entered September 20, 2019. Minh confirms she choose not to preserve her joint custody rights despite the fact this Court found the evidence demonstrates it is in the best interest of the children that the parties share joint physical custody. Decision and Order, pg. 6, lines 25-28; pg. 14, lines 1-10; pg. 23, lines 1-4. The Court gave Minh "reasonable time to consider the effect of [the Court's] decision in [sic] order and take the necessary steps to preserve her joint physical custody rights." Decision and Order, pg. 6, lines 25-28; pg. 14, lines 1-10; pg. 23, lines 1-4. Minh choose to move to California without her children rather than preserve her joint physical custody rights.

Minh is now making many of the same arguments she made at the evidentiary hearing only seven (7) months ago to seek a modification of

1 custody. Minh contends the Court should modify its custody order
2 because the children have been failing to thrive since Jim assumed primary
3 physical custody. To support this contention, Minh asserts the children's
4 behavior and grades have deteriorated. The only examples Minh provides
5 of the children's behavior deteriorating is around the times the parties
6 exchange the children for the custodial timeshare. Minh addressed the
7 incident in which the children ran away from Jim's home in December
8 2019, which Jim also addressed in his Emergency Motion. Minh also
9 acknowledges that she has involved the police on several occasions to
10 facilitate the custodial exchanges, which is unnecessary and a waste of
11 valuable public resources. Each time the police have been involved in the
12 custodial exchanges it is because Minh has called them, likely to present
13 to this Court a "record" of the children misbehaving given the lack of her
14 own credibility.

15 As detailed in his Emergency Motion, Jim does not disagree that the
16 children, primarily Hannah and Matthew, misbehave surrounding the
17 custodial exchanges. However, Jim has custody of the children a vast
18 majority of the time, and the children typically return to their normal,
19 happy, and well behaved demeanor within twelve (12) hours of returning
20 to his custody. The December 2019 incident in which the children ran
21 away from Jim's home is an anomaly and the only time in the past seven
22 (7) months that the children have misbehaved in such a way. It is also not
23 a coincidence the children ran away two days after being returned from
24 Minh. Minh attempts to use this situation as an example of "the length
25 to which the children would go to be with their mother," which, if she truly
26 believes this, is incredibly heartbreaking for the children who do not have
27 a mother who would put their best interests before hers. Minh attempts
28 to demonstrate how much the children miss her, but refuses to accept they

1 were put in this situation of having to miss her because she choose
2 California over them. Minh refuses to take responsibility for her decision.
3 Ironically, Minh blames Jim for her decision to leave the children.

4 Minh also falsely states that upon arriving at Lake Las Vegas after the
5 children called her from the guard station when they ran away from Jim's
6 home, she requested to enter Jim's house so she could check on the
7 children and Jim "shut the door in her face."¹ This is an example of
8 Minh's distortion of the truth. Minh never arrived at Jim's home and
9 asked to enter the house so it was not even possible for Jim to shut a door
10 in her face. Minh only made it as far as the Lake Las Vegas guard station.
11 When she arrived there, Minh asked that Jim let her through the guard
12 gate. Jim was busy talking to the police who had arrived at his home and
13 simultaneously trying to get the three children ready for school. Taking
14 into account how the children act during custodial exchanges when Minh
15 is present, Jim knew it would have caused more of a disruption to allow
16 Minh in his home at that time, especially while Jim was attempting to get
17 the children to school on time. Most notable about Minh's account of this

19 ¹ Minh claims her counsel contacted Jim's counsel to discuss the incident
20 and Jim's counsel "initially disclaimed any knowledge as to what happened." Minh
21 then contends that "Jim's counsel later tried to claim that they 'knew of what happened
22 shortly after it occurred.'" Minh's Motion, pg. 6 n. 5. This is yet another example of
23 how Minh misrepresents facts. On December 17, 2019, Minh's counsel, Fred Page,
24 contacted The Dickerson Karacsony Law Group offices to discuss the incident. Robert
25 Dickerson was out of town at the time so Sabrina Dolson spoke to Mr. Page. Ms.
26 Dolson informed Mr. Page she had not discussed the incident with Jim, and would
27 have to get back to Mr. Page. Shortly thereafter, Ms. Dolson learned Jim had called
28 Mr. Dickerson on his cellular telephone on December 17 to discuss the incident. Mr.
Dickerson sent a letter to Mr. Page on December 23, 2019, explaining he had spoken
to Jim the day the children ran away, but he was out of town and had not yet relayed
such information to Ms. Dolson. Exhibit I, December 23, 2019 Letter to Fred Page.
Despite providing this clarification, Minh essentially accuses Jim's counsel of lying
about their knowledge of the incident, stating "Jim's counsel later tried to claim that
they 'knew of what happened shortly after it occurred.'" It is unclear for what benefit
Minh misrepresents such facts, but she clearly believes whether Jim's counsel had
knowledge of the incident on the day it occurred is somehow helpful to her request for
modification of child custody.

1 morning, Minh does not deny she did not immediately call Jim to notify
2 him the children had run away and called her.

3 Minh has also now made a new allegation of abuse she has never
4 mentioned before—that Jim choked Hannah by pulling her purse, which
5 was around her neck, and pulling the collar of her shirt after she ran away.
6 Minh expects this Court to believe that although she has never before
7 raised any examples of Jim having violent tendencies in the ten (10) years
8 they raised their children together, now, after being awarded primary
9 custody, Jim has all of a sudden become a violent person. Jim has never
10 choked Hannah by pulling on her purse or collar. Jim simply took
11 Hannah's cell phone away from her. Hannah did attempt to prevent Jim
12 from doing so and kicked him in the jaw, but Jim never choked, pulled, hit,
13 or harmed Hannah in any way. Hannah even spoke to the police privately,
14 without Jim present, less than an hour after Jim took her cell phone away.
15 Hannah never made any mention that Jim had choked her or hurt her in
16 any way to the police.

17 Minh also claims Jim twisted Selena's arm during a custodial
18 exchange, which prompted her to call the Henderson Police Department
19 and make a statement. Not surprisingly, this is also the first time Jim or
20 his counsel have been notified of this incident, that the police were called,
21 or that Minh felt it appropriate to make a statement. If Minh was
22 honestly concerned about the well-being of the children in Jim's care, she
23 would have addressed these issues immediately. She did not because she
24 is simply trying to "build" a case to modify custody.

25 It is now quite clear Minh has been setting up her case since
26 December 2019. Minh's counsel, Fred Page, sent a letter to Jim's counsel
27 on December 19, 2019, to address the children running away and to
28 provide the exact same arguments Minh now includes in her Motion, albeit

1 without any reference to any abuse committed by Jim, to suggest a change
2 of custody was warranted. Exhibit 2, December 19, 2019 Letter from
3 Fred Page. This letter is essentially a summary of Minh's current Motion,
4 a foreshadowing of her plans to come. Minh was likely advised that the
5 reasoning provided in the December 19, 2019 letter was not sufficient to
6 modify custody, which likely led to Minh's current allegations of domestic
7 violence. There is absolutely no mention of Jim choking Hannah in this
8 letter, and the first time this allegation has been made is in Minh's Motion.

9 Minh seems to believe that because the children miss her and struggle
10 leaving her, they must not be thriving with Jim. This could not be further
11 from the truth. Of course the children miss their mother. Of course the
12 children are happy to see her for her one weekend visitation each month.
13 Of course the children struggle emotionally with leaving their mother at
14 the custodial exchanges. The children went from having a mother involved
15 in their every day lives to having a mother they see approximately a few
16 days every month. This is normal behavior for children who have been
17 forced to adjust to a completely new situation because they, unfortunately,
18 have a mother who would rather live in California than live near them.

19 Contrary to Minh's allegations, at custodial exchanges, Jim does not
20 simply tell Minh to bring the children in and leave, and then return to his
21 home to watch television. Jim spends a considerable amount of time trying
22 to persuade the children to come into the house. His efforts are not
23 encouraged by Minh. What Minh further fails to advise the Court is that
24 Jim often has one child, typically Selena and sometimes Matthew, in the
25 house while Hannah and/or Matthew refuse to come in. This requires that
26 Jim supervise Selena inside the house until Hannah and Matthew are ready
27 to come inside. Typically, Jim will turn the television on for Selena so he
28 . . .

1 is able to make additional attempts to talk to Hannah and Matthew and
2 to persuade them to come inside.

3 Minh also continues to misrepresent to the Court that Jim placed a
4 surveillance camera or recording device in Hannah's room. There is no
5 such surveillance camera or recording device in Hannah's room, and Minh
6 was informed of this in December 2019. Nevertheless, Minh accomplished
7 her goal of making Hannah feel uncomfortable in her own bedroom. In a
8 footnote of her Motion, Minh acknowledges Jim denied placing a
9 surveillance camera in Hannah's room, and accuses him of representing
10 that the surveillance camera was placed outside of the house near a window
11 outside of Hannah's bedroom. There is also no surveillance camera
12 outside of Jim's house near Hannah's window, and Jim never made any
13 such statement. On December 23, 2019, Mr. Dickerson sent a letter to
14 Mr. Page informing him there is no camera or other video device, or any
15 audio or recording device, in Hannah's room. **Exhibit 1**. Mr. Dickerson
16 requested Mr. Page ask Minh to cease trying to create fear in Hannah and
17 the other children. Mr. Dickerson's request was obviously not heeded as
18 Minh's most recent actions demonstrate.

19 Minh also makes outrageous allegations that Jim does not provide
20 the children with privacy when they speak to her and requires the children
21 to use an earpiece when speaking with her so that he is able to listen in on
22 their conversations. Minh claims one earpiece is in the child's ear and one
23 is in Jim's so that he can monitor the communications. This is absolutely
24 false. This fabrication is on par with Minh's false allegations of domestic
25 abuse, which has no basis in truth and is contradicted by the audio
26 recording Jim fortunately had the foresight to take. Jim also does not
27 record the children's conversations with Minh.

28 . . .

1 Jim also does not routinely take away the children's iPhones and
2 iPads, and certainly not to prevent them from talking to Minh. Since
3 having primary physical custody, Jim has only taken away Matthew's iPad
4 twice and Hannah's cell phone three times as consequences for their
5 behavior. Jim took away Hannah's cell phone and Matthew's iPad when
6 the children ran away on December 17, 2019, and another time when the
7 children were misbehaving toward each other in the parking lot at church.
8 Jim took Hannah's cell phone from her another time when Hannah had a
9 fight with Selena. Apart from these occasions, Jim has not taken the
10 children's electronics from them. During these instances, Jim allowed the
11 children to communicate with Minh on his cell phone or the land line at
12 his house. Even when the children have their electronics, they are always
13 permitted to communicate with Minh via Jim's cell phone and land line.

14 At the evidentiary hearing on custody, Minh claimed the children
15 were failing to thrive academically with the parties sharing joint physical
16 custody at that time, which was untrue. Minh is again claiming the
17 children are failing to thrive academically, which is still untrue. Minh
18 claims Hannah's grades have dropped from A's and B's to C's, D's, and an
19 F. Hannah has struggled with school since third grade, long before the
20 parties separated. Hannah also struggled more after she moved from Coral
21 Academy to Challenger as Challenger is much more difficult. However,
22 Hannah's grades have not dramatically decreased as Minh's contends.
23 Even the exhibit Minh attaches to her Motion does not support her
24 assertion. The Achievement Report attached as **Exhibit C** to Minh's
25 Motion, and **Exhibit 3** to this Opposition, shows that for the period of
26 August 19, 2019 to December 22, 2019, Hannah had one B+, two B's,
27 three B-'s, one C+, one C-, and two D's. Hannah has earned similar
28 grades since transferring from Coral Academy to Challenger, prior to the

1 parties' separation and while they shared joint physical custody. Hannah's
2 Mid-Term Notice for Term 2 of fourth grade, which was the period of
3 January 7, 2019 to June 7, 2019 shows that Hannah had one B+, three
4 B's, one B-, one C+, one C-, one D, and one F. **Exhibit 4**, Mid-Term
5 Notice for Hannah Vahey.

6 Minh makes similar misrepresentations regarding Matthew's grades,
7 claiming he went from being a straight A student to now earning B's and
8 C's. The Achievement Report for Matthew Vahey, which Minh attached
9 as **Exhibit D** to her Motion and is attached to this Opposition as **Exhibit**
10 **5**, also does not show that Matthew's grades have suffered since Jim was
11 awarded primary physical custody. The Achievement Report Minh
12 attached to her Motion shows that for the period of August 19, 2019 to
13 December 22, 2019, Matthew had two A's, one A-, two B+'s, two B's, two
14 B-'s, and one C. Matthew's grades have actually improved since Jim has
15 had primary physical custody. When the parties' shared joint physical
16 custody, Matthew's Mid-Term Notice for Term 2 of third grade, which was
17 the period of January 7, 2019 to May 29, 2019, shows that Matthew had
18 one B+, three B's, one B-, one C+, one C-, one D, and one F. **Exhibit 6**,
19 Mid-Term Notice for Matthew Vahey. The children's grades have not
20 decreased and the children are not failing to thrive as Minh alleges.

21 Jim continues to support the children with their homework, and the
22 children are receiving tutoring at school as well as at home with a private
23 tutor. Jim ensures the children have the necessary resources to excel in
24 school, and a healthy environment to support the children's ability to
25 learn. Jim ensures the children eat healthy, are well nourished, sleep
26 enough hours each night, have all required school supplies, arrive to school
27 on time, have tutoring available when needed, and parental support to
28 complete their homework and school projects. Jim understands it is the

1 children's responsibility for their school performance and homework, as
2 well as their behavior at school. Jim has consistently provided everything
3 they need to succeed.

4 Essentially, the only evidence provided by Minh in support of her
5 request for this Court to reconsider its custody order, which was entered
6 only seven (7) months ago, are the children's grades, which have not
7 suffered and have actually improved for Matthew, copies of the police
8 reports she only began making once she retained her new counsel, and a
9 false allegation of domestic violence. It is not a coincidence that these
10 issues have arisen since Minh retained new counsel; this is clearly a new
11 strategy to attempt to overturn this Court's custody decision.

12 Regarding Minh's allegation of domestic abuse on March 20, 2020,
13 Minh continues to misrepresent the facts. First, Minh states that her RV
14 was parked in front of Jim's garage. Minh's RV was actually not in Jim's
15 driveway. It was parked at the apron of Jim's driveway and remained on
16 the street, approximately 50 feet from Jim's garage. The RV's position is
17 clear in the video recording Jim attached to his Emergency Motion as
18 **Exhibit 13**. Minh states that "Jim refused to even hold the ladder and
19 simply watched Minh get the board." Jim was with the children while
20 Minh went to look for the windsurf board she mistakenly believed she had.
21 Minh did not ask Jim to hold the ladder for her, and Jim did not refuse any
22 such request. This is evident on the audio recording and transcript of
23 same, which is attached as **Exhibit 12** to Jim's Emergency Motion.

24 Minh claims that after she got her windsurf board down, "Jim
25 changed his mind and told Minh that the board was his now and that
26 Minh was 'not allowed to take it.'" It is clear from the audio recording of
27 this event that Minh never took her windsurf board, but rather took Jim's
28 kitesurf board. Minh acknowledges in the audio recording that she knew

1 she had the wrong board. After Jim tells Minh she has his kitesurf board,
2 and not her windsurf board, Minh states: "Well, then you need to go up
3 there and get my board." Emergency Motion, Exhibit 12. Minh tells Jim
4 to "get her board" a total of eleven (11) times. The fact that Minh tries to
5 now represent to the Court that she was actually in possession of her
6 windsurf board and Jim changed his mind and told her "the board was his
7 now" is yet another example of Minh's total lack of credibility. Minh will
8 lie whenever it suits her. Here, she wanted the police and this Court to
9 believe Jim was preventing her from taking her property when she knew
10 she was trying to take Jim's board.

11 Minh also asserts that Jim "looked like he was going to hit her and
12 charged at her aggressively and tried to wrest the board from her. Minh
13 further advises that Jim battered her and pushed her several times, and
14 eventually ripped the board away from her, yelling at her, "the board is
15 mine." The audio recording and transcript do not support Minh's
16 "version" of the event. After Jim noticed Minh had taken his kitesurf
17 board down, he walked to the garage and stated: "Nguyet. Nguyet. That's
18 a kitesurfing board. That's mine. That's a kitesurfing board." Emergency
19 Motion, Exhibit 12. Jim does not even raise his voice when talking to
20 Minh. The parties had an entire discussion regarding the fact that the
21 board Minh had taken down was not a windsurf board, but was Jim's
22 kitesurf board. Minh told Jim multiple times to get her board and Jim
23 informed Minh multiple times he did not think she had a windsurf board
24 and he did not know where her board was, if she did have one. Both
25 parties were holding onto the board during this conversation. Despite
26 knowing she had taken down Jim's kitesurfing board, Minh did not release
27 the board to Jim. Jim never charged at Minh aggressively or tried to wrest
28 the board from her.

1 Even after Minh began smashing the tail of the board on the garage
2 floor, Jim does not raise his voice or become aggressive in any way. Jim
3 states to Minh: "You're breaking it now? Let go of my board. Let go of
4 my board. Oh my gosh. Let go of the board. Get out. Get out. Oh,
5 Nguyet. You are such a baby. Get out of here. Get out of here. You're
6 an immature, narcissistic baby. Get out." Minh replies, "that's funny."
7 Minh never felt threatened by Jim because she was the aggressor.
8 Emergency Motion, Exhibit 12.

9 Minh contends that after Jim "threw the board inside the house," he
10 "pushed her and then pushed her again causing the ladder to fall over, and
11 nearly strike his car." The audio recording and transcript do not support
12 Minh's misrepresentations. After Minh finally released Jim's kitesurfing
13 board, Jim again tells Minh, "get out! Get out. Get out. Get out. Get
14 out." There are then loud noises on the audio recording, which is when
15 Minh picks up the aluminum handle and starts hitting Jim's car with it.
16 After Jim takes the aluminum handle from Minh to stop her from hitting
17 his car, he places it in front of his vehicle to keep it out of her reach. Minh
18 then tries to tip the ladder onto Jim's vehicle, which Jim was able to stop
19 before it hits his vehicle. Throughout this entire event, Jim's statements
20 evidence he is not the aggressor and he is trying to get Minh to leave his
21 garage. At one point, Jim states: "Oh my God! Get out of here. Now!
22 Get out." At another point, Jim states: "Golly, Nguyet." Minh, on the
23 other hand, taunts Jim, stating, "go ahead, hit me," to which Jim replies, "I
24 would never hit you." Emergency Motion, Exhibit 12. Jim's tone and
25 statements are not the reaction of an aggressive person who is pushing
26 another person into a ladder. This is the reaction of someone watching
27 another person damage their property. Jim's tone demonstrates he is in
28 disbelief by Minh's actions and he pleads with her to leave his garage.

1 Notably, there is no mention in Minh's Motion of Minh trying to hit
2 Jim's car with the aluminum handle or of her smashing Jim's ladder against
3 the wall of his house and the marble floor near his garage door. Minh
4 must have conveniently left these parts out because according to Minh's
5 account of the event, Jim pushed her after placing the ladder in his home
6 and screamed at her to get out of his home, and she walked back to her
7 vehicle. Minh's false allegations are not supported by the audio recording
8 and transcript, as detailed above and in Jim's Emergency Motion.

9 Minh asserts that the children were "percipient witnesses" and were
10 separately interviewed by police to ensure their statements were consistent.
11 Based on Minh's past conduct demonstrating she has no reservations
12 discussing inappropriate matters with the children, Jim believes Minh
13 likely informed the children of her version of the event. Minh did not
14 immediately leave his house after he started video recording her and she
15 finally left his garage. Jim was inside his house watching Minh's RV to
16 make sure she left his property. Minh stayed in her RV at the apron of
17 Jim's driveway for approximately ten (10) minutes. Jim believes Minh
18 used this time to tell the children what she wanted them to believe had
19 occurred. Whether the children's statements were consistent has no
20 bearing on the accuracy of what actually occurred. The children are young
21 and impressionable. They have no reason to believe their mother would
22 lie to them, which is how Minh was able to convince Matthew and Hannah
23 that there was a family plan to move to California. Jim even questions
24 whether he and Minh were visible to the children from where the RV was
25 parked. The following day after the incident, Jim took a photograph from
26 where the RV was parked looking into the garage at approximately the
27 same time the incident occurred (i.e., 4:00 p.m.). Attached as **Exhibit 7**
28 is a photograph showing how dark it is in the garage from where the RV

1 was parked. It is highly unlikely the children would have been able to see
2 Jim and Minh, especially when Minh was hitting Jim's car and trying to
3 smash the ladder against his wall and floor as these occurred at the back
4 of the garage.

5 The children continue to be manipulated and coached by Minh and
6 used as pawns in her game to change custody. It is truly disturbing how
7 Minh is psychologically harming these children. Minh asserts that "Selena
8 refuses to go outside because she associates going outside with having to
9 go back to Jim." Jim does not believe this is true. If there is any truth to
10 this allegation, Minh has unfortunately done more harm to their children
11 than even Jim anticipated. Selena has typically been the most well
12 behaved at the exchanges, readily coming inside his home while the two
13 oldest stay in Minh's vehicle. Jim recently spoke to the children, after
14 Minh's counsel sent a letter stating Minh would allow Jim to have
15 supervised telephonic contact with the children for up to five (5) minutes
16 each on Mondays, Wednesdays, and Fridays. Exhibit 8, March 31, 2020
17 Letter from Fred Page. While Jim appreciates the ability to speak to his
18 children, such an offer is completely contrary to Minh's past actions and
19 likely only being offered for the purposes of attempting to show the Court
20 Minh's ability to facilitate the children's relationship with their father.

21 Minh's false allegations of abuse resulted in Jim being arrested, which
22 was a traumatic event for Jim who has never been arrested.² Minh also
23 obtained a Temporary Protection Order ("TPO") to prevent Jim from
24 seeing the children. Jim is not a violent person and has never abused Minh
25 or the children. Jim even raised concerns of Minh's methods of punishing
26

27 ² Minh contends that Jim had the Henderson Police Department call her
28 on the Saturday after he was arrested to bail him out of jail. Jim did no such thing.
Jim called his brother. It also does not make sense that the Henderson Police
Department would call Minh on Jim's behalf to ask that she bail him out.

1 the children at the evidentiary hearing because he did not agree with
2 corporal punishment. Minh raised no such concerns about Jim's methods
3 of punishment or any aggressive or abusive behavior during the parties'
4 marriage at the evidentiary hearing, but now wants the Court to believe
5 Jim has basically become a completely different person. Minh wants this
6 Court to believe that she—a person who is aggressive, angry, and
7 vindictive—is afraid of Jim all of a sudden.

8 **III. LEGAL ARGUMENT**

9 **A. The Court Should Deny Minh's Request to Extend the TPO and** 10 **Order the TPO be Dissolved**

11 NRS 33.020 provides:

12 If it appears to the satisfaction of the court from specific facts
13 shown by a verified application that an act of domestic violence
14 has occurred or there exists a threat of domestic violence, the
15 court may grant a temporary or extended order. A Court shall
16 only consider whether the act of domestic violence or the
17 threat thereof satisfies the requirements of NRS 33.018
18 without considering any other factor in its determination to
19 grant the temporary or extended order.

17 Domestic violence occurs when a person commits battery against the
18 person's spouse. NRS 33.018(1)(a). Minh has falsely alleged Jim
19 committed an act of battery against her, which led to her filing the police
20 report, Jim's arrest, and her being granted the TPO. Jim should have never
21 been arrested and the TPO should have never been granted. Minh
22 obtained the TPO by falsely reporting Jim pushed her during the March
23 20, 2020 incident in which she tried to take his kitesurf board from his
24 home. The audio and video recordings demonstrate Minh was the
25 aggressor and attacked Jim and his property in his garage. Minh is
26 requesting the Court extend the TPO for an indefinite period of time,
27 "until the criminal matter is resolved," "[t]o protect the integrity of the
28 criminal investigation and prosecution, and thereby protect Minh and the

1 children's best interests." Preventing Jim from having contact with his
2 children, who he has primary physical custody of, would only serve as a
3 grave miscarriage of justice given the false allegations upon which this
4 request relies. This would also allow Minh to continue to manipulate and
5 coach the children.

6 Minh's attempts at making it seem as if Jim has all of a sudden
7 become a violent person and the children are suddenly fearful of him are
8 completely baseless. Minh did not allege Jim was violent or abusive in any
9 way at any time prior to or at the evidentiary hearing. After Hannah ran
10 away, Hannah did not inform the police Jim had choked her by pulling her
11 purse or her collar in any way. The police spoke privately to Hannah
12 immediately after she ran away and after Jim had taken her cell phone
13 away from her as a consequence for her actions. The first time Minh even
14 made the allegation that Jim choked Hannah is in her Motion. In
15 addition, Minh claims that although March 20, 2020 is the first time she
16 went to the police, it "was not the first time Jim has been violent toward
17 her and battered her." Yet, Minh provides no examples of Jim's purported
18 past violence. That is because there are no examples. Jim is not a violent
19 person. Jim is not an angry person. Jim is not a resentful person. Minh,
20 on the contrary, is.

21 Minh has failed to demonstrate in her Motion that Jim is a threat to
22 the children's safety. Jim has not spoken to the children about the parties'
23 divorce or the matters being litigated. Jim will absolutely not speak to the
24 children about the March 20, 2020 incident. Jim does not even believe the
25 children actually witnessed Minh's rampage. As Minh has done before,
26 Jim is aware Minh likely relayed to the children her version of the incident
27 and the children are merely parroting what Minh told them. This Court
28 noted it received evidence at the evidentiary hearing that demonstrated

1 Minh had discussed the dispute with the parties' children and advised
2 them to discuss same with their father. Decision and Order, pg. 11, lines
3 18-27. This Court determined that Minh's dialog with the children "has
4 the potential to alienate the children from their father." Decision and
5 Order, pg. 12, lines 5-6. Jim believes Minh similarly discussed the March
6 20, 2020 incident with them when she stayed in her RV for ten (10)
7 minutes after finally leaving his garage. There is no evidence Jim would do
8 the same and speak to the children about these adult matters. Jim is more
9 concerned that the children resume therapy as soon as possible so that
10 they can receive the help they need in processing the last few weeks.

11 Given the audio and video recordings do not support Minh's
12 allegation that Jim committed domestic abuse or that there exists a
13 continued threat of domestic violence, this Court should deny Minh's
14 request to extend the TPO. It is apparent Minh is attempting to use the
15 TPO as a sword rather than a shield. There was no basis upon which the
16 TPO should have been granted and this Court should now dissolve it.

17 B. The Court Should Deny Minh's Request for Temporary Sole Legal
18 and Sole Physical Custody Until the Criminal Matter is Resolved and
19 Deny Minh's Request for an Evidentiary Hearing to Permanently
20 Modify Custody as Minh Has Failed to Demonstrate Adequate
21 Cause Pursuant to *Rooney v. Rooney* for This Court to Hold a Hearing

22 Pursuant to NRS 125C.0045(1)(a), in any action for determining the
23 custody of a minor child, the Court may "[d]uring the pendency of the
24 action, at the final hearing or at any time thereafter during the minority of
25 the child, make such an order for the custody, care, education,
26 maintenance and support of the minor child as appears in his or her best
27 interest." NRS 125C.0035(4) sets forth the factors the Court is to
28 consider in determining the children's best interest. This Court has
discretion to deny Minh's motion to modify custody without holding a
hearing based on the fact Minh has failed to demonstrate adequate cause

1 to hold a hearing. *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124
2 (1993).

3 'Adequate cause' requires something more than allegations
4 which, if proven, might permit inferences sufficient to establish
5 grounds for a custody change. 'Adequate cause' arises where
6 the moving party presents a prima facie case for modification.
7 To constitute a prima facie case it must be shown that: (1) the
8 facts alleged in the affidavits are relevant to the grounds for
9 modification; and (2) the evidence is not merely cumulative or
10 impeaching.

11 *Id.* at 543, 853 P.2d at 125 (citing *Roorda v. Roorda*, 25 Wash. App. 849,
12 611 P.2d 794, 796 (1980)). Minh has not presented a prima facie case for
13 modification as a majority of the "facts" alleged are false. Jim did not
14 commit any act of domestic violence and the children are not failing to
15 thrive in Jim's care.

16 More importantly, it would absolutely not serve the children's best
17 interest for Minh to be awarded primary physical custody permanently, or
18 even sole legal and sole physical custody temporarily. Pursuant to NRS
19 125C.0035(4), in determining the best interest of the minor child, the
20 Court shall consider and set forth its specific findings concerning, among
21 other things:

22 (a) *The wishes of the child if the child is of sufficient age and capacity to*
23 *form an intelligent preference as to his or her physical custody*

24 Hannah is eleven (11) years old, Matthew is nine (9) years old, and
25 Selena is six (6) years old. Although Hannah is the oldest, she appears to
26 be the child most affected by Minh's alienation and manipulation, and has
27 been exhibiting the most behavioral issues. Furthermore, this Court found
28 less than seven (7) months ago that "[n]one of the children are of sufficient
age to form a preference." Decision and Order, pg. 11, lines 1-4. Nothing
has changed in the past several months to suggest any of the children are

...

1 now of sufficient age and capacity to form an intelligent preference as to
2 their physical custody.

3 (b) *Any nomination of a guardian for the child by a parent*

4 Minh actually argues that because she has historically been the
5 primary caregiver for the children, Jim has nominated her to be the
6 primary caregiver. This argument is absurd and borderline comical. Minh
7 was given the choice to share joint physical custody with Jim and she
8 choose to move to California instead. Yet, Minh has the audacity to
9 accuse Jim of being a "disinterested" parent. Minh's decision to only have
10 limited visitation with her children, despite being given the opportunity to
11 share joint physical custody, demonstrates her nomination of Jim to be the
12 children's primary physical custodian.

13 Even when the parties previously shared joint physical custody, prior
14 to Minh choosing California over her children, the Court found that "both
15 parties are dedicated to raising their children" and "both parents have been
16 involved in managing the children's daily routines, sharing responsibilities
17 for supervision, guidance, and education." Decision and Order, pg. 10,
18 lines 5-21. This Court specifically found that Minh's "allegation that
19 James Vahey was a disengaged or neglectful parent, or that she was the
20 primary parent or the more suitable parent, was not credible, and was not
21 supported by sufficient proof." Decision and Order, pg. 10, lines 11-16.
22 The fact that Minh can assert to this Court with a straight face that Jim
23 nominated her to be the children's primary caregiver, after she specifically
24 denied her option to share joint physical custody, should demonstrate to
25 this Court how unreasonable Minh truly is.

26 . . .

27 . . .

28 . . .

1 (c) *Which parent is more likely to allow the child to have frequent*
2 *associations and a continuing relationship with the noncustodial parent*

3 Jim is the parent more likely to allow the children to have a frequent
4 and continuing relationship with the other parent, which this Court found
5 after hearing the testimony and receiving the evidence at the evidentiary
6 hearing in August and September 2019. Decision and Order, pg. 11, lines
7 11-13. The Court raised its concerns that Minh's negative attitude toward
8 Jim based on his refusal to allow her to move to California has caused her
9 to negatively influence the children's relationship with Jim. Decision and
10 Order, pg. 11, lines 13-17. The Court noted it received evidence
11 demonstrating Minh had discussed the dispute with the parties' children
12 and advised them to discuss same with their father. Decision and Order,
13 pg. 11, lines 18-27. The Court determined that Minh's dialog with the
14 children "has the potential to alienate the children from their father."
15 Decision and Order, pg. 12, lines 5-6. The Court further stated it "is
16 concerned that Minh Luong's decision to live in California is intended to
17 create a distance between the parties, and to create a distance between the
18 children and their father, to avoid the sometimes tedious and inconvenient
19 aspects of co-parenting." Decision and Order, pg. 19, lines 3-8. The Court
20 found that Minh's "intention to move is, in part, to deprive [Jim] of [his]
21 parenting time." Decision and Order, pg. 18, lines 13-15.

22 As discussed in detail in his Emergency Motion, the Court's concerns
23 have been realized. Minh has continued to refuse to speak to Jim, at least
24 civilly, in the children's presence. When Minh does communicate with
25 Jim, she disparages him in front of the children. On March 1, 2020, in
26 front of Matthew and Hannah, Minh told Jim he was beneath her, beneath
27 dirt, and that she did not have to speak to him. Emergency Motion,
28 **Exhibit 1**. With Hannah and Matthew still present, Minh stated to Jim:

1 "You're selfish. You selfish SOB. I don't want to look at your face. I
2 don't want to see you. Do you know that? You're just beneath dirt.
3 Unbelievable." Emergency Motion, Exhibit 1. Minh even refuses to sit
4 with Jim at school events for the children. During Selena's Christmas
5 performance, after Jim sat down next to Hannah and Minh, Minh took
6 Hannah and moved to a different area far from Jim. Minh has no intent
7 on facilitating the children's relationship with Jim.

8 Minh does not help the children understand they must go with Jim
9 at the custodial exchanges. Rather, Minh is smug when the children
10 misbehave. Minh comforts the children as if she is helpless to change the
11 custodial timeshare, even though this is the custodial timeshare Minh
12 chose. Minh also has the children keep secrets from Jim, teaching them an
13 "us" versus "him" mentality. When Jim asks the children about their
14 weekend with their mother, the children are secretive and uncomfortable.

15 Based on the foregoing, Minh is not the parent more likely to allow
16 the children to have a frequent and continuing relationship with the other
17 parent. Minh shows her disdain for Jim in front of the children.

18 (d) *The level of conflict between the parents*

19 After the evidentiary hearing, the Court found the parties had
20 moderate conflict, but communicated well enough to address the children's
21 daily needs. Decision and Order, pg. 12, line 21, to pg. 13, line 4. The
22 Court noted Minh's insistence on communicating only via text message
23 and Jim's testimony that Minh does not speak to him verbally, even in
24 front of the children. Decision and Order, pg. 12, lines 25-28. The parties
25 have continued to communicate primarily via text message as Minh still
26 refuses to have any cordial in person communications with Jim. When
27 Minh does communicate with Jim, she disparages him in front of the
28 children, as detailed in the previous section and Jim's Emergency Motion.

1 The conflict has now increased even further as a result of Minh attacking
2 Jim and damaging his property in his garage, and then making a false
3 allegations of domestic violence to the Henderson Police Department
4 resulting in Jim's arrest. Minh's request that the TPO be extended for an
5 indefinite period of time, until the criminal case is resolved, further
6 demonstrates the level of conflict as she believes it is appropriate to
7 prevent Jim from seeing his children and prevent him from communicating
8 with her regarding their well-being.

9 (c) *The ability of the parents to cooperate to meet the needs of the child*

10 The Court found the parents have the ability to cooperate to meet
11 the needs of the children despite Minh's testimony that she cannot co-
12 parent with Jim. Decision and Order, pg. 13, lines 11-17. On March 1,
13 2020, Minh would not even communicate with Jim regarding whether the
14 children had eaten dinner. When Jim asked whether the children had
15 eaten, Minh replied: "Don't talk to me." Emergency Motion, Exhibit 1.
16 Hannah and Matthew were present.

17 Minh cannot even cooperate with Jim when it is solely for the
18 children's benefit. For instance, Jim described in his Emergency Motion
19 that he provided the children's ski gear to Minh for a ski trip she planned
20 with the children. When Jim asked Minh to return the ski gear because he
21 had a ski stip planned with the children, his brother, and his nephew,
22 Minh refused to do so. Jim ended up having to purchase new ski gear for
23 the children. Minh also demonstrated her inability to cooperate to meet
24 the children's needs when she informed Jim, within a week of this Court
25 entering its Decision and Order, that she would no longer support the
26 children's involvement in the extracurricular activities in which they were
27 enrolled at that time and would not contribute to the cost. Minh also has
28 not financially supported the children's private school education as she

1 refuses to reimburse Jim for one-half the cost, as ordered by the Court. In
2 addition, Minh refuses to pay for one-half of the children's health
3 insurance and one-half of the expenses not covered by health insurance.

4 Minh has further failed to cooperate to meet the children's needs
5 when it comes to the therapy the parties agreed the children needed in July
6 2019. Minh actually tries to use the children's participation in therapy as
7 a reason custody should now be modified, claiming "[t]he children are
8 seeing a counselor because they are living with Jim." The parties' children
9 have been participating in therapy since July 2019, when the parties agreed
10 the children needed therapy to cope with their divorce. Minh's prior
11 counsel even drafted the Stipulation and Order Appointing Dr. Michelle
12 Gravley as Children's Therapist, filed on July 30, 2019. The children are
13 not in therapy because they are living with Jim, and why Minh would
14 make such an allegation knowing the children began therapy when the
15 parties were sharing joint physical custody is unknown. Minh is now
16 refusing to take the children to therapy and informed Dr. Gravley that she
17 will not pay for one-half the cost of such therapy. Although Jim agrees the
18 children need a new therapist who specializes in alienation and
19 manipulation, such as Bree Mullins, he does not agree that the children
20 should cease attending therapy with Dr. Gravley until a new therapist is
21 chosen.

22 (f) *The mental and physical health of the parents*

23 Jim has valid concerns for Minh's mental health and believes her
24 mental health may be the underlying cause of Minh's recent aggressive
25 actions and her inability to coparent with him. The fact that Minh has
26 compromised the children's psychological health for her own selfish needs
27 is extremely concerning. This is why Jim has requested that Minh be
28 required to participate in therapy with the children.

1 (g) *The physical, developmental, and emotional needs of the child*

2 Although this Court found in September 2019 that the children's
3 physical, developmental, and emotional needs are being met, Jim is
4 concerned Minh's behavior toward him in front of the children and her
5 manipulation and alienation of the children has psychologically harmed
6 the children. Apart from the emotional harm Minh's actions have on the
7 children, Jim has been meeting the children's physical, developmental, and
8 emotional needs. Jim has continued to encourage the children's
9 participation in the extracurricular activities they enjoy, despite Minh's
10 withdraw of her approval and financial support of same.

11 Despite Minh's claims that the children's grades have dramatically
12 declined, it is apparent based on a comparison of the children's grades
13 when the parties shared joint physical custody to the children's grades for
14 the first semester of the 2019-2020 school year, in which Jim had primary
15 physical custody, that the children's grades have not dramatically declined.
16 Matthew's grades have even improved. Hannah has historically struggled
17 a bit more in school than Matthew, but she has nonetheless maintained
18 similar grades. Selena does not earn grades yet, but has earned satisfactory
19 marks in nearly all her classes. Exhibit 9, Challenger Achievement Report
20 for Selena Vahey.

21 (h) *The nature of the relationship of the child with each parent*

22 Jim is very closely bonded with the children. Minh only witnesses
23 the children not wanting to leave her at custodial exchanges to support her
24 conclusion that the children's relationship with Jim is poor. This could not
25 be further from the truth. The children typically return to their normal,
26 happy, well-behaved demeanor within approximately twelve (12) hours of
27 being in Jim's care. The children are also closely bonded to Minh, which
28 . . .

1 is why they have struggled with the custodial exchanges and adjusting to
2 spending much less time with their mother.

3 (i) *The ability of the child to maintain a relationship with any sibling*
4 Not applicable.

5 (j) *Any history of parental abuse or neglect of the child or a sibling of the*
6 *child*

7 There is no history of parental abuse or neglect of the children
8 although Jim previously raised his concerns for Minh's methods of corporal
9 punishment. This Court found that "neither party proved parental abuse
10 or neglect of the children." Decision and Order, pg. 14, lines 13-15. Jim
11 denies ever choking Hannah by pulling on her purse or the collar of her
12 shirt, and did not twist Selena's arm during a custodial exchange, as Minh
13 alleges. It is significant that Minh never before raised any concerns about
14 Jim being abusive to the children, but is now doing so because she believes
15 making such allegations will support her request for a modification of the
16 custody order this Court entered less than seven (7) months ago.

17 (k) *Whether either parent or any other person seeking physical custody has*
18 *engaged in an act of domestic violence against the child, a parent of the*
child or any other person residing with the child

19 As discussed in detail in his Emergency Motion and above, Jim has
20 never committed an act of domestic violence against Minh. Minh has
21 simply made such false allegations because she believes doing so will
22 support her plan to modify this Court's custodial orders.

23 (l) *Whether either parent or any other person seeking physical custody has*
24 *committed any act of abduction against the child or any other child*

25 Not applicable.

26 Based on the foregoing, it would not be in the children's best interest
27 for Minh to be awarded temporary sole legal and sole physical custody or
28 for the Court to grant Minh's request for an evidentiary hearing on

1 modification of the child custody orders the Court entered less than seven
2 (7) months ago.

3 C. This Court Should Deny Minh's Request for the Children to Be
4 Interviewed

5 Minh requests the Court allow the children to be "interviewed as to
6 what they like and dislike at each house, how they rate their relationship
7 with each parent, and how they are disciplined at each residence." Minh
8 contends the children should be interviewed to "find out why Hannah and
9 Matthew are running away, and why the children's grades are declining."
10 As set forth above, Hannah and Matthew have run away once from Jim's
11 home in the past seven (7) months. The reason they ran away is
12 clear—they miss their mother, who chose to move to California without
13 them. The children running away was an anomaly, and not a recurring
14 event. The children's grades are also not declining, and Minh has failed to
15 provide sufficient evidence to show anything to the contrary. Even the
16 exhibits Minh attached to her Motion demonstrate the Hannah is
17 receiving similar grades to when the parties were sharing joint physical
18 custody, and Matthew's grades have improved. This request is an attempt
19 to have the children, who are not of sufficient age or capacity to form an
20 intelligent preference as to their physical custody as this Court found in its
21 Decision and Order, choose between their mother and father.

22 Minh made a similar request in June 2019 when she filed
23 Defendant's Motion for Order Permitting Minor Children to Testify at
24 Evidentiary Hearing. The Court properly denied her motion then, and
25 should do so now. In opposing Minh's motion in July 2019, Jim raised
26 similar concerns that he continues to have regarding Minh's manipulation,
27 alienation, and coaching of the children. The children are young and do
28 not have the ability to distinguish between truth and falsehood regarding

1 the information their mother tells them. Hannah is only eleven (11) years
2 old, Matthew is nine (9) years old, and Selena is six (6) years old. The
3 children are too young to receive just impressions of whether they are
4 being influenced, manipulated, and coached, and possess the ability to
5 relate such impressions to the Court.

6 **IV. CONCLUSION**

7 Jim respectfully requests the Court deny Minh's Motion in its
8 entirety.

9 DATED this 10th day of April, 2020.

10 THE DICKERSON
11 KARACSONYI LAW GROUP

12 By: *s/ Sabrina M. Dolson*
13 ROBERT P. DICKERSON, ESQ.
14 Nevada Bar No. 000945
15 SABRINA M. DOLSON, ESQ.
16 Nevada Bar No. 013105
17 1745 Village Center Circle
18 Las Vegas, Nevada 89134
19 Attorneys for Plaintiff
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1 DECLARATION OF JAMES W. VAHEY

2 I, JAMES W. VAHEY, declare under penalty of perjury under the law
3 of the State of Nevada that the following statement is true and correct:

4 1. I am over the age of 18 years. I am the Plaintiff in this action.
5 I have personal knowledge of the facts contained herein, and I am
6 competent to testify thereto.

7 2. I am making this declaration in support of my OPPOSITION
8 TO DEFENDANT'S MOTION TO EXTEND TEMPORARY
9 PROTECTIVE ORDER T-20-204489-T, TO CHANGE CUSTODY ON
10 AN INTERIM BASIS, FOR AN INTERVIEW OF THE MINOR
11 CHILDREN AND TO CHANGE CUSTODY ("Opposition"). I have read
12 the Opposition prepared by my counsel and swear, to the best of my
13 knowledge, that the facts as set forth therein are true and accurate, save
14 and except any fact stated upon information and belief, and as to such
15 facts I believe them to be true. I hereby reaffirm said facts as if set forth
16 fully herein to the extent that they are not recited herein. If called upon
17 by this Court, I will testify as to my personal knowledge of the truth and
18 accuracy of the statements contained therein.

19 I, JAMES W. VAHEY, declare under penalty of perjury under the
20 law of the State of Nevada that the foregoing is true and correct.

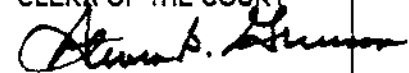
21 Executed on 4-10-2020

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23 
24 JAMES W. VAHEY

EXHIBIT 10

EXHIBIT 10

EXHIBIT 10



1 **RPLY**
2 **THE DICKERSON KARACSONYI LAW GROUP**
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 JAMES W. VAHEY,
11 Plaintiff,

10 CASE NO. D-18-581444-D
11 DEPT NO. II

12 v.

12 Oral Argument Requested: Yes

13 MINH NGUYET LUONG,
14 Defendant.

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PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO
PLAINTIFF'S EMERGENCY MOTION FOR IMMEDIATE
RETURN OF THE CHILDREN, DISSOLUTION OF TPO,
MODIFICATION OF CHILD CUSTODY, APPOINTMENT OF A
NEW THERAPIST FOR THE CHILDREN, AN ORDER TO SHOW
CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN
CONTEMPT, AND TO RESOLVE OTHER PARENT CHILD
ISSUES

21 COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and
22 through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA
23 M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW
24 GROUP, and submits Plaintiff's Reply to Defendant's Opposition to
25 Plaintiff's Emergency Motion for Immediate Return of the Children,
26 Dissolution of TPO, Modification of Child Custody, Appointment of a
27 New Therapist for the Children, an Order to Show Cause Why Defendant

1 Should Not Be Held in Contempt, and to Resolve Other Parent Child
2 Issues ("Reply").

3 This Reply is made and based upon the following Memorandum of
4 Points and Authorities, the Declaration of Jim attached hereto, the
5 attached exhibits, all papers and pleadings on file herein, as well as oral
6 argument of counsel as may be permitted at the hearing on this matter.

7 DATED this 15th day of April, 2020.

8 THE DICKERSON
9 KARACSONYI LAW GROUP

10 By s. Sabrina M. Dolson
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As of the date of this filing, Jim has filed and served his Emergency
4 Motion for Immediate Return of the Children, Dissolution of TPO,
5 Modification of Child Custody, Appointment of a New Therapist for the
6 Children, an Order to Show Cause Why Defendant Should Not Be Held
7 in Contempt, and to Resolve Other Parent Child Issues ("Emergency
8 Motion"), filed March 27, 2020,¹ and his Opposition to Defendant's
9 Motion to Extend Temporary Protective Order T-20-204489-T, to Change
10 Custody on an Interim Basis, for an Interview of the Minor Children and
11 to Change Custody ("Opposition to Motion to Extend TPO"), filed on
12 April 10, 2020. These documents address many of the facts addressed in
13 Defendant's, MINH NGUYET LUONG ("Minh"), Opposition to Jim's
14 Emergency Motion, which was not filed as a separate Opposition, but was
15 attached as an exhibit to Defendant's Response to Plaintiff's Ex Parte
16 Application for an Order to Show Cause. Accordingly, this Reply will
17 focus on facts and issues not previously addressed.

18 **II. FACTUAL STATEMENT**

19 In her Opposition to Jim's Emergency Motion, Minh essentially
20 admits that she refuses to communicate in a cordial manner with Jim in
21 front of the children. In responding to Jim's claim that she refuses to make

22
23 ¹ In Minh's Response to Plaintiff's Ex Parte Application for an Order to
24 Show Cause, filed on March 30, 2020, Minh accuses Jim of engaging in "litigation by
25 ambush." It appears Minh believes Jim did not file his Emergency Motion separately,
26 but rather attached it as an exhibit to his Ex Parte Application for an Order to Show
27 Cause. This is not the case. Attached as **Exhibit 1** is the Notification of Service
28 showing Jim's Emergency Motion was served on Minh's counsel on March 27, 2020
prior to the filing of his Ex Parte Application for Order to Show Cause. Jim's counsel,
Sabrina Dolson, also emailed Minh's counsel, Fred Page, on March 27, 2020, the day
the Emergency Motion was filed and served, informing him again that the Emergency
Motion had been filed and requesting how Mr. Page would like to be sent the audio
and video recordings attached as exhibits to the Emergency Motion. **Exhibit 2**, March
27, 2020 Email from Sabrina M. Dolson, Esq. to Fred Page, Esq.

1 eye contact with him at custodial exchanges, she simply replies "[e]ye
2 contact is irrelevant." Minh's Opposition, pg. 4, line 16. Minh then
3 proceeds to justify her refusal to cordially communicate with Jim in front
4 of the children by arguing that Jim created the problem by "betraying the
5 agreement he and Minh had to move to California."² Minh basically
6 admits that she has no issue behaving in such a manner in front of the
7 children because Jim deserves it. Minh's childish behavior does not go
8 unnoticed by the children. The children mimic Minh's behavior and
9 become awkward at exchanges, as if they feel uncomfortable
10 communicating with Jim when Minh is present. This is extremely unfair
11 to the children who witness the discord between Jim and Minh, and feel
12 as if they must choose sides.

13 Minh also claims there is no contact at the custodial exchanges
14 because Jim refuses to assist Minh with getting the children out of her
15 vehicle and then goes back inside the house to watch television. This is
16 untrue. Jim makes multiple attempts to coax the children to come inside.
17 When Jim goes inside his house, it is because one or more of the children,
18 usually Selena and sometimes Matthew, have come inside and he needs to
19 care for them and cook dinner. Jim asks Minh to help with whichever
20 child or children are misbehaving, most often Hannah, but usually receives
21 no assistance from Minh. Jim has returned to Minh's vehicle on several
22 occasions to find Minh comforting the children or text messaging.

23

24

25 ² Minh continues to claim the parties had an agreement to move to
26 California despite evidence and testimony being presented to the Court showing this
27 was not true. Attached as **Exhibit 3** are the checks Minh wrote as earnest money
28 deposits on two homes in California. The most recent one is dated April 24, 2017,
approximately four (4) months before Minh purchased the Irvine home. Despite Minh
admitting she purchased the Irvine home after she became angry at Jim, concluded he
did not care for her, and she would move to California with or without him, Minh now
changes her story and claims she purchased the Irvine home to be a vacation home
until the parties retired. Minh's Opposition, pg. 29, line 25, to pg. 30, line 5.

1 Minh even mischaracterizes the March 1, 2020 exchange in which
2 Jim explained he had waited over an hour and a half for Matthew and
3 Hannah to get out of Minh's vehicle. Minh falsely contends that Jim did
4 nothing to help get the children out of her vehicle for this hour and a half
5 while she "was struggling to get the children out of her vehicle." Jim even
6 stated in his Emergency Motion that during this exchange, he had tried to
7 coax Hannah and Matthew to leave Minh's RV five (5) separate times over
8 the period of an hour and a half with no assistance from Minh. The first
9 time Jim went to Minh's vehicle to get the children after she arrived, he
10 brought Selena in with no issues. The first thing Minh asked when Jim
11 opened the door of her RV is "can I get my gear?" Jim replied yes, and
12 then proceeded to help Selena out of the RV with her belongings. Selena
13 was extremely comfortable going with Jim and began telling him about her
14 weekend. After Jim brought Selena in, he told her to pick a movie so they
15 could have dinner and watch a movie, and then went back to Minh's RV
16 to get Hannah and Matthew.

17 Upon returning to Minh's RV, Minh again immediately asked for her
18 gear. Jim told her he would get it as soon as the children were inside as
19 that was the most important thing. Minh replied to Jim that she did not
20 have control of Hannah and Matthew, but he had control of her gear,
21 which she needed. Wanting to avoid confrontation with Minh, Jim then
22 grabbed the bag of Minh's windsurf gear and other belongings she had
23 requested and gave it to her. Jim asked Minh if she had plans to take the
24 children windsurfing, and stated that would be a great idea as it is a lot of
25 fun. Minh did not respond to Jim's question. Instead, Minh asked Jim
26 where the frame for a painting he had given her was. Minh was referring
27 to a frame that was given to Jim in exchange for two surgeries he
28 performed for a patient. Jim told Minh he worked hard for that frame and

1 was not going to give it to her. Minh then told Jim she was going to come
2 back to his house and get everything for which she paid. Matthew and
3 Hannah were still in the RV at this time listening to Minh argue over
4 possessions. Jim tried to tell Minh she was harming the children by
5 arguing in front of them, but she did not care. Jim again tried to ask
6 Hannah and Matthew to come in, but they ignored him. Jim told Minh
7 he had to go back inside his home to care for Selena.

8 The second time Jim attempted to coax Hannah and Matthew out
9 of Minh's vehicle is when Minh and Jim have the exchange transcribed in
10 his Emergency Motion. This is when Jim asked Minh if she was helping
11 to bring the children in and Minh responded, "You are beneath me. I
12 don't need to talk to you." Emergency Motion, Exhibit 1. This is also
13 when Minh refused to communicate with Jim regarding whether the
14 children had eaten, telling him: "Don't talk to me." Emergency Motion,
15 Exhibit 1. During this encounter, Minh continued to disparage Jim, and
16 told him he is "a low life," a "selfish SOB," and "beneath dirt." Emergency
17 Motion, Exhibit 1. Minh does not deny making these comments to Jim
18 and actually states that "after [Jim] abandoned Minh to leave her to
19 struggle with the children in the RV for an hour and a half, by herself, that
20 she pointed out that he is 'beneath her[,] 'a low life,' and 'beneath her.'
21 Minh's Opposition, pg. 5, lines 18-22.

22 Minh cannot even admit, after being recorded making such
23 demeaning and derogatory remarks, that she lost her temper and acted
24 inappropriately in front of the children. Instead, Minh stands by her
25 actions, characterizing her comments as merely pointing out what must be
26 the truth because it is what she believes. Despite her embarrassing
27 outburst in front of the children, Minh commends herself, stating her
28 "restraint after struggling in this situation for an hour and a half after

1 receiving no help from Jim and being taunted should be seen as being
2 remarkable." Minh's Opposition, pg. 6, lines 18-22. Minh even has the
3 audacity to contend that Jim asking Minh whether the children have eaten
4 is him goading her "for the express purpose of trying to provoke a reaction"
5 because she told him not to speak to her. Minh's Opposition, pg. 6, lines
6 3-7. Again, Minh sees no wrong in her refusal to communicate with Jim
7 regarding the children's well-being.

8 On Jim's third attempt, he went out to Minh's RV and told Minh
9 that the children had school the following day in hopes she would help him
10 get the children inside. Minh replied to Jim, "get them in." Jim asked
11 Minh to talk to Hannah and Matthew, and she told Jim, "you talk to
12 them." While Jim again tried to coax Matthew and Hannah to come
13 inside, Minh got out of her RV and tried to enter Jim's home. Jim told
14 Minh not to go inside and Minh replied she needed to get the shoes Selena
15 was wearing because she purchased them. After Jim asked Minh not to go
16 inside his house, Minh started calling for Selena from the door. Jim told
17 Minh not to use Selena to take things from his home. After the parties
18 briefly argued about the children's clothing, Minh became upset and told
19 Jim he was a piece of shit. Minh finally left Jim's front door and went back
20 to the RV. Jim again tried to talk to Hannah and Matthew to no avail.
21 Jim told Minh he had to take care of Selena and asked Minh to please
22 bring Hannah and Matthew in.

23 Jim made two more attempts to coax Hannah and Matthew out of
24 Minh's RV. This entire custodial exchange took approximately an hour
25 and a half before Hannah and Matthew came inside Jim's home. Contrary
26 to Minh's allegations, Jim did not refuse to help Minh while she struggled
27 to get the children out of her vehicle, as is demonstrated above. Jim had
28 to take care of Selena, who readily went to him, while cooking dinner and

1 also trying to make several trips to Minh's RV to talk to Hannah and
2 Matthew about coming inside. And, yet, Minh asserts that "[i]t should be
3 distressing for everyone to read that Jim admits that he smugly watched
4 the mother of their children struggle for an hour and a half of trying to get
5 children who are fighting her and who do not want to return [to] him."
6 Minh describes Jim as acting "completely abhorrent" and having a
7 "complete disregard for Minh (and the children)." This is how
8 unreasonable Minh is, and how much her memories and/or representations
9 are distorted and not factual.

10 Minh claims there was one instance in which she called the police to
11 help facilitate the custodial exchange because Jim was inside watching
12 football. As demonstrated above, Jim does not simply ignore Minh and the
13 children at the custodial exchanges. He tries talking to whichever child or
14 children are refusing to come in while at the same time caring for the child
15 or children that have come in. Jim did not tell any police officer that he
16 would not get the children from Minh's vehicle. If anything, Jim may have
17 told a police officer he did not feel comfortable going into Minh's RV to
18 physically take the children out, but Jim has never refused to help talk to
19 the children about coming inside his home. Jim believes Minh has more
20 of an effect convincing the children they should leave her RV because they
21 are refusing to go to Jim to appease Minh.

22 Minh includes text messages she sent to Jim during one exchange in
23 which she claims she attempted "in vain" to get his assistance with the
24 children. Minh claims that "[i]f Jim were actually giving an accurate
25 account, there would not be messages from Minh asking Jim to come out
26 and help with the children." However, it is evident from the time stamps
27 of these text messages, which Minh did not include in her Opposition, that
28 Minh sent them minutes apart to make it appear as if she was requesting

1 Jim's help for a long period of time. In reality, from the time Minh sent
2 the text message stating "Please come and help with the kids. We are
3 here," to the time Minh sent the text message stating "What do you want
4 to do now? My uncle just passed away. I need to leave to come over and
5 visit my aunt and cousins," a total of nineteen (19) minutes had passed.
6 Yet, Minh sent Jim nine (9) text messages to make it appear as if he was
7 ignoring her. **Exhibit 4.** Jim does not recall this particular custodial
8 exchange or why there are no text messages from him, but Jim is positive
9 he has helped Minh get the children out of her vehicle at every custodial
10 exchange. At most custodial exchanges, at least one child readily comes
11 inside so Jim may have been attending to one or more children at the time.

12 Minh has also sent text messages to Jim when he is in the process of
13 trying to get the children inside. This is even evident from the text
14 messages Minh references in her Opposition, which were sent on March 1,
15 2020:

16 Minh: I am taking care of the kids. You haven't even
been out here to help me.

17 Jim: I've been out there four times. And, you
18 wrote and sent that latest text while I was
standing out there for the fourth time.

19
20 Minh's Opposition, pg. 8, lines 12-15.

21 Minh agrees with Jim that the children's behavior at custodial
22 exchanges is concerning, but believes the children are only acting out
23 because they must not want to be with Jim. Minh cannot even fathom
24 that the children may be acting out because they only see their mother a
25 few days every month when they previously had both parents involved in
26 their every day lives. The children miss their mother and feel guilty she
27 left them. The children are also made to feel as if they are choosing sides
28 when they leave Minh. When they leave Jim, they are comfortable

1 knowing he wants them to enjoy their time with Minh and he will not be
2 disappointed to see them happily go to Minh. It is no surprise the children
3 have no issue going to Minh when it is her custodial timeshare when they
4 spend such little time with her. The only reason the children count the
5 days until they see Minh is because she constantly tells them how many
6 days there are until she will see them. Jim discussed this with Dr. Gravley,
7 who thought it was odd even Selena, who was only five (5) at the time,
8 knew the number of days until Minh had visitation again. The children do
9 not count the days on their own. Minh constantly reminds them.

10 In response to the December 17, 2019 incident in which the children
11 ran away, Minh admits she called her attorney and the guard station twice
12 before she called Jim. Minh's Opposition, pg. 21, lines 17-27. When the
13 parties attended Selena's Christmas program later that same day, Minh
14 claims her moving with Hannah to a different part of the bleachers was
15 justified because the children "seemed to be very distressed" and Jim was
16 "rude, hostile, accusatory, and . . . lied to the Court about their agreement
17 to move to California." Minh's Opposition, pg. 23, lines 9-17. How
18 Minh's warped perception of the parties having an "agreement" to move
19 to California is relevant to Minh's ability to co-parent for the benefit of the
20 children is unknown. Yet, this seems logical to Minh. Minh then asserts
21 this is when Hannah first informed her that Jim choked her by pulling on
22 her purse or the collar of her shirt. Minh's Opposition, pg. 23, line 25, to
23 pg. 26, line 4. If this were true, there is no doubt Minh would have been
24 up in arms and informed her counsel immediately. Yet, her counsel makes
25 no mention of this alleged choking in his December 19, 2019 letter to
26 Jim's counsel addressing the December 17, 2019 incident.

27 Regarding the confusion surrounding Spring Break, Minh contends
28 she did not know Jim had confused the dates Spring Break was

1 rescheduled. Jim readily admitted he mistakenly believed Spring Break was
2 only moved up one week when in reality it had been moved up two weeks.
3 Unlike Minh, Jim admits when he is wrong. Despite her claims, Minh was
4 well aware of Jim's mistake, which was clearly evident when he asked her
5 if she would be staying in Nevada for what he believed was her weekend
6 visitation. Rather than correct Jim and inform him she was taking the
7 children to California for the Spring Break holiday, Minh allowed Jim to
8 believe she was staying in Nevada with the children by responding she
9 would be complying with the Court's order. Jim thanked Minh for what
10 he believed was a straight answer given he had clearly referenced her
11 weekend visitation in Nevada and not Spring Break. Minh's answer
12 turned out not be, which, unfortunately, is not surprising. Nevertheless,
13 what this exchange demonstrates is that under normal circumstances most
14 parents would co-parent and communicate to clear up any confusion, but
15 Jim does not have that luxury. Minh tries to use even the slightest
16 mistakes to make Jim out to be a bad parent, stating that because Jim
17 confused the dates of Spring Break, he must not communicate with his
18 children. Such a conclusion is illogical.

19 Minh asserts she was not required to return the children's ski gear
20 Jim provided to her because she determined the ski clothing no longer fit
21 the children. If this is true, Minh could have simply returned the ski gear
22 to Jim for him to determine whether the younger children could use the
23 gear the older children had outgrown. Minh did not even inform Jim that
24 the reason she was refusing to return the children's ski gear was because it
25 did not fit. Jim and Minh exchanged text messages regarding the children's
26 ski gear from January 26–28, 2020. Exhibit 5, Text Messages Exchanged
27 January 26–28, 2020. The following are the responses Jim received from
28 Minh regarding why she would not return the children's ski gear:

1 *January 26, 2020

2 Jim: We'll be going skiing before your next trip.
3 Please get their ski clothes to me.

4 *No response from Minh

5 ...

6 *January 27, 2020

7 Jim: Please bring the kids' ski gear tomorrow to
8 Dr. Grayley's. They need it for a ski trip were
 taking with Ed and Jason.

9 Minh: Here are a few personal items I need returned
10 to me. Some I have asked for months and
11 have been ignored: painting above fire place,
12 red sleeping bag that you took to use at Zion
 with the kids, large multi room tent and small
 one person tent including all the kids clothes
 that have been accumulating at your house
 since September.

13 *January 28, 2020

14 Jim: Please bring their ski clothes tonight. They
15 need them for our skip trip.

16 Minh: Please bring all the items I have requested.

17 Minh did not inform Jim the ski gear did not fit the children. She tried to
18 use it to obtain items she wanted from Jim's home.³

19 Minh states it "strains credulity" that Jim spent nearly \$1,000 to
20 purchase new ski gear for the children to replace the ski gear she would not
21 return. Minh's Opposition, pg. 14, lines 13-20. Attached as **Exhibit 6** are
22 photographs of the ski gear Jim provided to Minh. Contrary to Minh's
23 assertions, the ski gear did not only include jackets, pants, and gloves. In

24
25 ³ Minh includes a footnote in her Opposition stating she believes Jim was
26 unhappy the children snow boarded with her while in Brianhead. Minh's Opposition,
27 pg. 14 n.9. Jim is unsure why Minh believes whether the children skied or snow
28 boarded would matter to him. Needless to say, Jim was not unhappy to learn the
 children snow boarded with Minh. Jim skis and snow boards and has actually snow
 boarded almost exclusively the past four years. It has always been the parties' intention
 to teach the children how to both ski and snow board.

1 addition to jackets, pants, and gloves for each of their three children, Jim
2 also provided boots, beanies, helmets, and goggles for each of the three
3 children. It is completely unreasonable for Minh to claim that she did not
4 return all of this ski gear when only a few items no longer fit the children.
5 Minh simply did not return the children's ski gear because she is angry at
6 Jim, and wanted to hold it hostage to make Jim give her more items from
7 his home she claims are hers. Minh cares more about her possessions than
8 she does about ensuring the children have their ski gear.

9 Minh unreasonably asserts that when Jim asks the children about
10 their weekend with their mother, including what they did and where they
11 went, he is interrogating the children to their detriment. Minh's
12 Opposition, pg. 14, line 21, to pg. 15, line 4. Parents are allowed to
13 discuss how their children's weekend was without it being an interrogation.
14 Jim certainly does not grill the children and try to obtain information from
15 them to use against Minh. Jim genuinely cares about how the children
16 spent their weekend and wants to hear what fun things they did with their
17 mother. Jim is not even sure why Minh believes where she and the
18 children spent their weekend or what they did is information he should not
19 know. For most divorced or separated parents, this would not even be an
20 issue. However, because Minh directs the children to keep where they go
21 and what they do a secret from Jim, it suddenly becomes an interrogation
22 for Jim to ask the children how their weekend was.

23 Minh contends that as long as she spends her weekend visitation
24 anywhere in the state of Nevada, whether it be in another city hundreds
25 of miles away or in Las Vegas, she is essentially never required to provide
26 an itinerary to Jim pursuant to the Court's Findings of Fact, Conclusions
27 of Law, Decision and Order ("Decision and Order"), entered September
28 20, 2019. Minh's Opposition, pg. 15, lines 9-23. Minh claims that the

1 Decision and Order only provides that “[t]he parent **vacationing** with the
2 minor children shall provide the other parent with a travel itinerary”
3 Pg. 19, lines 16-20 (emphasis added). Minh argues that because the
4 Decision and Order does not provide specified vacation time to either
5 party, only “holiday” time, Minh is never required to provide Jim an
6 itinerary. Minh’s Opposition, pg. 15, lines 9-23. Minh claims the holidays
7 and her visitation set forth in the Decision and Order are not “vacations”
8 regardless of where Minh takes the children. This is yet another example
9 of the unreasonableness Jim has to deal with on a daily basis—difficulty co-
10 parenting because Minh uses semantics to avoid complying with the spirit
11 of the Decision and Order, which is to require the parents to communicate
12 and co-parent for the children’s benefit. If this is how Minh wishes to
13 behave, it may be necessary for the Court to specifically order that if either
14 party will not be spending their custodial timeshare at their homes in
15 Nevada or Minh’s home in California, then the party is required to provide
16 the other parent with the same type of itinerary as when “vacationing.”

17 Minh acknowledges she will not reimburse Jim directly for one-half
18 ($\frac{1}{2}$) the cost of the children’s private school tuition. Minh will only
19 contribute to the children’s private school tuition if she can pay the school
20 directly. Jim inquired into whether the parties would be able to each have
21 one-half ($\frac{1}{2}$) the cost of the children’s tuition automatically withdrawn
22 from their bank accounts each month, but the school system will only
23 allow an automatic payment from one account. Minh includes in her
24 Opposition an email she sent to Jim on January 11, 2020 offering to pay
25 the school directly and claims “Jim has simply ignored Minh’s multiple
26 requests and no [sic] claims that Minh is violating the Court’s orders.”
27 Minh’s Opposition, pg. 18, lines 19-25. Jim sent Minh an email on
28 January 18, 2020, stating: “You could send a one time on line payment to

1 the school for your half.” Emergency Motion, Exhibit 7. On January 22,
2 2020, Minh sent an email to Jim, stating: “Like I said multiple times before
3 in my emails, I will make the payments directly to the school. I need
4 documents from the school of the amount and the break down for each
5 items, FROM THE SCHOOL.” Exhibit 7, Emails Exchanged Between
6 Minh and Jim on January 22 and 24, 2020. Jim replied on January 24,
7 2020: “Please contact the school for whatever you need and whatever
8 payment arrangements you want to set up. You still need to reimburse me
9 for half of the applicant fees.” Exhibit 7; Exhibit 8, Receipt for
10 Challenger School Applicant Fees.

11 These emails demonstrate Jim did not ignore Minh’s requests and
12 agreed she could pay the school directly. It is Minh’s responsibility to
13 reimburse Jim for her one-half ($\frac{1}{2}$) portion once Jim has paid for the
14 expense. If Minh cannot behave maturely and pay Jim directly, and would
15 prefer to pay the school instead, which Jim told her she is free to do, it is
16 her responsibility to request from the school whatever information she
17 believes she needs to set up her payment. Both parties have access to the
18 billing information from the school.

19 In addition to refusing to pay for the children’s private school
20 tuition, Minh also believes she is justified in refusing to pay one-half ($\frac{1}{2}$)
21 the cost of the children’s extracurricular activities. Minh claims that Jim
22 previously refused to pay for the children’s extracurricular activities, which
23 is why she withdrew her agreement to the children’s participation in their
24 extracurricular activities a week after this Court’s Decision and Order.
25 Minh’s Opposition, pg. 17, lines 19-24. The only extracurricular activities
26 for which Jim has refused to pay are the extracurricular activities in which
27 Minh unilaterally enrolled the children in California during the summer of
28 2019 when the Court had yet to hold the evidentiary hearing on child

1 custody. Jim did not want Minh to interpret his contribution to
2 extracurricular activities in California as his consent to the children moving
3 there, which Minh no doubt would have twisted to use for her case.

4 Minh provides no coherent response to the fact that Jim finds it
5 completely unreasonable she is requesting he reimburse her for one-half
6 ($\frac{1}{2}$) the cost of the children's dental work she performed without
7 discussing same with him. Half of the amount for which Minh billed Jim
8 was a carryover charge; however, no date for previous charges or the work
9 completed was provided. The parties never purchased dental insurance for
10 the children during their marriage for the obvious reason that Minh is a
11 children's dentist and can and did provide the children's dental care. If
12 Minh is now going to be "charging" Jim, and obviously only Jim, for dental
13 work she performs on the children, Jim would rather purchase dental
14 insurance and find a dentist under his insurance plan to provide dental
15 care for the children. This will be much more cost effective considering the
16 exorbitant amount Minh has tried to charge Jim for dental work on their
17 children.

18 **III. LEGAL ARGUMENT**

19 **A. Jim Did Not Fail to Comply with EDCR 5.501**

20 EDCR 5.501(a) provides: "Except as otherwise provided herein or by
21 other rule, statute, or court order, before any family division matter motion
22 is filed, the movant must attempt to resolve the issues in dispute with the
23 other party." As set forth in Jim's Emergency Motion, the parties
24 discussed a majority of the issues raised in Jim's Emergency Motion in
25 December 2019 and March 2020. Once Minh falsely accused Jim of
26 domestic violence, obtained a TPO against him, and informed him she
27 believed he should not have contact with his children until the criminal
28 trial was conducted, it became clear Court intervention would be necessary.

1 B. This Court Should Order the Immediate Return of the Children to
2 Jim, Enforce this Court's Decision and Order, and Dissolve the TPO

3 Jim has not seen his children since March 20, 2020. The children
4 should have been returned to him on March 29, 2020. When the hearing
5 on Jim's Emergency Motion is held on April 22, 2020, it will have been 33
6 days since he last saw his children and 24 days since the children should
7 have been in his custody. As set forth in detail in Jim's Emergency Motion
8 and Opposition to Minh's Motion to Extend TPO, Jim is not a violent
9 person, has never assaulted or battered Minh or the children, and is not
10 any danger to the children. Jim, unlike Minh, understands he cannot
11 discuss these matters with the children. Although Minh continues to state
12 that Jim has been charged with a crime, Jim has been informed by his
13 attorney, John Marchiano, that he has not actually been charged with a
14 crime at this time.

15 It would be unjustified to deprive Jim of his custodial rights based on
16 Minh's allegations as she has an ulterior motive for falsely accusing Jim of
17 domestic violence. Jim has no idea what Minh told the children and had
18 them tell the police, but he does not believe the children were able to see
19 Minh damaging his property and losing her temper from where the RV was
20 parked. Jim, and this Court, have previously expressed concern over
21 Minh's past inappropriate discussions with the children and how such
22 discussions have the potential to lead to alienating the children from their
23 father. Jim has been trying to address such manipulation and alienation
24 through therapy for the children, but Minh's actions have gone too far this
25 time. The more time the children go without seeing their father, the
26 greater the potential for irreversible alienation.

27 . . .

28 . . .

1 Jim requests the Court order that the TPO be dissolved, the children
2 be immediately returned to Jim, and Jim be awarded 24 days of makeup
3 time with the children during the Summer.

4 C. This Court Should Modify Custody and Appoint a New Therapist
5 for the Children

6 The parties agree a new therapist should be appointed for the
7 children. Jim has researched and recommended Bree Mullins and Minh
8 has recommended Jen Mitzel. Jim believes Ms. Mullins would be a much
9 more convenient choice as her office is within seven (7) minutes of the
10 children's school, which is important as the children will most likely be
11 attending sessions on weekdays after school and will need sufficient time
12 to complete their homework and study when they get home. Exhibit 9,
13 Google Maps – Challenger School to Bree Mullin's Office. Ms. Mitzel's
14 office is 24 minutes from the children's school. Exhibit 10, Google Maps
15 – Challenger School to Jen Mitzel's Office. Jim also believes Ms. Mullins
16 is more qualified than Ms. Mitzel. Ms. Mullins is a psychologist whereas
17 Ms. Mitzel is a clinical social worker/therapist. Exhibit 11, Psychology
18 Today, Jen Mitzel. Ms. Mullins has worked with high-conflict families in
19 navigating the divorce process, improving co-parenting, and guiding
20 children to achieve their full potential. Exhibit 12, Psychology Today,
21 Bree Mullins. Considering the present psychological health of the children,
22 especially Hannah who has been most affected, a child psychologist is a
23 much better choice than a clinical social worker/therapist. A child
24 psychologist has a greater likelihood of successfully helping the children to
25 recover and foster healthy relationships with both parents.

26 Jim respectfully requests this Court appoint Ms. Mullins to provide
27 the children therapy, and allow Ms. Mullins to testify as a witness if
28 necessary. Jim also requests that Minh's visitation be suspended or

1 supervised here in Nevada until the children and Minh participate in
2 therapy to address the valid concerns of alienation and manipulation.

3 D. The Court Should Issue an Order to Show Cause Why Minh Should
4 Not Be Held in Contempt

5 The following is a list summarizing the instances in which Minh has
6 committed contempt and failed to abide by the Court's Decision and
7 Order requiring the parties "to share equally private school tuition and
8 related expenses, all medical and dental expenses for the children that are
9 not covered by insurance, expenses for the children's extracurricular
10 activities that the parties agree are best for the children[] . . . pursuant to
11 the 30/30 rule" Decision and Order, pg. 29, lines 1-13.

12 1. Children's Challenger School tuition: Minh's one-half portion
13 each month is \$1,946 for the period of August 2019 to March 2020
14 (Minh's one-half equals \$15,568)

15 Jim has provided receipts for the children's tuition to Minh and
16 emailed her on multiple occasions requesting she reimburse him for one-
17 half the cost of the children's Challenger School tuition. Jim emailed Minh
18 on October 30, 2019 (Emergency Motion, Exhibit 7), January 17 and 18,
19 2020 (Emergency Motion, Exhibit 7), January 24, 2020, and March 14,
20 2020 (Exhibit 13). Jim previously stated he believed Minh's monthly one-
21 half portion for the children's tuition was \$2,140, however, he believes this
22 amount includes the children's after school tutor and other expenses. Jim
23 believes the base rate for the children's tuition is \$3,892 per month, and
24 Minh's one-half portion would be \$1,946. Minh has not reimbursed Jim
25 for this expense.

26 2. Challenger School Uniforms: \$377.67 (Minh's one-half equals
27 \$188.84)

28 . . .

1 Jim emailed Minh on October 30, 2019 requesting she reimburse him
2 for her one-half portion of the cost of the children's school uniforms, and
3 provided Minh the receipt for same. Emergency Motion, **Exhibit 7**. Minh
4 has not done so.

5 3. Matthew's Karate: \$460.24 (Minh's one-half equals \$230.12)

6 Jim emailed Minh on October 30, 2019 requesting she reimburse him
7 for her one-half portion of the cost of Matthew's karate, and provided
8 Minh the receipt for same. Emergency Motion, **Exhibit 7**. Minh has not
9 reimbursed Jim.

10 4. Michelle Gravley Therapy: \$175.50 (Minh's one-half equals
11 \$87.78)

12 Jim emailed Minh on December 19, 2019 requesting she reimburse
13 him for her one-half portion of the cost of the children's December 19,
14 2019 therapy session with Dr. Gravley, and provided proof of payment of
15 same. **Exhibit 14**. Minh has not reimbursed Jim.

16 5. Challenger School Applicant Fees: \$525 (Minh's one-half
17 equals \$262.50)

18 Jim emailed Minh on January 22, 2020 requesting she reimburse him
19 for her one-half portion of the cost of the Challenger School applicant fees,
20 and provided her a copy of the check with which he paid these fees.
21 **Exhibits 7** and **8**. Minh has not reimbursed Jim.

22 6. Hannah's ophthalmology appointment: \$125 (Minh's one-half
23 equals \$62.50)

24 Jim sent the receipt and a text message to Minh on February 19,
25 2020 requesting she reimburse him for one-half the cost of the
26 ophthalmology appointment. **Exhibit 15**. Minh has not reimbursed Jim.

27 ...

28 ...

1 7. Selena's ophthalmology appointment and eye drops: \$70 for
2 the ophthalmology appointment and \$15 for eye drops (Minh's one-half
3 equals \$35.00 and \$7.50, respectively)

4 Jim emailed Minh on March 3, 2020 requesting she reimburse him
5 for one-half the cost of the ophthalmology appointment, and provided a
6 copy of the receipt. Exhibit 16. Jim emailed Minh on March 9, 2020
7 requesting she reimburse him for her one-half portion of the cost of
8 Selena's eye drops and provided Minh the receipt verifying payment of
9 same. Exhibit 17. Minh has not reimbursed Jim for either of these
10 expenses.

11 E. This Court Should Address Other Parent Child Issues

12 Minh did not address this section of Jim's Emergency Motion and,
13 thus, must not be opposed to Jim's request for the Court to address other
14 parent child issues. Jim requests the Court enter a Behavioral Order
15 directing that neither party is to communicate with the children about this
16 matter, or make any derogatory or demeaning statements about the other
17 parent in the presence of the children. The Court should order that the
18 children's clothing, belongings, and possessions are to be transferred freely
19 with the children. This Court should order Minh to return the children's
20 school uniforms given Jim has primary custody and takes the children to
21 and from school.

22 In addition, the Court ordered both parties to provide health
23 insurance for the children if offered through employment. Minh does not
24 provide health insurance for the children so Jim is requesting this Court
25 order Minh to pay one-half of the health insurance premium Jim pays for
26 the children from the date of the Decision and Order (i.e., September 20,
27 2019 to the present). See Emergency Motion, Exhibit 7. Jim has also paid
28 for Minh's health insurance since September 20, 2019, and is requesting

1 this Court order Minh to reimburse him for this expense. Jim has
2 previously requested Minh reimburse him for her health insurance
3 premium and she has refused.

4 Lastly, Jim is also requesting this Court order that neither party is to
5 travel internationally with the children without the approval and consent
6 of the other parent. Based on Minh's Opposition, it appears she believes
7 she only needs to provide an itinerary to Jim for vacations and not out of
8 town travel for the holidays or other custodial timeshare the Court
9 specifically granted to each party. Minh contends the Court did not grant
10 either party "vacation" time that would require her to provide an itinerary,
11 and a "vacation" is separate and distinct from the holidays and other
12 custodial timeshare set forth in the Court's Decision and Order. Minh has
13 the ability to travel internationally without Jim's consent as she took the
14 children's passports with her when she moved out of Jim's home.

15 **IV. CONCLUSION**

16 The Court must make clear to Minh that she will not be permitted
17 to continue her game playing to the detriment of the parties' children.
18 Based on the foregoing, Jim respectfully requests the Court grant the relief
19 requested in this Emergency Motion.

20 DATED this 15th day of April, 2020.

21 THE DICKERSON
22 KARACSONYI LAW GROUP

23 By /s/ Sabrina M. Dolson
24 ROBERT P. DICKERSON, ESQ.
25 Nevada Bar No. 000945
26 SABRINA M. DOLSON, ESQ.
27 Nevada Bar No. 013105
28 1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

1 DECLARATION OF JAMES W. VAHEY

2 I, JAMES W. VAHEY, declare under penalty of perjury under the law
3 of the State of Nevada that the following statement is true and correct:

4 1. I am over the age of 18 years. I am the Plaintiff in this action.
5 I have personal knowledge of the facts contained herein, and I am
6 competent to testify thereto.

7 2. I am making this declaration in support of my REPLY TO
8 DEFENDANT'S OPPOSITION PLAINTIFF'S EMERGENCY MOTION
9 FOR IMMEDIATE RETURN OF THE CHILDREN, DISSOLUTION OF
10 TPO, MODIFICATION OF CHILD CUSTODY, APPOINTMENT OF A
11 NEW THERAPIST FOR THE CHILDREN, AN ORDER TO SHOW
12 CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN
13 CONTEMPT, AND TO RESOLVE OTHER PARENT CHILD ISSUES
14 ("Reply"). I have read the Reply prepared by my counsel and swear, to the
15 best of my knowledge, that the facts as set forth therein are true and
16 accurate, save and except any fact stated upon information and belief, and
17 as to such facts I believe them to be true. I hereby reaffirm said facts as if
18 set forth fully herein to the extent that they are not recited herein. If
19 called upon by this Court, I will testify as to my personal knowledge of the
20 truth and accuracy of the statements contained therein.

21 I, JAMES W. VAHEY, declare under penalty of perjury under the
22 law of the State of Nevada that the foregoing is true and correct.

23 Executed on 4-15-2020

24 
25 _____
26 JAMES W. VAHEY

